

Form No.HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

W.P. No.38068 of 2016

Mst. Mamuna Amin Vs. Government of Punjab etc.

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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07.12.2016 Mr. Abid Mehmood Mirza, Advocate for the Petitioner.
Rana Kamran, Assistant Advocate General, Punjab on Court's call.

Through this constitutional petition the Petitioner has challenged the vires of order dated 13.6.2016 passed by the Secretary School Education Department, Punjab (Appellate Authority) through which order dated 08.08.2015 passed by the Complaint Redressal Cell, Lahore Division ("CRC") was set aside and the Petitioner was held not eligible for the job in question.

2. Brief facts of the case are that on 12.12.2014, an advertisement was published in daily "Duniya" inviting applications for the appointment of Educators for various posts in District Nankana Sahib. The Recruitment Policy 2014 for these appointments was duly notified. The Petitioner applied for the post of Senior Elementary School Educator claiming to have passed NTS test in Tehsil Nankana Sahib clearing all stages successfully. The candidature of the Petitioner was rejected by Respondent No.5 because the Petitioner was resident of Shahkot having domicile issued in her favour from Shahkot on 04-08-2009, therefore, the Petitioner was not entitled to be appointed in Tehsil Nankana Sahib on the basis of her previous domicile of Nankana Sahib dated 07-07-2008.

3. The Petitioner aggrieved of this decision filed a complaint before Respondent No.2 / CRC, the complaint was accepted vide order dated 8.8.2015, Respondent No.5 was directed to issue appointment letter to the Petitioner. The decision of Respondent No. 2 was challenged by Respondent No. 4 before the Appellate authority / Respondent No. 1. The decision of Respondent No. 2 was reversed, appeal was accepted through impugned order dated 13-06-2016. The verdict of Respondent No.5 was upheld.

4. Learned counsel for the Petitioner contends that order passed by the Appellate Authority is arbitrary, capricious and against law. The basic terms of recruitment policy were not considered. Respondent No.1 acted with *mala fides* and ulterior motives at behest of respondents No.4 & 5. The impugned order was passed in violation of the basic principles of natural justice and fair play. The Petitioner being resident of Nankana Sahib having valid domicile of said district is eligible for appointment.

5. On the other hand, learned AAG submits that Petitioner was having two domiciles of different places for four years, being resident of Shahkot having obtained second domicile from Shahkot, the Petitioner is not eligible for the job by using her first domicile of Nankana Sahib. After obtaining subsequent domicile the earlier domicile cannot be used for getting employment.

6. Arguments heard. Available record perused.

7. It is an admitted fact that first domicile of the Petitioner was issued from Nankana Sahib on 07-07-2008. Petitioner submits that she left Nankana Sahib with a view to settle in Tehsil Shahkot, therefore, she applied for her second domicile from Tehsil Shahkot which was issued to her on 04.08.2009. On 19.12.2013 domicile certificate issued from Tehsil Shahkot was cancelled on Petitioner's request. The Petitioner has not disputed the findings of the Appellate Authority that she got a job in the Special Education in 2012 being resident of Tehsil Shahkot, the Petitioner is registered voter of Tehsil Shahkot, the address mentioned in her application form, fee deposit challan form and National

Identity Card is that of Shahkot. It is also not disputed that Petitioner was having two domiciles from 04.08.2009 to 19.02.2013 pertaining to two different Tehsils.

8. The basic questions to be answered in this case are; can a person hold two domiciles of different places at the same time and secondly on account of change of residence, if a fresh domicile is obtained, what will be the status of previous domicile. In order to address the issue the statutory provisions relating to domicile are first taken into consideration. The issuance of domicile certificate is governed by Section 17 of the Pakistan Citizenship Act, 1951 (“**Act**”) and Rule 23 of the Pakistan Citizenship Rules 1952 (“**Rules**”) the provisions are reproduced here for ready reference:-

*“Section -17. **Certificate of Domicile.** – The Federal Government may upon an application being made to it in the prescribed manner containing the prescribed particulars grant a certificate of domicile to any person in respect of whom it is satisfied that he has ordinarily resided in Pakistan for a period of not less than one year immediately before the making of the application and has acquired a domicile therein”.*

*“Rule -23. **Certificate of domicile.** – The Federal Government, the Provincial Government or any District Magistrate authorized by the Provincial Government in this behalf may on application made to it in this behalf issue a certificate of domicile in Form ‘P-1’ in the manner following: --*

(a) An application for a certificate of domicile shall be made in Form “P” in duplicate, shall be accompanied by an affidavit affirming the truth of the statement made in it and affirming further that the applicant had not migrated to India after the first day of March, 1947 or that, having so migrated, and returned to Pakistan under a permit for resettlement or permanent return issued by an officer authorized by the Government of Pakistan.

