

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 3947/2018.

Muhammad Zaryab Ali

Versus

Ministry of Religious Affairs, through its Secretary, Islamabad, etc.

Petitioner by: Ms. Zaib-un-Nisa, Advocate.

Respondents by: Barrister Mumtaz Ali, AAG.
Ms. Rakhshanda Younas, Advocate.
Inam-ul-Haq, Director, R&R, M/o Religious
Affairs, Islamabad.

Date of Hearing: 28.03.2019.

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioner has prayed for the following reliefs:-

- i. *To direct the respondent No.1 to bring entire record alongwith the application forms, and all other related documents of candidates (Respondents No.2 to 18) who have been appointed illegally in violation of merit of post of Naib Qasids.*
- ii. *To re-scrutinize/fresh the eligibility of recommended candidates, through honest and independent inquiry committee on merits.*
- iii. *That the appointments of those candidates (Respondents No.2 to 18) be declared null and void who did not meet the criteria and merit.*
- iv. *That the respondent No.1 be directed to consider the petitioner for the post of Naib Qasid who meet the criteria and cleared the test and interview holding domicile of Islamabad.*

2. Learned counsel for the petitioner contends that respondents No.2 to 18 have been selected against the post of Naib Qasid in violation of the terms referred in the advertisement and their selection is in violation of law which

give rise to a situation that their appointment be recalled; that majority of appointees are not resident of District Islamabad and even they do not have any valid domicile in their favour to justify that they are residents of Islamabad.

3. Conversely, learned counsel for respondents as well as AAG in attendance under the instruction of Ministry of Religious and Interfaith Harmony, Islamabad contend that advertisement got published by the respondent department only refers that preference will be given to the local candidates but it does not mean that any candidate from other districts will not be appointed; that post advertised by the department is of federal nature and as such the candidates of other region could not be deprived of their valuable rights in terms of constitutional guarantees.

4. Arguments heard, record perused.

5. From the perusal of record, it reveals that petitioner has called in question the appointment of respondents No.2 to 18 appointed as Naib Qasid in Ministry of Religious and Interfaith Harmony, Islamabad on the basis of advertisement dated 30.04.2017. The main objection of the petitioner is regarding the eligibility criteria in which one of the pre-condition for the post of Naib Qasid BPS-1 is local basis. In order to reach at the just conclusion, I have gone through the relevant advertisement in which following condition has been given:-

حکومت پاکستان
وزارت مذہبی امور و بین المذاہب ہم آہنگی، اسلام آباد

اسامیاں خالی ہیں

وزارت مذہبی امور و بین المذاہب ہم آہنگی، اسلام آباد میں درج ذیل اسامیوں پر تقرری کیلئے شرائط پر پورا اترنے والے امیدواروں سے درخواستیں مطلوب ہیں:

سیریل نمبر	نام اسامی	تعداد اسامی	تعلیمی قابلیت و تجربہ	علاقائی/صوبائی کوٹہ	عمر کی حد
4	نائب قاصد(بی ایس-1)	17	پرائمری پاس	مقامی امیدواروں کو ترجیح دی جائے گی۔	18 تا 25 سال

6. Respondents No.2 to 18 have been selected after due process by the competent authority and as per final list, only two candidates having domicile of Islamabad were selected, whereas, rest of the candidates are from different parts of Pakistan, therefore, it is necessary to go through the relevant law as to whether it is pre-condition that all aspirant candidates for the posts of BPS-01 have to be appointed on local basis and as such terms "local" means the person who are based in Islamabad with domicile, issued from ICT Magistrate. The other meaning of word "local" are restricted, limited confined narrow, home neighboring community district, regional area, native indigenous resident, inhabitant, etc., whereas the term "domicile" referred in Pakistan Citizenship Act, 1951 read with Rules of 1952 has been explained as under:-

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.

The term domicile is widely used in different contexts and conveys different meanings. Domicile is a person's permanent place of dwelling. It is a legal relationship between the person and locality. It may or may not be of same meaning as term "residence". For the purpose of jurisdiction, "domicile" means a legal residence which is the place where the person has fixed dwelling with intention to making it his/her permanent home.

7. Domicile is a combination of two factors namely residence and intent to remain. As the term domicile includes residence, the scope and significance of the term domicile is larger than the term residence. An individual may have several residences, whereas he/she will have only one domicile. Domicile is used as reference to personal rights, duties and obligations. The individual's

present physical location of stay is known as residence and it may be one amongst several places where a person may be present and there is no restriction that a person may have his/her residence in one place and his/her domicile in another. The term residence used in the statute will be construed as having the meaning of domicile or vice versa depends upon the purpose of statute. It also depends upon the nature of matter as well as context in which the term is used will be taken into consideration. Similarly, residence is a more flexible concept than domicile and permanency is not a requirement for residency as even a temporary and transient place of dwelling can qualify as residence. However, while considering the provisions of the Citizenship Act, I have also gone through the concept of domicile certificate, which is an essential document through which a person is declared to be an inhabitant or permanent resident of that city as such certificate is primarily used for the purpose of job and admission in University or educational institutions.

