

2012 C L C 840

[Islamabad]

Before Shaukat Aziz Siddiqui, J

NOORISH SABAH----Petitioner

versus

**FEDERAL PUBLIC SERVICE COMMISSION through Chairman and 2 others----
Respondents**

Writ Petition No.3304 of 2011, decided on 23rd January, 2012.

Competitive Examinations Rules, 2010---

---Rr. 7(v) & 18---Constitution of Pakistan, Art.199---Constitutional petition---Petitioner appeared in the written examination of Central Superior Services (CSS), and cleared the same---Process of verification of documents of the petitioner, revealed that domicile certificate and permanent resident certificate submitted by the petitioner at the time of applying for the examination were bogus---After issuing the petitioner the show-cause notice, she was disqualified for competitive examination and was debarred from employment under Government---No authentic proof was available to establish that decision taken on the proceedings commenced from show-cause notice was communicated to the petitioner---Bona fide of the petitioner was evident from the aspect that she herself approached the respondent authorities concerned for holding of an inquiry regarding issuance of domicile certificate and permanent resident certificate---Deputy Commissioner, on inquiry, issued direction of fresh domicile and permanent resident certificate to the petitioner---No mens rea existed on the part of the petitioner, her career was required to be protected, if she otherwise had qualified---Order disqualifying the petitioner for competitive examination and debarring her from employment under Government, was set aside, with direction to the authorities to take into consideration, the inquiry report of domicile issuing authority and issuance of permanent resident certificate and domicile to the petitioner and pass a fresh order in accordance with law.

Haris Azmat for Petitioner.

Kamran Raffat, Asstt. Director, FPSC and Mumtaz Hussain Shaukat, Asstt. Director FPSC for Respondents.

Date of hearing: 23rd January, 2012.

JUDGMENT

SHAUKAT AZIZ SIDDIQUI, J.--- Brief facts glean out from the petition are that, petitioner appeared in the Central Superior Services (CSS) Written Examination in the year 2010, and cleared the same. During the process of verification of documents it transpired that domicile certificate dated 22nd December, 2009 and permanent resident certificate dated 23-12-2009 submitted at the time of applying for CSS examination were bogus. Resultantly, respondent No.2 (Director Competitive Examination, FPSC) issued show-cause notice dated 3rd May, 2011. The petitioner was also called upon to appear for personal hearing on 10th of May, 2011. The Show-cause notice was issued on the strength of rule 7(v) of Competitive Examinations Rules 2010. Second show-cause notice dated 11th May, 2011 was issued after hearing the petitioner in person on 10th of May, 2011. It was replied by the petitioner on 23rd May, 2011.

The grievance of the petitioner is that after receipt of reply of second show-cause notice dated 23rd May, 2011, petitioner was not informed about the result of the proceedings initiated against her despite the fact that petitioner kept on requesting for the same. Petitioner finally wrote a letter dated 27th of October, 2011 to respondent No.2 which was replied vide letter dated 12th of November, 2011. Respondent No.2 informed the petitioner that under rule 18 of rules *ibid*, petitioner was supposed to apply within 30 days and representation of the petitioner is time-barred.

2. Petitioner invoked the constitutional jurisdiction of this court by way of filing the instant writ petition with the following prayer:---

"In the light of the foregoing, it is most respectfully prayed that this honourable Court may be graciously pleased to:---

(I) Set aside the Impugned Letter as illegal and void;

(II) Direct the respondents Nos.1 and 2 to communicate the decision to the petitioner;

(III) Direct the respondents Nos.1 and 2 to give the petitioner a full opportunity to explain her case and prove her innocence;

(IV) Direct the respondent No.3 to make a fresh new domicile of the petitioner in accordance with law;

(V) Direct the respondent No.2 to accept the new domicile and deal with the petitioner in accordance with the law;

Any other relief deemed appropriate by this honourable Court may also be granted."

3. Vide order dated 9-12-2011, respondents Nos.1 and 2 were called upon to file a report and parawise comments through which main reliance has been placed on rule 7(v) of the rules *ibid*, which is reproduced hereinbelow:---

"A candidate who knowingly furnishes particulars which are false, or suppresses material information, or attempts to influence the Commission, or officers or members of the staff of the Commission, or tries to obtain support for his/her candidature by improper means, or deliberately submits forged certificates, or tampers with the entries in his/her age, educational and other certificates, or misbehaves in the examination hall or uses unfair means/copying, or is found guilty of misconduct during examination/medical, Viva Voce Tests and uses filthy and unethical language in the Answer Book(s) during written examination, may be disqualified for this and/or subsequent examinations/selections held by the Commission and/or criminally prosecuted and debarred from employment under Government."

4. Vide order dated 20-12-2011, respondents were directed to produce the original record through which petitioner was communicated about the decision of FPSC, perusal whereof reveals this fact that there is no authentic proof to establish that decision taken on the proceedings commenced from show-cause notice was communicated to the petitioner. Postal receipt does not contain full particulars and address of the petitioner.

5. It appears that petitioner has been deceived by the tout mafia working within the premises of the courts who for their petty interest play havoc with the career of brilliant students/candidates, like petitioner. The bona fide of the petitioner is evident from this aspect that she herself approached the authorities concerned for holding of an inquiry regarding issuance of domicile certificate and permanent resident certificate and Assistant Commissioner Gulshan-e-Iqbal, Karachi Estate, vide Report No.AC/GI/05/2012, Karachi, dated 4-1-2012 submitted to the Deputy Commissioner, Karachi Estate, gave following opinion:---

OPINION:--

In view of my opinion, during inquiry she produced CNICs. Copies of her Grand Father/Mother (Maternal), Grand Mother (Paternal), and Service Book of her father is proving that her family belongs to permanent in Karachi City and she travelling from Karachi due to her father service in Pakistan Army as a Military Officer (Major) and posted at different places during his service she got education at different places in Pakistan after retirement of her father she is living in Karachi permanently since last 4 years (2007 to 2011) and According to section 17 of Citizenship Act 1951, "Where Federal Government is satisfied that any person has ordinarily resided for a period not less than one year immediately".

In view of the above circumstances and in the light of above quoted Rule, she is entitled for Domicile and Permanent Resident Certificate (P.R.C) from Karachi City and it may be issued and resolve grievances of Mrs. Noorish Sabah daughter of Sabahuddin, in the interest of justice and further previous domicile with the signature of defunct D.D.O (Revenue) Korangi Town, which was in possession of applicant and the same was submitted in Federal Public Service Commission, Islamabad, was bogus/forged, fabricated and manipulated by agent mafia and in account of cheating with the applicant it is therefore, the forged, fabricated and manipulated domicile and PRC, may be treated as Null and Void."

6. In pursuance of inquiry, the Deputy Commissioner issued direction of fresh domicile and permanent resident certificate to the petitioner which bears number PRC No.580/2012, dated 5-1-2012 and No.559/2012 of even date.

This court observes that there is no mensrea on the part of the petitioner; therefore, her career is required to be protected, if she otherwise qualifies.

In this view of the matter order dated 13th of June, 2011, disqualifying the petitioner of competitive examination 2010 and debarring her from employment under Government is set aside with a result that respondents are directed to take into consideration, the inquiry report of domicile issuing authority and issuance of fresh PRC and domicile to the petitioner and pass a fresh order in accordance with law.

H.B.T./42/IsI.

Order accordingly.