(b) Any authority to whom an application is presented may demand such evidence as it may consider necessary for satisfying itself that the facts stated in the application are correct and that the applicant has been continually resident in Pakistan for a period not less than one year and intends to live permanently in Pakistan.

(c) The authority shall pass such orders on the application as it deems fit.”

9. The word ‘**Domicile**’ is not defined in the Act or Rules. In Black’s Law Dictionary (Eighth Addition) it is defined as “*The place at which a person has been physically present and that the person regards as home; a person’s true fixed, principal and permanent home, to which that person intends to return and remain even though currently residing elsewhere. A person has a settled connection with his or her domicile for legal purposes, either because that place is home or because law has so designated that place.*”

The Concise Oxford English Dictionary (Eleventh Edition, Revised) defines ‘**permanent**’ as “*lasting or remaining unchanged indefinitely, or intended to be so; not temporary*”

10. It is Petitioner’s own case in para 5 of the petition that Petitioner shifted to Tehsil Shahkot with her family and applied for fresh domicile of Tehsil Shahkot. This was Petitioner’s second domicile as she earlier had domicile of Nankana Sahib. When the Petitioner applied for domicile of Tehsil Shahkot, it means that Petitioner had intention to live in Shahkot permanently and had left her place of abode in Tehsil Nankana Sahib. The documents referred in para 7 above show that Petitioner is still residing in Shahkot and is falsely showing change of residence to avail more benefits. For grant of subsequent domicile certificate she must have claimed to be the permanent resident of Tehsil Shahkot with no intention to go back to her earlier place of abode. In the case of Muhammad Yar Khan Vs. Deputy Commissioner cum-Political Agent Lora Lie and another (1980 SCMR 456), it was held that if an application is made to get a domicile it must be claimed that permanent residence of a person will be at the place for which domicile is applied. In the case of Mst. Khadija Shaheen Ali Vs. District Coordination Officer, Rajan Pur and another (2015 CLC 859), it was held that person might have more than one places of residence but could only have one place of domicile, place of domicile of a person would signify a place where he always had intention to return. If a person had moved from a certain place and has applied for a domicile of different place that means he has no intention to return back to his earlier place of abode.

11. The concept of permanent residence in terms of domicile is of two types, one by birth and the other by choice. A person who desires to select his permanent residence by choice means he intends to relinquish his original place of abode and chooses another place for the purpose of his permanent residence. Once the fact of relinquishment is established and person acquires a new domicile that new place is considered as his permanent residence and with the issuance of new domicile for a new place the earlier domicile cannot be used. It has been held in the case of *Khalid Bashir Mughal and others Vs. Asad Government of the State of Jammu and Kashmir through Chief Secretary and others* (2015 PLC(C.S.) 650), that a person is not authorized to keep in possession two domicile certificates for different places simultaneously.

12. It is established principle of law that 'Domicile Certificate' is a prima facie proof of the place of permanent residence of a person. Reference in this behalf is made to the case of *Muhammad Khalil and another Vs. Executive District Officer, Revenue, Pishin and another* (PLD 2011 Quetta 21).

In the said judgment it was also held as under:-

“There are two stages of a domicile certificate, one is, that when the person intended to permanently reside at a particular place, as such, applies for a domicile certificate. Secondly, after obtaining a domicile certificate, the holder of a certificate continues to permanently residing at a particular place. Thus, in the first circumstance, when a person applies for a domicile certificate, the authority has to consider whether the applicant relinquished his earlier permanent place of residence before selecting his new place of domicile. As far as second circumstance is concerned, the authority on its own or on the objection of any person concerned can conduct an inquiry with regard to a permanent residence of a holder of a certificate for a particular place”.

13. It is thus clear that the Petitioner in order to gain employment used her previous domicile which the Petitioner was not authorized to use. The previous domicile after obtaining new domicile of a different place is considered as relinquished. The Petitioner after obtaining subsequent domicile of Shahkot was required to make fresh application to the authorities in order to satisfy the authorities that she is no more resident of Shahkot and is residing in Nankana Sahib permanently.

14. For what has been discussed above, the order of appellate authority calls for no interference. The petition is, therefore, **dismissed in limine.**

(MUHAMMAD ALI)
JUDGE

APPROVED FOR REPORTING.

JUDGE

*M. Afzal **