



- c. Direct the Ministry of Commerce to observe the guidelines given in the above quoted Office Memorandum issued by the Office of Honorable Prime Minister; and Petitioner may please be posted as Consul General of Pakistan at Istanbul being his first choice.*
- d. Direct the Ministry of Commerce to honor the results and guidelines of issued by the Prime Minister of Pakistan and be instructed to issue notification for appointment of the Petitioner in accordance with the law.*
- e. Take cognizance of the non-action of Respondents No.1 to 3 and issue appropriate instructions.*
- f. Award the cost to the Petitioner.*
- g. Grant any other relief deem fit in the circumstances.*

2. The facts tersely revealed from the petition are that the Petitioner is a civil servant and working as Commissioner of Inland Revenue in Federal Board of Revenue (**FBR**). In December 2016, the Ministry of Commerce (the “**MOC**”) invited applications from Public/Private Sector Candidates having relevant education and work experience to fill in 9 vacancies of the Trade Officers (BS-18 to BS-20) in Pakistan Missions Abroad. The Petitioner duly applied for the post of BS-20. The Petitioner was shortlisted for written test which was conducted on 15.01.2017 and was declared successful candidate. Subsequently, the Petitioner was called for interview on 13.02.2017, but later came to know that the MOC instead of recommending the name of the Petitioner for the said post, sent proposal to the Prime Minister to re-advertise the seat of BS-20. Feeling aggrieved thereby the Petitioner filed Representation before the Prime Minister but the same remained unattended. Hence, this petition.

3. In pursuance of order of this Court dated 24.04.2017, the Respondents No.1 to 3 filed report and parawise comments denying all the allegations levelled in the petition and prayed for dismissal of the same.

4. Through C.M. No.2/2017, the Petitioner also placed on record some additional documents in support of his case which was allowed and made part of the file on 04.07.2017.

5. The learned counsel for the Petitioner *inter alia* submitted that the Petitioner passed the written test and has been failed/ousted in the interview which is against the Policy dated 16.02.2016 (the “**Policy**”) for appointment on foreign posting as the same provided that no candidate would be considered to have failed merely due to his performance in the interview; that the Respondents have failed the Petitioner in the interview on the basis of *mala fide* as he had passed the written test and is highly qualified having unblemished service record; that the proposal/recommendations of the Respondents for re-advertisement is beyond their legal competence and in violation of guidelines provided by the Prime Minister; that the impugned orders are discriminatory and based on *mala fide* and against Article 25 of the Constitution, as such the same are liable to be set aside; that the *mala fide* on the part of the Respondents is apparent as they have failed the Petitioner in the interview against the Policy of the Prime Minister and sent proposal for re-advertisement just to exercise their own discretion for

appointment on the said seat to their blue eye persons. Learned counsel for the Petitioner, in support of his contentions has placed reliance on the case titled *Orya Maqbool Abbasi v. Federation of Pakistan etc.* (Constitutional Petition No.22/2013), *Syed Mahmood Akhtar Naqvi and others v. Federation of Pakistan etc.* (PLD 2013 SC 195) and *Muhammad Ashraf Tiwana and others v. Pakistan and others* (2013 SCMR 1159).

6. On the contrary, the learned Law Officers, appearing on behalf of the Respondent No.1, have raised preliminary objections regarding the maintainability of the petition as well as on merits by contending that all the Respondents belong to Islamabad Capital Territory, therefore, the instant petition is not competent before this Court; that the Petitioner is a civil servant and the prayer of the Petitioner exclusively falls within the terms and conditions of his service, therefore, this Court is barred under Article 212 of the Constitution to entertain such like matters; that the prayer of the Petitioner does not reveal any impugned order and mere on the basis of apprehension no writ can be issued; that as admittedly the Petitioner has participated in the written test conducted in pursuance of re-advertisement, as such the instant petition has become infructuous; that the Petitioner remained unable to answer the questions and that too did not possess the required level of interpersonal and communication skills necessary for effectively performing responsibilities entrusted to the Trade Ministers/Consul Generals; that the recommendations of the Special Selection Board

(SSB) that the Petitioner does not possess required skill, have been approved by the Prime Minister, as such the Petitioner cannot be appointed as the Trade Officer. The learned Law Officers have placed reliance on the case titled Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Muhammad Javed and others (2015 SCMR 269), Fahad Raza etc. v. Federation of Pakistan etc. (W.P. No.313 of 2017), Mst. Shafqat Perveen v. The Commissioner, Punjab Employees Social Security Institution (PESSI) and others (2017 PLC (C.S.) 607), Saima v. Government of Balochistan through Secretary Education Department, Quetta and another (2014 PLC (C.S) 579), Ghulam Rasool v. Government of Pakistan through Secretary, Establishment Division Islamabad and others (PLD 2015 Supreme Court 6), Watan Party and another v. Federation of Pakistan and others (PLD 2013 Supreme Court 167) and Hassan Shahjehan v. FPSC through its Chairman, etc. (W.P. No.28579/2016).

