

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)



Bench-II:

Mr. Justice Syed Mansoor Ali Shah

Mr. Justice Aqeel Ahmed Abbasi

Civil Petition No. 651 of 2025

(Against the judgment dated 28.01.2025 passed by the Islamabad High Court, Islamabad in C.M.A. No. 409/2024)

Federal Public Service Commission, through its Chairman, Islamabad

... Petitioner

Versus

Dr. Shumaila Naeem and Others

... Respondents

For the Petitioner: Mr. Rashideen Nawaz Kasuri, Addl. A.G.P.
a/w Mr. Haroon Rasheed, Director FPSC
Mr. Sana Ullah Islam, J.S, Establishment
Division, Government of Pakistan.
Mr. Masroor Hussain, D.S, Establishment
Division, Government of Pakistan.

For the Respondents: Barrister M. Saad Umer Buttar, ASC.
a/w Mr. Moiz Gul and Ms. Maheen Junaid,
Advocates.

Amicus Curiae: Ms. Asma Hamid, ASC.

Assisted by: Mr. Umer A. Ranjha, Judicial Law Clerk and
Ms. Uzma Zahoor Civil Judge/Research
Officer, Supreme Court of Pakistan.

Date of Hearing: 22.05.2025.

JUDGMENT

Syed Mansoor Ali Shah, J.– Briefly, Dr. Shumaila Naeem (the “respondent”) then unmarried, joined government service as a Medical Officer on 07.09.2007¹, based on her domicile of origin in Khyber Pakhtunkhwa (“KPK”). Following her marriage on 31.05.2008 to a civil servant domiciled in Balochistan, she was transferred on deputation to the Pakistan Institute of Medical Sciences (“PIMS”) under the Ministry of National Health Services Regulations and Coordination (“MNHS”), in accordance with the wedlock policy, *vide* order dated 08.09.2009. She was subsequently absorbed at PIMS through a notification dated 17.12.2013, and was later promoted to the post of Senior Registrar (BS-18) on 14.12.2021 and also performed duties as Assistant Professor (BS-19). It is prudent to note that the respondent did not change or alter her

¹ Letter No. F.1-260/2012-H-I dated 29.04.2025 issued by the Ministry of National Health Services Regulations and Coordination (C.M.A. No. 3555/2025).

domicile throughout this time on the basis of her husband's domicile which is of Balochistan. Subsequently, during service, the respondent changed her domicile to that of her husband i.e, Province of Balochistan on 20.10.2018 and formally relinquished her Province of KPK domicile on 25.10.2018. On the basis of her new domicile, she applied for an advertised post of Associate Professor (Obstetrics & Gynaecology) (BS-19) at PIMS against the Balochistan seat. Controversy arose when the respondent, having obtained the requisite departmental no objection certificates ("NOCs") for applying to the post of Assistant Professor (Obstetrics & Gynaecology) (BS-19) on the basis of her Balochistan domicile, got rejected by Federal Public Service Commission ("FPSC"). Although the respondent successfully passed the written examination, her candidature was rejected by the FPSC *vide* memorandum dated 10.07.2024, on two grounds: first, that a change of domicile after entry into government service is impermissible; and second, that she lacked the requisite experience for the post. Dissatisfied with the FPSC's decision, the respondent preferred a departmental representation, which, along with her subsequent review petition, was dismissed through orders dated 12.09.2024 and 02.10.2024, respectively. However, her appeal under Section 7(3)(d) of the FPSC Ordinance, 1977 ("Ordinance") before the Islamabad High Court was allowed *vide* judgment dated 28.01.2025 ("impugned judgment"), whereby the impugned decisions rejecting her candidature were set aside. Aggrieved by the impugned judgment, the present petition for leave to appeal has been filed before this Court by the FPSC.