8. In Islamabad Capital Territory, following documents have been enlisted as requirement for the purpose of domicile.

“For the applicants who attained the age of 21 years (major)

- *Copy of CNIC of Applicant*
- *Copy of CNIC of Father/Husband*
- *Copy of Proof of Residence in Islamabad (Allotment letter or Lease Agreement)*
- *One original utility bill (Electricity, Gas or Telephone) of the residence*
- *NOC from the Department (For Government Servants)*
- *Copy of SSC/Matric Certificate.*
- *Copy of Marriage Registration Certificate (for married persons)*
- *Copy of Form-B (if you have children)*
- *Proof of trade or occupation.*
- *Two Passport size photographs*

For the applicants who are under the age of 21 years (Minor)

- *Copy of Form-B or CNIC of Applicant.*
- *Copy of CNIC of Father/Mother*
- *Copy of Domicile Certificate of parent(s) in which the name of applicant is mentioned*
- *Copy of SSC/Matric Certificate*

- *Proof of trade or occupation*
- *Two passport size photographs*

The above referred requirements for domicile in Islamabad Capital Territory give rise to an impression that such documents can only be issued to a person who holds a proof of residence in Islamabad and his secondary school education was completed in Islamabad Capital Territory or he is doing a job of any Government department or a private business in Islamabad Capital Territory. In order to reach out the answer of said queries, the ICT administration is relying upon utilities bills of residence, NOC of Government department, Form-B, and for any applicant who is less than 21 years of age, his parents domicile plays a key role. The question originates as to why such requirement have been imposed by the district administration for obtaining domicile certificate, the answer is simple, after obtaining the said certificate of domicile, a person is eligible for consideration of any job or admission in any educational institution as of right being a resident of the Islamabad Capital Territory as any seat reserved for the residents of Islamabad Capital Territory will only be considered against those applications of different individuals who are permanent residents of Islamabad.

9. The above referred provision clearly spells out the concept of permanent residence certificate, which could only be granted upon findings of fact that as to whether the person is actually/physically resided in a particular area or otherwise. The said provision also qualifies the term "ordinarily resided" and as such, certificate requires an inquiry on the administrative side by the District Magistrate, who after receiving certain documents referred above and by recording of statement, satisfies himself that the applicant is a resident of that district, where-after, said certificate could be issued. The minimum requirement is one year as determining factor for any applicant who is residing within particular territory can apply for the issuance of domicile and

as such only one domicile can be issued at one time, while a person holding two domiciles at the same time would be guilty of misconduct and liable for prosecution.

10. I have also gone through the constitutional provision of Article 27 of the Constitution of Islamic Republic of Pakistan, 1973, which governs the concept of adequate representation in the services of Pakistan, therefore, same is reproduced hereunder for ready reference:-

***Art. 27:** No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground of race, religion, caste, sex, residence or place of birth:*

*Provided that, for a period not exceeding **[forty] years** from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan.*

Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex [:]

[Provided also that under-representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an Act of Majlis-e-Shoora (Parliament).]

(2) Nothing in clause(1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority.

11. While taking into consideration the above Article, the time of **forty (40) years** has already been expired in the year 2013. In my humble understanding, the time limit envisaged in the said Article is only meant to equalize the underprivileged areas of Pakistan with the privileged ones in order to eliminate the gap, harmonize, rationalize and equalize the human development gap. The other purpose of the abovementioned time limit of 40

years further gives an uplift to the regions having less exposure or they have not been developed due to their socio-economic and political reasons, therefore, the citizens of those areas could be given an opportunity equal to those citizens who are living in developed areas of Pakistan.

10. The period of 40 years has already been expired in year 2013, whereafter the time limit was neither extended nor the parliament passed any other specific legislation to address such issue, therefore, this Court is bound by the mandate prescribed by the constitutional wisdom. In this sense, Article 27(2) plays a key role while dealing with positions notified for local authority, whereas the local authority or the Provincial Government is empowered to prescribe any condition as to residence in relation to any post or class of service under that Government or authority. The said Article of the Constitution also empowers the local administration of the Islamabad Capital Territory to prescribe any condition to a service with reference to the residence, therefore, in my humble estimation, the departments established in the Islamabad Capital Territory, called as "local departments" within limited jurisdiction to Islamabad Capital Territory for the purposes of dealing with different issues of governance, can only hire candidates, who are residents of Islamabad and having domicile issued by the district administration of Islamabad.

12. In Islamabad District, the offices like ICT Administration, ICT Police, CDA, District Courts, High Court and similar type of offices, which are only confined to the ICT for the purpose of their working and jurisdiction, can only hire candidates having domicile of ICT, unless any particular post has been declared as federal post or their rules prescribe quota of other region. Rule 16 of Civil Servants (APT) Rules, 1973 put emphasis that vacant posts of BPS-1 & BPS-2 shall ordinarily be filled on local basis, which means that person

ordinarily residing in Islamabad on permanent basis alongwith domicile of district Islamabad.

