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JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.2412 of 2023

Anam Bibi
Versus
Secretary, Punjab Public Service Commission, Lahore & others

J U D G M E N T

Date of hearing: 16.02.2023.
Petitioner by: Mr. Mahmood Ahmad Qazi, Advocate.
Respondents by: M/s. Ch. Fiza Ullah, Assistant Advocate
General along with Mian Muhammad Iqbal,
Law Officer, PPSC.

MUHAMMAD SAJID MEHMOOD SETHI, J.:- This writ petition is directed against the rejection letter dated 23.08.2022, issued by the Presiding Member, Punjab Public Service Commission (“PPSC”), Lahore as well as orders dated 08.11.2022 & 15.12.2022, passed by respondent No.6 / Member, PPSC, Lahore and respondent No.7 / Director Recruitment-I, PPSC, Lahore, respectively, whereby petitioner’s candidature for the post of Lecturer Philosophy (Female) (BS-17) in the Punjab Higher Education Department, was rejected on account of non-issuance / non-submission of her domicile certificate and petitioner’s representations in this regard were rejected.

2. Necessary facts are that in response to advertisement for the post of Lecturer Philosophy (Female) (BS-17) in the Punjab Higher Education Department, petitioner having requisite qualification, applied for the post in question on the basis of domicile certificate of her husband, namely Asim Raza son of Hakim Ali, who was resident of District Gujrat having domicile certificate of same district (as petitioner had not yet applied for issuance of domicile till the closing date for filing of applications i.e. 17.12.2021). Thereafter, petitioner successfully passed the written test and was called for interview for recruitment to the post in question. She appeared along with necessary documents including her husband’s domicile certificate in addition to

her own, as she got issued her domicile certificate on 16.03.2022. However, respondent-PPSC, vide letter dated 23.08.2022, refused to interview the petitioner and rejected her candidature for the post in question on account of non-issuance / non-submission of her domicile certificate before the closing date. Petitioner filed representations which were rejected vide orders dated 13.09.2022 and 22.09.2022. Feeling aggrieved, petitioner approached this Court by way of filing **W.P. No.57809 of 2022**, which was allowed vide judgment dated 03.10.2022 with the direction to re-decide the representation strictly in accordance with law and keeping in view Regulation No.23(e) of the Punjab Public Service Commission Regulations, 2016 (**“the PPSC Regulations, 2016”**). However, petitioner’s representations were again rejected vide orders dated 08.11.2022 & 15.12.2022. Hence, instant petition.

3. Learned counsel for petitioner submits that respondents were required to pass a speaking order, keeping in view the provisions of Regulation 23(e) of the PPSC Regulations, 2016, whereby only domicile of petitioner’s husband was to be considered, but this aspect of the matter has been overlooked while passing impugned orders merely by following the Policy Decision, which practice has been deprecated by the Hon’ble Superior Courts. In support, he has relied upon Muhammad Nadeem Arif & others v. Inspector-General of Police, Punjab, Lahore and others (2011 SCMR 408).

4. Contrarily, learned Law Officer defends the impugned orders by contending that petitioner has failed to pinpoint any illegality or legal infirmity therein, thus, no interference is warranted.

5. Arguments heard. Available record perused.

6. This case hinges upon the applicability or otherwise of the Regulation 23(e) of the PPSC Regulations, 2016, which for ease of reference is reproduced hereunder:-

“A married female candidate may opt for the district of domicile of her husband till she acquires her own Domicile. In such a case she shall produce domicile certificate of her husband alongwith the evidence of her marriage.”

7. In previous round of litigation, this Court specifically directed the respondents to re-consider the matter with reference to afore-noted Regulation, however, a bare perusal of impugned order dated 23.08.2022 speaks otherwise and petitioner's representation was turned down by observing as under:-

"PPSC followed the Service Rules / Policy Decision while determining the eligibility of the candidates. Petitioner qualified the written test and called for interview on 23.08.2022. As such, there is no discrimination / irregularity committed on the part of the PPSC."

The Policy Decision relied upon by the respondent-PPSC reads as under:-

"A married female candidate may opt for the district of domicile of her husband provided she shall produce Domicile Certificate of her husband alongwith her previous Domicile Certificate, if she belongs to a district other than that of her husband, and also shall produce of her marriage. If she has no previous Domicile she shall be considered ineligible."