2. The learned Additional Attorney General, assisted by representatives of the FPSC and MNHS, contended that under the Establishment Division's Office Manual No. F.8/5/75-WC dated 12.08.1975 ("O.M. 1975")², a married female candidate may adopt her husband's domicile if applying for a post through "direct recruitment". However, it was argued that "direct recruitment" refers solely to first-time entry into service, after which the domicile declared at initial induction under Establishment Division Office Manual No. 1/14/71-TRV dated 20.09.1971 ("O.M. 1971") becomes final and binding for the duration of service. The High Court, it was submitted, erred in holding that O.M. 1975 overrides O.M. 1971; instead, both operate in distinct spheres: O.M. 1975 governs initial appointments, while O.M. 1971 applies post-entry. Permitting a change of domicile mid-service, it was argued, could lead to

² An Office Manual in Pakistan's service law framework is a departmental guide for internal procedures. It does not override statutory service rules but can be used to interpret or implement them unless it contradicts a statute or constitutional provision. This is issued under Section 25 of the Civil Servants Act, 1973.

arbitrary advantage and disruption of seniority. On the respondent's experience, it was submitted that the certificates were issued by unauthorized officials and reflected service on an internal arrangement, not a substantive appointment or promotion to BS-18. Hence, her experience was non-countable. Additionally, the NOC was challenged as legally infirm, allegedly obtained through misrepresentation of domicile. Accordingly, the FPSC's rejection of both her Balochistan domicile and experience was defended as lawful.

3. Conversely, learned counsel for the respondent raised several objections to the FPSC's actions. As a preliminary matter, he contended that the FPSC lacks locus standi to file the petition and cannot be represented by the State, relying on this Court's settled jurisprudence. On merits, it was argued that the respondent, having secured the highest marks in the written examination, acquired a vested right to be fairly considered for appointment, one that could not be arbitrarily denied. He further submitted that the respondent does not fall within the definition of a "civil servant" under the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990, making O.M. 1971 inapplicable. Since the post was to be filled through "direct recruitment", her husband's domicile recognized under O.M. 1975 ought to be considered. "Direct recruitment", it was emphasized, entails fresh appointments distinct from existing service, seniority, or promotion structures, involving independent pay scales and selection procedures. The respondent was said to have met all experiential requirements, supported by a valid experience certificate issued under the Pakistan Medical and Dental Council Regulations, 2018 ("PMDC Regulations"). As this certificate had not been challenged through any legal forum, it had attained finality. Reference was also made to Rule 14 of the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, which allocates only six percent of seats for Balochistan. It was argued that had the respondent retained her KPK domicile, her selection prospects would have been stronger, undermining allegations of strategic domicile change. Accordingly, the FPSC's rejection of her domicile and experience was characterized as arbitrary, erroneous, and without legal basis.

4. The learned amicus curiae opined that Sections 15 and 16 of the Succession Act, 1925 ("1925 Act") are inapplicable to the present matter, as their provisions do not extend to Muslims. She further submitted that the respondent may avail the benefit of O.M. 1975 only if this Court concludes on the factual plane that the advertised post constitutes a new post and falls within the scope of "direct recruitment".

5. We have heard the learned counsel for the parties and amicus curiae at length and have carefully examined the impugned judgment, the applicable law, and the record of the case.

Preliminary Objections: Locus Standi, Representation and Status of the Respondent

6. Before addressing the substantive issues, we must first dispose of the preliminary objections raised by the respondent. Firstly, he contended that the FPSC lacks locus standi to file the petition relying on *Rahim Foods*³. We have examined the said judgement whereby this Court categorically held that the Competition Commission of Pakistan (“CCP”), under the Competition Act, 2010 (“2010 Act”), functions primarily as a regulatory body and also as a quasi-judicial forum. However, when CCP decides a matter between rival parties in exercise of its quasi-judicial powers, CCP cannot claim to be an aggrieved person for the purposes of challenging a decision before a superior forum.⁴ No such quasi-adjudicatory framework exists under the Ordinance in question⁵, which merely provides for an administrative review of the FPSC’s own decisions. Therefore, the instant case is distinguishable. The impugned rejection of the respondent’s candidature is not a determination made in a quasi-judicial capacity of FPSC between contesting parties but rather exercising an administrative power of review of its earlier order. Therefore, the precedent cited by the respondent is inapposite, as it pertains to quasi-judicial bodies seeking to defend their adjudicatory decisions, which is not the situation here. The objection to the locus standi of the FPSC to file the present appeal is misconceived.

