JUDGMENT SHEET

PESHAWAR HIGH COURT
ABBOTTABAD BENCH
(Judicial Department)

WP No. 1300-A/2021.

Dr. Laiba Khan

Petitioner(s)

V e r s u s

Government of Khyber Pakhtunkhwa & others

Respondent(s)

For Petitioner(s):	*Mr. Azeem Ullah Khan Tahir Kheli, Advocate.*
For Respondents:	*M/s. Waqar Khan Aurakzai, AAG and Asad Ali, Advocate on video link.*
Date of hearing:	***28.10.2025.***

J U D G M E N T

SYED MUDASSER AMEER, J. Through this petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has invoked the constitutional jurisdiction of this Court, praying that paragraph 4(a) and (b) of the *Induction Policy for FCPS-II Training and First Fellowship, Session July 2021* be declared null and

void, and that the respondents be directed to allow her participation in the entry test for fellowship training at the Postgraduate Medical Institute (PGMI), Peshawar.

2. The petitioner, a resident and domiciled in District Abbottabad, graduated with an MBBS degree in 2019 from Women Medical College, Abbottabad. She passed the FCPS Part-I examination in November 2020 and became eligible for fellowship training at PGMI. Her application for induction, however, was rejected under the impugned policy clause, which provides that upon marriage, a female candidate shall assume the domicile of her husband and that her own domicile shall thereafter not be considered valid. The petitioner asserts that this rule deprives her of the opportunity to pursue higher medical education and violates her fundamental rights.

3. Arguments heard and record perused.

4. Learned counsel for the petitioner contended that clause 4(a) of the policy offends Articles 4, 9, 15, 25, and 37(c) of the Constitution. It extinguishes a woman’s independent right to choose her domicile and thereby restricts access to higher education on grounds other than merit. Learned AAG, assisted by

counsel for PGMI, defended the policy as an administrative measure to prevent double applications and argued that it is consistent with Regulation 20(e) of the Khyber Pakhtunkhwa Public Service Commission Regulations, 2003, and with Sections 15 and 16 of the Succession Act, 1925.

5. For convenience of reference the relevant part of the impugned policy and Regulation 20(e) of the KP Public Service Commission Regulations, 2003 are given below:

> **Induction Policy for FCPS-II Training & 2nd Fellowship, Session July, 2021.**
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> **4. DOMICILE POLICY**
>
> a. Female candidates upon marriage shall assume domicile of her husband meaning after marriage domicile of husband will be considered as domicile of the female candidate (post marriage, her own domicile will not be considered as valid).
>
> b. Permanent address on CNIC must be of Khyber Pakhtunkhwa.

> **Khyber Pakhtunkhwa Public Service Regulations, 2003:**
>
> **20. Citizenship / Domicile Certificate / Photograph.**
>
> ……
>
> (e) A female candidate if married before entry into government service shall acquire the domicile of her husband. If otherwise she will possess her own domicile.

6. A bare reading of Regulation 20(e) shows that it does not impose a compulsion. It recognizes

choice. A married female candidate may retain her own domicile if she so chooses, or she may adopt her husband's domicile. The impugned PGMI policy, however, removes that choice altogether. It presumes, without inquiry or consent, that marriage automatically transfers domicile; an assumption foreign to constitutional law and inconsistent even with the Regulation it purports to follow.

7. The petitioner has chosen to retain her Abbottabad domicile and continues to reside there. Her husband, a native of Punjab, has himself applied for domicile in Abbottabad, showing their mutual intent to reside permanently in Khyber Pakhtunkhwa. Thus, both *factum residendi* and *animus manendi*, residence and intention, are established in her favour.

8. It may also be clarified that the concept of 'domicile' under the Succession Act, 1925 is distinct from the domicile recognized for administrative or employment purposes under the Pakistan Citizenship Act, 1951 and the Pakistan Citizenship Rules, 1952. The domicile referred to in Section 16 of the Succession Act is a legal fiction applied for determining succession and personal law, whereby a

wife's domicile follows that of her husband during marriage. It does not, however, affect the domicile certificate issued by the provincial authorities for purposes of employment, education, or quota allocation. For such administrative purposes, the test remains one of residence, intention, and permanent association with a particular province or district. Accordingly, a woman born and permanently residing in Khyber Pakhtunkhwa does not lose her provincial domicile upon marriage to a person domiciled in another province, unless she voluntarily adopts the domicile of her husband or applies for its change. She therefore continues to be entitled to the rights, privileges, and employment opportunities available to holders of Khyber Pakhtunkhwa domicile.

9. Furthermore, Section 9 of the *Succession Act, 1925* provides that "*the domicile of origin prevails until a new domicile is acquired*". This law reinforces the petitioner's stance that, having never acquired a new domicile after marriage, her domicile of origin lawfully endures. The petitioner's continued residence, intention to remain in Khyber Pakhtunkhwa, and absence of any act signifying a change of domicile conclusively preserve her

original domicile of origin. The provision, thus, supports the conclusion that her legal domicile remains Abbottabad, notwithstanding her marriage.

10. The law on domicile, as explained in *District Education Officer (Female), Charsadda v. Sonia Begum* (2023 SCMR 217), rests upon *animus manendi* (the intention to reside) and *factum residendi* (actual residence). Marriage does not automatically alter domicile; intention and residence do. Likewise, in *Mubashar Mehmood v. Home and Tribal Affairs* (PLD 2018 Balochistan 49), it was held that domicile, under the Citizenship Act and Rules, pertains to the whole of Pakistan and is distinct from residence in a particular province. Article 15 of the Constitution further guarantees every citizen the right to reside and settle anywhere in Pakistan. A woman cannot be denied the right to retain her pre-marriage domicile as that would infringe upon her fundamental right to freedom of movement and choice of residence protected under Article 15 of *The Constitution*.