Notably, PPSC Regulations, 2016 were formulated by taking power from sub-section (2) of Section 10 of the Punjab Public Service Commission Ordinance, 1978 and these are subordinate and delegated legislation, deriving authority and legal cover from the provisions of the main statute. Regulation 3 of the PPSC Regulations, 2016 authorizes the Commission to make Policy Decisions specifying detailed procedures for activities of the selection process and collateral matters, which reads as under:-

"The Commission may make Policy Decisions to specify detailed procedures for activities of the selection process and matters consequential, incidental and ancillary. Such Decisions shall be incorporated in the Manual of Policy decisions."

8. It is evident from the above that Policy Decisions are meant to deal with details and can neither be a substitute for the fundamentals of the Regulations nor can add to them. To determine the vires of Policy Decisions of respondent-PPSC, this Court has to examine whether the same are beyond the power granted by the enabling Regulations or consistent therewith. The Policy Decision in question has imposed a

further condition of having domicile of the candidate before her marriage for getting benefit of domicile of her husband. While Regulation 23(e) does not require the submission of earlier domicile of any married female candidate or rejection of her candidature in case she does not possess any earlier domicile. The beneficial Regulation 23(e) has been qualified with a restriction leading to ineligibility of a candidate to be considered for appointment if she has no domicile before marriage. It is hard to imagine that the Policy Decision in question is elaborating the Regulation 23(e) *ibid*.

9. The principles of delegated legislation entitle the delegatee to carry out the mandate of the legislature, either by framing rules, or regulations, which translate and apply the substantive principles of law set out in the parent legislation. They can fill in details but not vary the underlying statutory principles. It is observed that while making Policy Decisions, respondent-PPSC has to remain within the power given by the Regulations. The efficacy of the Regulations cannot be left to the mercy of Policy Decisions to be made by respondent-PPSC. Reference can be made to Khawaja Ahmad Hassan v. Government of Punjab and others (PLD 2004 Supreme Court 694), Suo Motu Case No.13 of 2009 (PLD 2011 Supreme Court 619), Suo Motu Case No.11 of 2011 (PLD 2014 Supreme Court 389), Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others (2015 SCMR 630), Dr. Noor Homoeopathic v. National Council (1996 CLC 1687), Independent Newspapers Corporation (Pvt.) Ltd. And others v. Federation of Pakistan and others (PLD 2017 Lahore 289), Ms. Shagufta Hashmat and others v. Federation of Pakistan through Secretary Cabinet Division and others [2018 PLC (C.S.) 619] and Rida Fatima v. Pakistan Medical Commission and others (PLD 2022 Lahore 197).

10. Even otherwise, if a subordinate legislation is in conflict with the primary legislation, then it is void and *ultra vires*. Similarly, through a policy, a valid subordinate legislation can neither be made

redundant nor superseded and no policy can be made in conflict therewith. Reliance is placed upon Muhammad Nadeem Arif's case supra, Waseem Riaz and 119 others v. Ministry of Capital Administration and Development (CADD) through Secretary and another [2019 PLC (C.S.) 403] and Muhammad Yaqoob and another v. Government of Khyber Pakhtunkhwa through Secretary Land Revenue Department, Peshawar and others [2021 PLC (C.S.) 119].

For facility of reference, relevant portion of the case of Waseem Riaz supra is reproduced hereunder:-

"39. It is settled law that if a subordinate legislation is in conflict with the parent statute i.e. the primary legislation then it is void and ultra vires. Likewise, through a policy a valid subordinate legislation can neither be made redundant nor superseded let alone a statute enacted by the legislature. A primary legislation, therefore, prevails over subordinate legislation and no policy can be made in conflict therewith. Policies which are in violation of fundamental rights guaranteed under the Constitution or affect the interests of the public at large are void and, therefore, open to be challenged. Reliance is placed on case of "Watan Party and another v. Federation of Pakistan and others" [PLD 2013 SC 167]."

11. For the reasons recorded above, instant petition is **allowed** in the manner that impugned letter and orders are declared to be illegal and without any lawful authority, thus, same are set aside. Respondent-PPSC shall associate petitioner in the remaining part of the recruitment process as per applicable law, rules and regulations.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

A.H.S./Sultan