7. The second objection challenging the competence of the learned Additional Attorney General to represent the FPSC is equally untenable. As an attached department of the Establishment Division⁶, the FPSC is a Federal Government entity and, as a matter of settled law, must be represented by government counsel, not private advocates.⁷ The respondent’s claim of a vested right to appointment on the basis of her performance in the written test is similarly flawed. The FPSC retains the authority to determine eligibility, and mere success in the examination or a conditional recommendation does not confer a vested right to

³ A. Rahim Foods (Pvt.) v. K & N’s Foods (Pvt.) PLD 2023 SC 516.

⁴ Wafaqi Mohtasib v. SNGPL PLD 2020 SC 586.

⁵ Section 7 of the Ordinance.

⁶ Rule 4(4) read with Schedule III of The Rules of Business 1973 and Dr. Riffat Kamal v. Federation of Pakistan 2015 SCMR 847.

⁷ Officer InCharge Army Housing v. Federation of Pakistan PLD 2024 SC 576 and Rasheed Ahmad v. Federation of Pakistan PLD 2017 SC 121.

appointment.⁸ Further, the argument that the respondent is not a civil servant lacks merit. It is settled by this Court that a civil servant is someone who holds a civil post in connection with the affairs of the Federation and who has been employed by the competent authority i.e., either by the FPSC or the Provincial Public Service Commission in the prescribed manner after following the due process of law and having gone through the process of competition.⁹ Applying this to the instant case, the respondent was appointed through the KPK Public Service Commission i.e., competent authority through an open competition. Moreover, this Court has already held that doctors employed in PIMS and other federal institutions hold civil posts and are civil servants within the meaning of Section 2(1)(b) of the Civil Servants Act, 1973.¹⁰ Accordingly, the respondent's reliance on the inapplicability of O.M. 1971 is misplaced and does not withstand scrutiny.

The Legal Doctrine of Domicile: Origins, Elements, and Contemporary Relevance

8. Before turning to the core controversy surrounding domicile and its bearing on “direct recruitment”, it is instructive to examine the legal doctrine of domicile itself. Modern scholarship traces its origins to Roman law, with English Canon Law serving as the vehicle for its transmission into the common law tradition.¹¹ The term “domicile” is derived from the Latin *domicilium* (from *domum colere* - to inhabit or cultivate a home), and its Dutch counterpart *woonplaats*, both evoking the notion of a permanent legal home “this is where you are, because this is where you belong.”¹² Across jurisdictions, legal dictionaries and judicial pronouncements consistently define domicile as a person's legal home to which they intend to return whenever absent.¹³ Lord Chelmsford aptly

⁸ Paragraph 14(b) of General Instructions of Federal Public Service Commission states that ‘Eligibility of the candidates in terms of Recruitment Rules and the advertised conditions shall be determined after the conduct of screening/professional test/descriptive examination. On detailed scrutiny of the applications if they are found ineligible, their candidatures will be cancelled irrespective of the fact whether they have appeared in the examination/test or even qualified therein.’

⁹ Sindh Irrigation and Drainage Authority v. Government of Sindh 2022 SCMR 595 and Muhammad Mubeen us Salam v. Federation of Pakistan PLD 2006 SC 602.

¹⁰ Dr. Rashid Anwar v. Federation of Pakistan 1996 PLC (C.S.) 1073. See Article 240 of the Constitution and Section 2(1)(b), Civil Servants Act, 1973 which defines civil servants as “means a person who is a member of an All-Pakistan Service or of a civil service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does not include—

(i) a person who is on deputation to the Federation from any Province or other authority;

(ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies; or

(iii) a person who is a “worker” or “workman” as defined in the Factories Act, 1934 (XXV of 1934), or the Workmen's Compensation Act, 1923.”

¹¹ Nikolaos A Davrados, ‘Nationality, Domicile, and Private International Law Revisited’ in Essays in Honour of Nestor Courakis (2017).

¹² Ellison Kahn, ‘The South African Law of Domicile of Natural Persons’ (1971) 1971 Acta Juridica 1; Albert Levitt, ‘The Domicile of a Married Woman - I - The Older View’ (1920) 91 Cent LJ 4.

