

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition No. 492/2020
Asmatullah Janejo
Versus
Federation of Pakistan, etc

Petitioner by: Mr. Khurram Mehmood Qureshi, Advocate.
Respondents by: Ch. Muhammad Tahir Mehmood, AAG,
Qaiser Masood, Additional Director, FIA.
Date of Hearing: 12.05.2020.

FIAZ AHMAD ANJUM JANDRAN, J:- Through the instant writ petition, the petitioner has challenged the Order dated 14.01.2020, passed by the respondent No.1/ Secretary, Ministry of Interior, wherein certain nominations/recommendations regarding foreign postings/appointments in the Link Offices of the respondent No.5 for the Foreign Missions were halted. Through the said recommendations, name of the petitioner was recommended as Counselor Immigration for Italy.

2. Facts, relevant for the disposal of instant writ petition, are that the respondent No.5/FIA initiated a process for the appointment of officials/staff to the newly established Link Offices of FIA in Turkey, Italy, UAE and Spain (hereinafter to be referred as 'foreign postings'). In this respect, some correspondence was made between the respondent No.1 and the respondent No.5/FIA. Thereafter, a letter bearing No.C-22/A/ADMN-I/2019, dated 06.12.2019 was issued by the respondent No.5/FIA to the respondent No.1 for the issuance of diplomatic status in respect of said selected candidates in the foreign postings. Subsequently, the respondent No.1 also wrote a letter dated 30.12.2019 to the respondent No.3/Secretary, Ministry of Foreign Affairs for the purpose mentioned in the letter dated 06.12.2019. On 14.01.2020, the respondent No.1 communicated a decision to respondent No.3 regarding

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withdrawal of the letter dated 30.12.2019 wherein the request of the respondent No.5/FIA for the issuance of diplomatic status to the nominees/selectees was withdrawn. Thereafter, the impugned letter was issued in which it was stated that a policy will be framed by a Committee comprising Addl. Secretary-III (Chairman) and Addl. D.G. (FIA) and the same will be got approved by the competent authority before the finalization of any appointments in the foreign postings and until then the existing process is stopped. The said letter dated 14.01.2020 is impugned herein.

3. The learned counsel for the petitioner contends that the said letter is nothing but a nullity in the eye of law because the same has been issued on the instructions of the respondent No.2/Minister of Interior and in the Rules of Business, 1973 (hereinafter to be referred as “1973 Rules of Business”) the Minister of Interior figures nowhere; that the approval of the Prime Minister had been sought for creation of the posts and nominations of the individuals including the petitioner and when the said approval had been accorded, then the Minister of Interior is not authorized to withdraw/rescind or amend the same in any manner; that some other persons selected through the same process were nominated and finalized by the respondent No.5/FIA are posted abroad and are already performing their duties, hence the petitioner is meted with discrimination in violation of the Article 25 of the Constitution; that foreign postings of the FIA officials are essential for the purposes of Financial Action Task Force-FATF and the role of the petitioner would be supportive in improving the performance of the Government before the next FATF meeting, likely to be held in the June 2020; that the budgetary allocation of Rs.40 Million for this purpose is likely to expire if the same is not availed; that as per the US Trafficking In Person (TIP) Report 2019, the country is

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already in the list of Tier-2 countries and the delay in the matter would aggravate the situation; that after due process all formalities were completed and finally name of the petitioner was approved, therefore, by any illegal exercise his rights could not be jeopardized. Learned counsel in support of submissions referred Rule 5, 14 & 15 of the 1973 Rules of Business and placed reliance upon case laws reported as M/s Mustafa Impex Karachi and others Vs The Government of Pakistan through Secretary Finance, Islamabad and others (PLD 2016 SC 808), Sheikh Mudassar Ahmed Vs Government of Pakistan through Secretary Establishment Division, Islamabad and 02 others (1991 MLD 2121), Dr. Shoukat Pervez Vs Federation of Pakistan through Secretary Establishment Division, Islamabad and another [2011 PLC (CS) 26], Fatima Vs Federation of Pakistan through Secretary, Ministry of Commerce, Islamabad and 02 others [2018 PLC (CS) 292], Hajj Organizers Association of Pakistan through Authorized Officers and 11 others Vs Federation of Pakistan through Secretary, Ministry of Religious Affairs and Interfaith Harmony, Islamabad and 2 others (PLD 2020 Sindh 42) and World Call Cable Pvt. Limited through Chief Executive Officer Vs Federation of Pakistan through Secretary and another (2020 CLC 543 Sindh).