11. In the case of *Mst. Shaista Gul v. Government of KP and others* (WP No.564-M/2019) decided on 26.11.2019, this Court observed

> "13. …The intention of the married woman to make the ordinary or permanent place of residence of her husband can also be gathered if she has acquired a CNIC or domicile wherein her permanent residence is reflected as that of a husband."

12. *Article 4* assures every citizen the right to be dealt with in accordance with law and not arbitrarily. *Article 9* protects the right to life, which the Supreme Court has expansively interpreted to include education, livelihood, and professional advancement. In *All Public Universities BPS Teachers Association v. Federation of Pakistan* (2025 SCMR 322), it was observed that education is an integral part of life and denial thereof violates Article 9. *Article 15* ensures the freedom to reside and settle in any part of Pakistan. *Article 25* guarantees equality before law and prohibits discrimination on the basis of sex. *Article 37(c)* obligates the State to make higher education equally accessible to all on the basis of merit. The impugned clause violates each of these guarantees. It discriminates against married women, denies them equal educational opportunity, and restricts their freedom to reside and serve in their province of choice. It enforces a presumption that a woman's

individuality dissolves upon marriage; a notion alien to the Constitution.

13. The impugned provision leaves no room for choice. It compels a married woman to abandon her own domicile and assume that of her husband; whether she wishes it or not. It presumes that marriage erases individuality. The law does not. The Constitution certainly does not. A woman's domicile is not a transferable chattel, nor does it change hands upon marriage. It reflects residence, intention, and choice; all attributes of personhood. To impose an "alien domicile" upon her merely because she married is to deny her individuality. This, the Constitution forbids.

14. A female candidate may marry yet wish to continue her education and career in her native province, where she has lived, studied, and intends to reside permanently. If her husband, too, chooses to make that province their home, the State has no business to displace that joint decision. Domicile is a question of *intention and residence*, not gender or marital status. By extinguishing her choice, the policy does not promote administrative order; it enforces gender subordination. It replaces merit with

marital dependency. The Constitution knows no such hierarchy.

15. Learned counsel for the respondents placed reliance on a previous judgment of this Court wherein the same policy was upheld. That judgment, however, turned on its own peculiar facts. The petitioner in that case had admittedly acquired her husband's domicile and had concealed material facts from the Court. The present petitioner, in contrast, has acted with full candour; she has retained her original domicile, continues to reside in her native district, and has exercised her constitutional right to choose her permanent place of residence. A choice even acknowledged by her husband who has applied for domicile at the same place. Furthermore, the earlier judgment rested primarily on Sections 15 and 16 of the Succession Act, 1925, which regulate succession to property and create a legal fiction confined to that field. Those provisions do not govern administrative or provincial domicile under the Pakistan Citizenship Rules, 1952, nor can they override constitutional guarantees of liberty, equality, and educational access under Articles 9, 15, 25, and 37(c). With utmost respect, that judgment is therefore distinguishable both on facts

and on law, and does not preclude the relief sought in the present case.

16. It is settled law that while matters of policy ordinarily fall within the domain of the executive, the courts will intervene where such policy is tainted with illegality, arbitrariness, or constitutional infirmity. A policy can be struck down if it is ultra vires the parent statute, inconsistent with constitutional provisions, discriminatory, irrational, or founded on extraneous considerations. Likewise, if it violates fundamental rights, offends the principle of equality under Article 25, defeats legitimate expectation, or constitutes a colourable exercise of power, it cannot stand judicial scrutiny. The executive cannot, under the guise of policy, amend or override statutory provisions, nor can it act contrary to the constitutional guarantees of fairness, reasonableness, and due process. The line of distinction is clear: courts do not sit in appeal over the wisdom of a policy, but they will strike it down when it crosses the boundary of legality.

17. This Court’s jurisdiction to test executive policy against the touchstone of constitutional rights is well-established; where a policy infringes

individual liberty, equality, or the right to life, the Court must intervene (*PESCO v. Ishfaq Khan*, 2021 SCMR 637). Executive policy cannot override the Constitution or fundamental rights. The PGMI policy, to the extent that it deprives married women of choice, is precisely such an arbitrary exercise.

18. A policy that compels a married woman to abandon her own domicile and assume that of her husband, regardless of residence or intention, is unconstitutional. It is inconsistent with Articles 4, 9, 15, 25, and 37(c) of the Constitution. It offends the equality clause, curtails liberty, and denies educational access on grounds unrelated to merit.

19. Accordingly, paragraph 4(a) of the *Induction Policy for FCPS-II Training and Second Fellowship, Session July 2021* is declared *ultra vires* the Constitution and struck down to the extent that it mandates automatic assumption of the husband's domicile upon marriage. A married woman shall retain the right to rely upon her own domicile, if she so chooses, subject to verification under law. Sub-paragraph (b) of paragraph 4, however, does not suffer from any constitutional infirmity and shall remain intact.

20. The respondents are directed to amend the policy accordingly and to permit the petitioner to resume her FCPS-II fellowship training from the point where she left off. The years she has lost, four valuable years, were lost through no fault of hers. Fairness requires that they not be held against her.

21. This Petition is allowed to the above extent. No order as to costs.

Announced.
28.10.2025.
Tahir CS

J U D G E

J U D G E

Hon'ble Justice Sadiq Ali &
Hon'ble Justice Syed Mudasser Ameer.