¹³ Black's Law Dictionary (9th edn, West 2009) 558; Words and Phrases (Permanent edn, vol 13, West 1952) 425–26; Corpus Juris Secundum (vol 25, West 1956) 2–3; District Education Officer (Female), Charsadda v. Sonia Begum 2023 SCMR 217; Muhammad Yar Khan v. Deputy Commissioner 1980 SCMR 456; Joan Mary Carter v. Albert William Carter PLD 1960 SC 616; Mark v Mark [2005] UKHL 42; Cragnish v. Craignish [1892] 3 Ch. 180; Pradeep Jain v. Union of India (1984) 3 SCC 654 and Mohammad Raza v. State of Bombay, AIR 1966 SC 1436.

described it as the “intention of a permanent home.”¹⁴ Thus, domicile has two essential components: (i) *factum* - the physical fact of residence; and (ii) *animus manendi* - the intention of remaining there permanently.¹⁵ Importantly, domicile is not synonymous with residence. While one may have multiple residences, a person can have only one domicile at a time. Indeed, even a person with no physical home cannot be without a domicile in law. Domicile may be categorized as: (i) Domicile of origin: acquired by operation of law at birth; (ii) Domicile of choice: adopted voluntarily by a legally competent person intending to make a place their permanent home; and (iii) Domicile of dependence: determined by the domicile of another, such as a spouse, parent, or legal guardian.¹⁶ It is a settled principle that any person, subject to legal capacity and in accordance with applicable law, may lawfully change their domicile.

9. Domicile, though often perceived as administrative, is a foundational legal concept that shapes an individual’s access to rights, opportunities, and entitlements. It is not merely a declaration of permanent residence, but a legal construct that governs access to public services, education, employment, political participation, and regional entitlements. Domicile can influence taxation, voting rights, and eligibility for regional quotas in civil service recruitment.¹⁷ In Lord Westbury’s words, domicile is “a relation which the law creates between an individual and a particular locality or country.”¹⁸ Theories of domicile span several disciplines — law, human geography, and residential mobility, each highlighting how one’s place of habitual residence affects jurisdiction, migration patterns, and settlement dynamics. Accordingly, domicile must always be interpreted in light of the underlying purpose it is meant to serve.

10. In Pakistan, the concept of domicile is recognized in Part II of the 1925 Act, Section 17 of the Citizenship Act, 1951 (“1951 Act”), and the Schedule to Rule 310-A of the Civil Service Regulations (“CSR”) Volume I. These provisions acknowledge changes of domicile through dependence, voluntary relocation, choice, or marriage. The procedural framework for obtaining, modifying, renewing, or cancelling domicile is outlined in the Citizenship Rules, 1952.¹⁹ This legal understanding of

¹⁴ *Waicker v Hume* (1858) 10 HLC 124.

¹⁵ Peter Stone, Conflict of Laws (Longman Law Series 1995) and *District Education Officer (Female), Charsadda v. Sonia Begum* 2023 SCMR 217.

¹⁶ Paul Torremans, ‘Domicile, Nationality and Residence’ in Paul Torremans (ed), Cheshire, North & Fawcett: Private International Law (15th edn, OUP 2017).

¹⁷ Anggi Fitratama Rianto Putra and Rifqi Ridlo Phahlevy, ‘The Concept of Domicile in Filling Government Positions in the Regions’ (2024) 1(4) *Journal of Geography, Regional Planning and Development*.

¹⁸ JG Castel, ‘*Domicile*’ (1958) McGill LJ 179.

¹⁹ Rules 23, 28-B and 30, Citizenship Rules, 1952.

domicile is central to the present controversy, as the respondent claims eligibility for appointment under the province of Balochistan quota on the basis of a changed domicile acquired through marriage. Whether such a change is legally sustainable, for a civil servant, for the purpose of “direct recruitment”, particularly after entry into civil service, lies at the heart of the dispute now before this Court.

Applicability of Sections 15 and 16 of the Succession Act, 1925 on Muslims

11. The respondent argued that, by virtue of Sections 15 and 16 of the 1925 Act that a wife’s domicile automatically shifts to that of her husband upon marriage. However, this contention is legally untenable. These provisions fall under Part II of the 1925 Act, which, by virtue of Section 4, expressly excludes their application to Muslims, Hindus, Buddhists, Sikhs, and Jainas. The historical context reinforces this exclusion. Prior to the Succession Act, 1865, Muslims and Hindus were governed by their respective personal laws, while other communities were subject to a patchwork of colonial legal principles. The 1925 Act was a consolidating statute aimed at non-Muslim and non-Hindu communities, deliberately preserving the autonomy of personal laws in succession matters for the latter.²⁰ Accordingly, Sections 15 and 16 have no applicability to Muslims, and the respondent’s reliance on them is misplaced.