4. On the other hand, learned Assistant Attorney General assisted by Additional Director Law FIA, argued that the objection of the petitioner regarding role of the respondent No.2/Minister of Interior is repelled because the impugned letter was issued by the respondent No.1/Ministry of Interior and not by the respondent No.2/Minister and that the comments filed before this Court pursuant to order dated 17.02.2020 are also filed by the respondents 1&2, so the Ministry of Interior i.e. the respondent No.1 is fully endorsing the stance taken by the respondent No.2/Minister of Interior and stands by the impugned letter for all

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intents and purposes. As for as the second limb of arguments of the learned counsel for the petitioner regarding the approval of the Prime Minister is concerned, it is argued that the same is not the approval in respect of claim of the petitioner but is regarding the restructuring and approval of 492 additional posts in FIA; that the official respondents i.e. respondents 1&2 have decided to frame a comprehensive policy regarding foreign postings and for that purpose a comprehensive policy is going to be framed and that in respect of policy matters, courts normally avoid to interfere.

5. Heard the learned counsel for the petitioner as well as learned AAG and examined the record with their able assistance.

6. The record available on file appended by both the parties shows the recommendations of a Committee constituted by the respondent No.5/FIA which recommended amongst others, the name of the present petitioner as “Counselor Immigration (BS-19/18)” in Italy. Paragraph 3 of the Minutes of the Committee dated 29.08.2019, 18th & 19th of September 2019, being relevant and indicative of the process is reproduced hereunder:-

“3. On the basis of individual performance of each officer, assessment of the Committee on given criteria and after giving due consideration to fair and equitable representation to different cadres (presently all three liaison officers are from FIA) and zones etc **the Committee recommends the following officers for approval of the competent authority to proceed aboard**: [emphasis supplied]

S. No.	Name	Designation	Domicile Province	Posted to Link Office.
1	Dr. Mian Saeed Ahmed, (BS-19)	Addl Director	KPK	Turkey
2	Asmatullah Junejo (BS-19)	Addl Director	Sindh	Italy
3	Tariq Pervaiz (BS-18)	Deputy Director	KPK	UAE

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7. It is explicitly mentioned in the recommendations *ibid* that “**the Committee recommends the following officers for approval of the competent authority to proceed abroad**”.

There is no final approval available on record till this day as was suggested/required in the recommendations. If the proposal was ultimately accepted and the notification was issued regarding appointment of the petitioner, then it could be said that a right had been accrued in favour of the petitioner.

8. A writ could only be issued if violation of fundamental right enshrined in the Constitution or for infringement of a vested right accrued in favour of the aggrieved person is made out. Admittedly, no such approval/notification is available on record, the violation of which could be agitated through the instant writ petition. The interference in the policy making domain is not warranted. Reliance in this respect is placed on **Shahid Pervaiz Vs Ejaz Ahmad (2017 SCMR 206)** wherein at paragraph No.136 it is observed as under:-

“This Court in a series of judgments has held that policy making is the domain of the executive and the Courts normally do not interfere in such matters, but when a policy is violative of the fundamental rights of individuals, the Courts are obliged to examine such policy in judicial review.”

9. It is also settled law that the exercise of jurisdiction under Article 199 of the Constitution in foreign policy matters is not justiceable. In this respect reliance is placed on **Muhammad Shoaib Razzaq Vs Federation of Pakistan through President and 5 others (PLD 2019 Islamabad 339)**, wherein it is held that:-

“the decision pertains to policy matters in context of foreign policy, defence and security of the Pakistan are outside the realm of judicial review.”

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It is, therefore, observed that generally, Courts are reluctant to interfere into the policy matters of the executive and any order/letter issued by the respondent No.1 for formulation of any policy regarding foreign postings, if interfered by this Court, that too, on a petition in which neither a violation of fundamental right is alleged nor any vested right has been accrued in favour of the petitioner, would not be appropriate.

10. The next contention of the learned counsel for the petitioner that the respondent No.1 is not authorized to stop the process of appointments of FIA officials in foreign postings on the basis of sub-rule (4) of Rule 5 of the 1973 Rules of Business, is misconceived and against the facts. Sub-rule (4) of Rule 5 of the 1973 Rules of Business provides that:-

“(4) No decision of policy taken by the Prime Minister shall be varied, reversed or infringed without consulting him.”

The Rule *ibid* clearly stipulates an impediment to the effect that no policy decision of the Prime Minister shall be varied, reversed or infringed without his consultation. In the present case, the petitioner has not been able to explore any such approval given by the Prime Minister on any policy decision that includes approval of the foreign postings of the FIA officials including the petitioner.

11. The fact of the matter is that the letter which is impugned herein is not issued by the respondent No.2 rather the same was issued by the respondent No.1. The written comments have been filed before this Court by the respondents 1 & 2 jointly and while arguing the case, the learned Assistant Attorney General has forcefully argued that the stance of the respondent No.2 is fully endorsed by the respondent No.1/Ministry of Interior, which is the competent authority in the matter and is owing and

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endorsing the stance of the respondent No.2, therefore, to describe the impugned letter by just mentioning the name of the respondent No.2 as illegal, is misconceived and against the facts.