7. The learned counsel for the Respondent No.2 submitted that the instant petition is not maintainable as the matter falls within the executive domain; that the Courts are usually refrain from interfering in policy making domain of the Executive; that it is a well settled law that the responsibility of deciding suitability of an appointment, posting or transfer fell primarily on the executive branch of the State; that the Respondent No.2 has not violated any policy rather it is implementing the 'Policy Guidelines for Foreign Appointment and Posting in Pakistan Missions Abroad and against

Pakistan's seats in International, Multinational, Bilateral and Regional Organizations, For a and Bodies' issued on 16.02.2016 (the "2016 Policy") in its true perspective; that the Respondent No.2 only conveyed recommendations of SSB to the Prime Minister as per legal competence; that there is no illegality in re-advertising the posts as the same have been done under the directions of the Prime Minister to have a fair competition; that no discriminatory attitude has been adopted towards the case of the Petitioner, as such the petition is liable to be dismissed. The learned counsel has placed reliance on the case titled **Ghulam Rasool v. Government of Pakistan etc.** (PLD 2015 SC 6).

8. In rebuttal, learned counsel for the Petitioner while answering the question of jurisdiction, submitted that the instant petition is maintainable before this Court and has relied upon the case titled **A.M. Construction Company (Pvt.) Limited through Chief Executive Officer and another v. National Highway Authority through Chairman and 2 others** (2017 CLC 178), and **Khalid Habib v. Pakistan Telecommunication Corporation Ltd. and others** (2014 PLC (C.S) 203). While reply to the answer regarding maintainability of the petition, the Petitioner has submitted that the relief claimed by the Petitioner does not fall within the ambit of terms and conditions of his service, as such the petition is competent before this Court. To support his contention the Petitioner has placed reliance on the case titled **Province of Sindh and others v. Ghulam Hassan Bughio** (2014 PLC (C.S) 1320), **Athar Hussain Khan and**

**others v. Federation of Pakistan through Principal Secretary and others (2015 PLC (C.S) 547) and Syed Ijaz Hussain v. Federation of Pakistan and others (2017 PLC (C.S) 115).**

9. I have heard the arguments of both the sides and perused the record minutely.

10. At the very outset, without touching the merits of the case the issue of territorial jurisdiction is essential to be resolve by this Court. The bare examination of the multiple prayers, made by the Petitioner, reveal that the Petitioner is aggrieved from the recommendations of the Respondent No.2 & 3, who sent proposal to the Prime Minister for re-advertisement of the post of BS-20 for appointment as the Consul General of Pakistan which exclusively fall within the domain of territorial jurisdiction of Islamabad Capital Territory (the “ICT”). Furthermore, the addresses of all the Respondents against whom directions have been sought by the Petitioner in this Petition belong to ICT. It is pertinent to mention here that the relief sought is about a vacancy advertised twice in Islamabad. The following chart will depict the clear picture of territorial nexus of the matter in hand:

<b>Sr.No.</b>	<b>Subject Matter</b>	<b>Nexus</b>
1	Addresses of the Respondents, to whom a direction is sought to be issued.	At Islamabad
2	Advertisement	At Islamabad
3	Pre-Test Screening	At Islamabad

4	Written Test conducted by LUMS	At Islamabad
5	Result of Written Test	At Islamabad
6	Interview	At Islamabad
7	Ministry Minutes	At Islamabad
8	Ministry Summary	At Islamabad
9	Prime Minister's Letter/Response	At Islamabad
10	Representation to Prime Minister	At Islamabad
11	Re-advertisement	At Islamabad
12	Second Written Test by LUMS	At Islamabad
13	Result of the Second Written Test	At Islamabad
14	Second Interview	At Islamabad

11. The Hon'ble Supreme Court has elaborated the importance of territorial jurisdiction in the case of **Sandalbar Enterprises (Pvt.) Limited v. Central Board of Revenue and others,** (PLD 1997 SC 334) that in order to determine the question of territorial jurisdiction, the dominant purpose behind recourse to law is to be taken into consideration. Further, it was also held as under:

*"A perusal of the above sub-clause (a)(i) of the above Article [199] indicates that a High Court has power to issue a direction to a person performing within its territorial jurisdiction functions in connection with the affairs of the Federation, a Province or a Local Authority*