12. For civil servants, the applicable domicile regime is set out in the Schedule to Rule 310-A of the CSR, Volume I. This Schedule explicitly recognizes the change of domicile through marriage and other modes, and affirms that the domicile of a married woman ordinarily follows that of her husband. As the respondent is a civil servant, it is this framework not the 1925 Act or 1951 Act that governs the determination and change of her domicile.

Domicile and Marriage: Autonomy, Dependency, and the Rights of Women in Civil Service

13. While CSR recognizes that a married woman may adopt her husband’s domicile by virtue of Item No. 7 of the Schedule to Rule 310-A of the CSR. Having established that the respondent’s status as a civil servant brings her within the ambit of Rule 310-A, the critical question that arises is whether such adoption is automatic or mandatory; or a matter of personal choice under the Item No. 7 of the Schedule and;

²⁰ Law Commission of India, Report No 247 on Indian Succession Act (Government of India 2014).

whether the domicile of civil servant freezes upon entry into the civil service and cannot be altered during service.

(i) Acquisition of the domicile of the husband is optional

14. To address the first question, it is necessary to examine whether the mere fact of marriage results in a compulsory shift of domicile. There exist interpretational inconsistencies among courts regarding whether a wife's acquisition of her husband's domicile is a matter of law or choice.²¹ The traditional common law rule under which a wife's domicile followed that of her husband is rooted in the doctrine of dependency and aimed at preserving legal unity within the marital relationship. However, this dependency rule has come under strong criticism for subordinating a woman's agency. Lord Denning famously described it as "the last barbarous relic of a wife's servitude," calling for its abandonment in light of modern principles of equality and autonomy. This rule, born from the doctrine of coverture²² which rendered a married woman "civilly dead" by merging her legal identity into that of her husband has been widely rejected across common law jurisdictions.²³ Legal reforms in the United Kingdom, New Zealand, Australia, and Singapore have abolished the automatic domicile rule, affirming a woman's right to independently determine her legal affiliation.²⁴ Even in jurisdictions like Malaysia, where no statute has been enacted, courts have recognized a woman's right to abandon her husband's domicile and assert her own.²⁵ From a constitutional standpoint, tethering a woman's legal identity and civic entitlements to her husband's domicile infringes upon her autonomy, dignity, and equality. The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), to which Pakistan is a signatory²⁶, affirms a woman's right to be free from such marital subordination and to choose her domicile irrespective of her marital status.²⁷ Accordingly, the proposition that a woman's domicile automatically changes upon marriage is neither supported by contemporary constitutional values nor binding in the absence of express

²¹ Dr. Muather Gul v. Government of Khyber Pakhtunkhwa 2025 MLD 36; Najm-un-Nisa v. Government of Khyber Pakhtunkhwa 2021 PLC (C.S.) 434; Dr. Shama Hidayat v. Chairman Public Service Commission 2018 PLC (C.S.) Note 93; Shabnam v. Government of Khyber Pakhtunkhwa 2015 PLC (C.S.) 1111 and Fareeda Noor v. Mehar Muhammad Nawaz 2005 CLC 669.

²² E. H. Deering, 'Coverture and Lasting Effects of Gender Inequality: An Analysis through Equal Protection Jurisprudence' Washington University Jurisprudence Review (Volume 16, Issue 2, 2024).

²³ Reed v. Reed 404 U.S. 71 (1971); Frontiero v. Richardson 411 U.S. 677 (1973); Kirchberg v. Feenstra 450 U.S. 455 (1981); Bombay Labour Union v. Messrs International Franchises AIR 1966 SC 942; C. B. Muthamma v. Union of India AIR 1979 SC 1868; Air India v. Nargesh Meerza AIR 1981 SC 1829; Joseph Shine v. Union of India AIR 2018 SC 4898, Murdoch v. Murdoch [1975] 1 SCR 423 and Bhe v. Magistrate Khayelitsha 2005 (1) SA 580 (CC).