12. There is another legal aspect of the matter and that is Rule 6 of the 1973 Rules of Business. The said Rule specifically describes the functions and role of the Minister in connection with the official business while in Rule 8 of the said Rules, it is mentioned that the business of the Division ordinarily be disposed of by, or under the authority of the Minister-in-Charge. Rule 8 of the 1973 Rules of Business reads as under:-

“(8) The business of the Division shall ordinarily be disposed of by, or under the authority of Minister-in-Charge.”

In sub-rule (9) of Rule 5 of the 1973 Rules of Business, it is mentioned that the Secretary shall (a) assist the Minister-in-Charge in the formulation of policy and thereafter sub-rule (10) also carries much role in favour of the respondent No.2/Minister and in case of some disagreement between the respondent No.1 and the respondent No.2, the matter is referred to the Prime Minister. It is a matter of record, that no such disagreement or dissent is available in the case at hand.

When Rule 5, sub-rule (6), (7), (8), (9) & (10) of the 1973 Rules of Business are interpreted, it evinces that the said rules supplement each other. After considering the said rules in juxtaposition, it transpires that consultation with the Minister-In-Charge is material in as much as that any matter whereupon any suggestion/direction is to be issued after consultation, and respondents 1&2 arrive at consensus decision regarding subject matter under consideration, then same is in accordance with the spirit of

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1973 Rules of Business. The mentioning of designation in the impugned letter does not mean that the sole decision was of the respondent No.2/ Minister but it is considered and meant, as in accordance with the 1973 Rules of Business.

The act of the official respondents is covered/protected within the parameters of the 1973 Rules of Business. The letter impugned herein specifies that the official respondents want to formulate a policy regarding appointments in the foreign missions in newly created liaison offices, which is an administrative action and while exercising the power of judicial review of the administrative actions, superior courts in Pakistan have generally exercised judicial restraint in interfering with the policy making domain of the Executive Authority. The reluctance of the superior courts in Pakistan to judicially examine administrative decisions/actions involving policy consideration has been time and again emphasized. The beneficial guidance is sought from the case of Ferzand Ali Vs. Province of West Pakistan (PLD 1970 SC 98), Government of Pakistan Vs. Zamir Ahmad Khan (PLD 1975 SC 667), Watan Party case (PLD 2004 SC 697), case of Dr. Akhtar Hassan (2012 SCMR 455) and case of Dossai Travels (2013 SCMR 1749).

13 The learned counsel for the petitioner has referred few precedents of the previously appointed individuals. The examination of the said letters indicate that the same were issued after approval of the respondent No.1, who is the competent authority, while in the present case, no such approval has so far been accorded/granted. Therefore, the ground of discrimination in the light of facts of the case, is not available to the petitioner.

14. As far as the submission with regard to role of the petitioner towards the Financial Action Task Force-FATF,

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next budgetary allocation, and placement of the country in the list of Tier-2 countries pursuant to US Trafficking In Person (PIP) report 2019 is concerned, suffice it to say that it is not the business of the petitioner rather is the prerogative of the Government being a policy matter for which no one including the petitioner can claim vested right so to compel the Government to take certain/specific steps.

15. The case of **Messrs Mustafa Impex Karachi (PLD 2016 SC 808)** elaborates the term “Federal Government” and the nature of 1973 Rules of Business being binding on the Government. It was graciously laid down that the Federal Government is the collective entity described as the Cabinet constituting the Prime Minister and the Federal Ministers. The case law reported as **1991 MLD 2121 titled Sheikh Mudassar Ahmad Vs Government of Pakistan** laid down the principle regarding exercise of jurisdiction under Article 199 of the Constitution in a case where a vested right has been infringed while in the case at hand no vested right is accrued to the petitioner. In case of **Dr.Shaukat Pervez [2011 PLC (CS) 26]**, appointment of the petitioner was approved by the competent authority i.e. the Prime Minister while in the present case no such approval exists. The case of **Fatima Vs Federation of Pakistan [2018 PLC (CS) 292]**, the process of appointment was completed while in the present case, same is still underway and has not yet been finally approved. The case of **Hajj Organizers Association (PLD 2020 Sindh 42)** laid down the procedure of judicial review of the High Court in terms of Article 199 of the Constitution while case of **World Call Cable (2020 CLC 534)** also elaborates the general principles of judicial review, therefore, with due reverence, the case laws relied upon by the learned counsel for the petitioner do not extend any help to the petitioner due to having distinct question of law and facts.

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16. For what has been discussed above, no violation of any fundamental right or vested right is borne out from record. Consequently, the instant writ petition is **dismissed.**

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on _____.

JUDGE

Approved for reporting.