*to refrain from doing anything he is not permitted by law to do or to do anything he is required by law to do. Similarly, under sub-clause (a)(ii) a declaration without lawful authority or of no legal effect can be given by a High Court in respect of any act done or proceedings taken within its territorial jurisdiction by a person performing functions in connection with the affairs of the Federation, a Province or a Local Authority."*

12. Similarly, it was held in **Sandalbar Enterprises (Pvt.) Limited v. Central Board of Revenue and others**, (PLD 1997 SC 334) as under:

*"We may observe that it has become a common practice to file a writ petition either at Peshawar, or Lahore, or Rawalpindi or Multan etc. to challenge the order of assessment passed at Karachi by adding a ground for impugning the notification under which a particular levy is imposed. This practice is to be depreciated. The Court is to see, what is dominant object of filing of the writ petition. In the present case, the dominant object was not to pay the regulatory duty assessed by a Customs official at Karachi. We are, therefore, not inclined to grant leave. Leave is refused."*

13. In Black's Law Dictionary "dominant jurisdiction principle" has been defined as under:

*"**dominant jurisdiction principle.** The rule that the court in which a case is first filed maintains the suit, to the exclusion of all other courts that would also have jurisdiction."*

14. It is a recognized principle of law that Constitutional jurisdiction or jurisdiction of judicial review by High Court is exercised under Article 199 of the Constitution and not under any other instrument. The Lahore High Court is created by the Constitution

of Pakistan, thus, it can only exercise powers which are conferred upon it by or under the Constitution. The High Court under Article 199 of the Constitution enjoyed ample powers but it was mandatory upon High Court to confine itself to its territorial jurisdiction as provided in the Constitution, and no one should consider constitutional jurisdiction of the High Court fragile to misuse or deviate from same to meet his own designs or suitability. (ref. *Mirza Luqman Masud v. Government Of Pakistan and 14 others*, 2015 PLC (C.S.) 526 [Balochistan] – DB; *Azad Hafeez Ltd v. Chairman, FBR and 5 others*, (2012 M L D 1684) [Islamabad]; *Ibrahim Fibres Ltd. v. Federation Of Pakistan and 3 others*, 2009 PLD 154 [Karachi] – DB; *Dr. Qaiser Rashid v. Federal Secretary, Ministry Of Foreign Affairs, Government Of Pakistan, Islamabad*, PLD 2006 Lahore 789 – DB; *InaamElahi Nasir and others v. National Bank Of Pakistan and others*, 2013 PLC (C.S.) 899 [Islamabad]; *Danish Kaneria v. Pakistan and others*, 2012 CLC 389 [Sindh] – DB; *Mrs. Rohi Chaudhry and 2 others v. Federation Of Pakistan and 3 others*, 2010 PTD 1233 [Karachi]; *High Noon Textile Ltd v. Saudi Pak Industrial And Agricultural Investment Co. (Pvt.) Ltd and 4 others*, 2010 CLD 567 [Lahore]; *Muhammad Maqsood Sabir Ansari v. District Returning Officer, Kasur and 3 others*, 2007 CLC 1113 [Lahore]; *Mst. Shahida Maqsood v. President Of Pakistan and another*, 2004 CLC 565 [Karachi] – DB; *Province of NWFP and another v. Abdur Rahman, Forest Contractor and others*, 1991 SCMR 1321; *Muhammad Naim v. State Cement Corporation Of Pakistan and others*, 1989 CLC 1241 [Karachi] – DB)

15. From the perusal of the instant petition, arguments of the learned counsels and documents annexed therein, the primary dominant object of filing this Constitutional petition is setting aside the recommendations of the Respondents No.2 & 3, direction to the Respondents No.1 to 3 which all relate to Islamabad and fall outside the territorial jurisdiction of this Court. Respondent No. 2 & 3 do not function within the territorial jurisdiction of this Court, and are not amenable to the jurisdiction of this Court. Importantly, issuance of writ is an extraordinary jurisdiction of the High Court and is invoked when stipulations in the Constitution for its issuance are met. The Petitioner has failed to satisfy that this High Court could exercise jurisdiction to pass direction to all the Respondents.