13. I have also gone through the Esta Code, Chapter-II, which deals with recruitment, appointment, seniority and promotion, whereby at Serial No.14, following O.M. has been referred:

"Sl. No.14

Quota for Posts in Islamabad Capital Territory Administration and Autonomous/Semi Autonomous Bodies

Rules-15 and 16 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, provides as under:

Rule-15. Vacancies in posts in BPS 3 to 15 and equivalent in offices which serve only a particular province or region shall be filled by appointment of persons domiciled in the province for region concerned.

Rule-16. Vacancies in posts in BPS 1 and 2 and equivalent shall ordinarily be filled on local basis."

2. *Recruitment to posts upto BPS 15 in all the offices of the I.C.T.** administration and other Federal Government offices whose functional jurisdiction is restricted to the Islamabad Capital Territory, is required to be made on regional/local basis in accordance with the above quoted rules.*

3. *Attention is also invited to the Estt. Division's O.M. No.8/9/82-TRV/R2, dated 29.09.1973 (Sl No.45) under which the provincial/regional quotas have been made applicable to appointments in or equivalent to BPS 17 and above in all Autonomous/Semi-Autonomous Bodies under the administrative control of the Federal Government***. As such, recruitment to posts upto BPS 16 in autonomous/semi-autonomous bodies located in Islamabad is outside the provincial/regional quotas.*

4. *All Ministries/Divisions and Heads of Departments are requested that the above rules/instructions may please be observed strictly while making recruitment to the posts upto BPS 15 in offices/organizations under their control."*

The above referred O.M. clearly spells out the mandate of Article 27(2) of the Constitution of the Islamic Republic of Pakistan, 1973.

14. While considering the entire background and advertisement as well as law on the subject, the advertisement published by the respondent department has put emphasis (مقامی افراد کو ترجیح دی جائے گی-), which means

preference will be given to ICT based candidates, whereas two out of eighteen candidates were appointed from ICT while the remaining candidates have been appointed from rest of the Pakistan, as such the minimum requirement has not been fulfilled. The departments are under obligation to apply the law in its true perspective, especially with reference to the local residents of Islamabad (ICT) who are not being considered for any post in other provinces as no quota is fixed for them on reciprocal basis.

15. Keeping in view the situation discussed above as the advertisement specifically carries condition that “مقامی افراد کو ترجیح دی جائے گی”, hence, respondent Ministry was under obligation to appoint local inhabitants of Islamabad being domicile of Islamabad and in case of any local resident of Islamabad was not appointed, the department was bound to write down the reason for not appointing a candidate of Islamabad domicile while he was to be given preference vide advertisement and such preference could not be put aside without solid reasoning which otherwise amounts to depriving a person being domicile of Islamabad being local resident (مقامی افراد). As such depriving a local resident of Islamabad from appointment amounts to depriving him from his legitimate right of appointment.

16. Moreover, in my humble view, posts from BPS-01 to BPS-15 are to be considered for the purpose of appointment in terms of Rules 15 and 16 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 as employees in such cadres play key role in the working of any government department. Local candidates have been given preference only with intention to save time as such employees can easily deal with their service and family matters for being in same vicinity. The other important reason for hiring of local person for the post of BPS-1 and BPS-2 is the economic factor as due to lower slabs, such candidate would effortlessly afford to live in such particular district or area for being already settled. In case, the candidate belongs to

far-flung areas of Pakistan, he would not be able to perform his duties while dealing with his domestic affairs in performance of his official duties due to his lower salary slab.

17. It is pertinent to mention here that all the local based departments in ICT have to apply strict adherence to the principle of “local basis” and “domicile” of ICT for appointment in BPS-1 to BPS-15 and should not hire any person who is neither a permanent resident of ICT nor holder of ICT domicile as such kind of practice will prejudice the rights of the local residents of ICT. After 18th amendment in the Constitution of the Islamic Republic of Pakistan, 1973, majority of the departments have been vested to provinces and at this stage, local posts could only be given to local residents of ICT and not to candidates belonged to other provinces.

18. At last, I am of the view that respondents have not considered the ratio and wisdom of the term “local basis” explained in Rule 16 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973 as well as in the advertisement. Even otherwise, they hired only 02 candidates from Islamabad against total 18 vacant posts, which clearly expresses the incorrect approach of the respondent department, who had to give preference to the candidates, who belonged to Islamabad Capital Territory by virtue of their permanent residences as well as domiciles, as the word ”مقامی افراد کو ترجیح دی جائی گی“ means preference should be given to those, who are resident of Islamabad by virtue of their address in addition to their domiciles, therefore, the instant writ petition is hereby **DISPOSED OF** with direction to the respondent department to reconsider the entire hiring process in light of observations made hereinabove by this Court and appoint candidates having domicile of Islamabad Capital Territory, who have their permanent addresses of Islamabad as at this stage this Court restrains itself from setting aside the appointments while in process of judicial review due to the reason that it is

the role and duty of the Government of Pakistan and the concerned respondents, who are sitting at the helm of affairs to apply the law in its correct approach. The respondent department is under obligation to resettle the appointments while considering the law within the period of 03 months, under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: April, 2019.

JUDGE

Approved for reporting

Khalid Z.

Uploaded By: Engr. Umer Rasheed Dar