16. Reliance is also placed on the case titled **Shahrukh Aamir Ubaid v. National Highway & Motorway Police** (2017 PLC (C.S.) 368) = (PLJ 2017 Lahore 258) and the recently passed judgment by this Court in case titled **Hassan Shahjehan v. FPSC through its Chairman etc.** (2017 LHC 2385) = (W.P. No.28579/2016) wherein this Court held that “*Constitutional architecture of a Provincial High Court provides that while it enjoys judicial power to examine all laws or actions of the federal, provincial and local governments or authorities, it can only do so if the cause of action arises or the respondent government or authority is located or if the impugned action or order affects a person within the territorial jurisdiction of this Court i.e., within the Province. As a corollary, the*

*relief granted or the writ issued by the High Court also remains within the territorial jurisdiction of this Court and can only benefit or affect a person within the territorial jurisdiction of the Court.*”

This Court in Hassan Shahjehan *supra* also ruled that:

*“It is trite law that if the order or action of the Government or Authority (federal or provincial), present within the Province, affect the rights of a person within the Province, writ can be issued against the said Government or Authority (irrespective of its federal character) and relief given to the aggrieved person located within the Province.*

It has further been held as under:

*“Another dimension of the case is the principle of forum non conveniens which is a discretionary power that allows courts to dismiss a case where another Court, or forum, is much better suited to hear the case. This dismissal does not prevent a plaintiff from refilling his or her case in the more appropriate forum.”*

17. In the case of Muhammad Farhan Khan v. Federation of Pakistan and another (PLD 2016 Lahore 629), the Division Bench of this Court has also dismissed the petition by stating as under:

*“3. The authority of this Court to judicially review the vires of an act done or proceedings taken in connection with the affairs of the Federation, within its territorial jurisdiction cannot be doubted, however, the Constitutional arrangements contemplated under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 are to be faithfully observed in order to uphold the principle of judicial comity and harmony.”*

18. In the case of **Azad Hafeez Ltd v. Chairman, FBR and 5 others (2012 MLD 1684 [Islamabad])**, the petition was dismissed being not maintainable, and it was held that “*subject matter of the suit pertained to the territorial limits of the Sindh High Court as the consignments were retained at the Port of Karachi and that cause of action had therefore accrued to the petitioner within such territorial limits; and thus, High Court Islamabad lacked territorial jurisdiction to adjudicate over the matter*”. The same principle has also been summed up in several judgments including **Mirza Luqman Masud v. Government Of Pakistan and 14 others (2015 PLC (C.S.) 526 [Balochistan] – DB); Ibrahim Fibres Ltd. v. Federation Of Pakistan and 3 others (2009 PLD 154 [Karachi] DB); Dr. Qaiser Rashid v. Federal Secretary, Ministry Of Foreign Affairs, Government Of Pakistan, Islamabad (PLD 2006 Lahore 789 – DB); Inaam Elahi Nasir and others v. National Bank Of Pakistan and others (2013 PLC (C.S.) 899 [Islamabad]); Danish Kaneria v. Pakistan and others (2012 CLC 389 [Sindh] DB); Alamdar Engineering (Pvt.) Ltd v. Federation Of Pakistan and 2 others (2012 PTD 1758 [Lahore]); Mrs. Rohi Chaudhry and 2 others v. Federation Of Pakistan and 3 others (2010 PTD 1233 [Karachi]); High Noon Textile Ltd v. Saudi Pak Industrial And Agricultural Investment Co. (Pvt.) Ltd and 4 others (2010 CLD 567 [Lahore]); and Mst. Shahida Maqsood v. President Of Pakistan and another (2004 CLC 565 [Karachi] – DB).**

19. So far as the case law cited by the learned counsel for the Petitioner in support of his contention regarding territorial jurisdiction of this Court is concerned, in this regard it is stated that the same are distinguishable from the case in hand and each and every case has its own facts and circumstances, therefore, do not support him and cannot be relied upon. In the case law cited by the learned counsel for the Petitioner either the parties fell within the territorial jurisdiction of the Court which assumed the jurisdiction or the cause of action accrued in the said territory but in the present case all the Respondents belong to ICT and all proceedings were also conducted in ICT. Therefore, the case in hand is distinguishable from the cited case law. This Court is, therefore, of the considered opinion that it does not have the territorial jurisdiction to issue a writ in this Constitutional Petition, and has no jurisdiction to issue direction to Respondents beyond its jurisdiction i.e. in Islamabad because the relief sought is about a vacancy advertised twice in Islamabad and all the process including Advertisement, Pre-Test Screening, Written Test and its result, Interview, Ministry Minutes, Ministry Summary, Prime Minister's Letter/Response, Representation to Prime Minister, Re-advertisement, Second Written Test and its result, Second Interview etc. for the appointment on the said post have been completed in Islamabad. The best course for the Petitioner is to approach appropriate forum for the redressal of his grievances.

20. For what has been discussed above, I am of the affirmed view that interference by this Court would be constitutionally inappropriate

and impermissible and this Court has no jurisdiction to entertain the instant petition, which is accordingly dismissed for want of territorial jurisdiction.

**(JAWAD HASSAN)  
JUDGE**

\*NAVEED\*