²⁴ Domicile and Matrimonial Proceedings Act 1973 (U.K.); Domicile Act, 1976 (New Zealand); Domicile Act, 1982 (Australia) and Section 52, Women's Charter 1961 (Singapore).

²⁵ Teo Ka Fook v Loo Chiat Hui [2010] MLJU 636.

²⁶ Pakistan ratified the CEDAW on April 12, 1996.

²⁷ Articles 2, 5, 15 and 16, CEDAW.

legal compulsion. It is therefore held that a married woman retains the legal discretion, choice or agency to either adopt her husband's domicile or retain her own. In the present case, the respondent, by her own volition, opted to adopt her husband's domicile, which is legally permissible.

(ii) The domicile freezes on joining the civil service and cannot be changed during service in light of O.M. 1971

15. Unlike general domicile concepts rooted in personal identity and legal affiliation, the interpretation of domicile for government servants must be aligned with the objectives and practical necessities of recruitment policies and service conditions. Domicile must be understood in light of the purpose and object of the relevant legal context. In service law, it is interpreted with reference to recruitment policies and service terms.²⁸ The Establishment Division's O.M. 1971 addresses the issue of domicile change after entry into government service:

Change of Domicile after entry into Government Service: A question has arisen whether a government servant who entered service based on the domicile of a particular province/region may subsequently change domicile during service. While a government servant, as a Pakistani citizen, may change domicile under law, it has been decided that the domicile declared and accepted at entry shall be final for the duration of service and no later change shall be recognized for service terms, including postings and transfers. (emphasis supplied)

The O.M. 1971 permits civil servants irrespective of gender to change their domicile for purposes related to citizenship rights and obligations. However, the domicile declared and accepted at entry into civil service shall be final for the duration of service and no later change shall be recognized for service terms, including postings and transfers.²⁹ This principle equally applies to female civil servants. The rationale behind this is that Pakistan, as a constitutional Federation, comprises several Provinces with distinct socio-economic profiles and varying levels of development. To ensure equitable representation and fair opportunities across the Federation, the civil service recruitment process allocates vacancies based on provincial quotas determined by the domicile of the candidates. Domicile, in this context, serves as a constitutional tool to promote inclusivity and national integration by safeguarding the interests of less-developed regions and underrepresented populations. Once a candidate enters the civil service against a post allocated to a particular province or region, their domicile is considered "frozen" to maintain the

²⁸ *Mauzam Hanif v. Settlement Officer* 2006 SCMR 642.

²⁹ *Qaisar Khan v. Government of Khyber Pakhtunkhwa* 2021 SCMR 67 and *Muhammad Shakoor and Rehan Safdar v. Federal Public Service Commission* PLD 2007 SC 381.

integrity of this federal balancing mechanism. It is also important to note that permitting the change of domicile may affect the mechanism of transfer and seniority as well. Disregarding seniority undermines bureaucratic impartiality, violates constitutional guarantees of due process and equality (Article 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”))³⁰ and breeds cynicism within the service. The erosion of seniority norms weakens administrative stability.³¹ Allowing post-induction changes in domicile would not only undermine the quota system but also open avenues for manipulation, enabling individuals to shift provincial affiliation for personal advantage, thereby diluting the constitutional promise of provincial parity. The freezing of domicile thus serves the larger constitutional purpose of federal harmony and administrative fairness within the civil service structure of Pakistan.

16. In this context, an unmarried female civil servant such as the respondent while legally entitled to adopt the domicile of her husband upon marriage, but for all service-related entitlements and obligations, her original domicile (in this case, KPK) continues to be the determining document. The question that now arises is whether the O.M. 1975 creates a specific exception that permits a female civil servant to change her domicile (or use her husband’s domicile under the aforesaid O.M.) during service, only in limited cases where appointment to a higher post is through “direct recruitment”?

Direct Recruitment of in-service female candidates is an exception to general rule

17. Learned counsel for the respondent relied on O.M. 1975, arguing that because the advertised post was to be filled by “direct recruitment”, the respondent’s matrimonial domicile cannot be disregarded. O.M. 1975 states:

Married Female Candidates – Determination of Domicile: According to Estt. Division’s O.M. No. 2/2/67 dated August 26, 1968, a candidate’s domicile is determined by their parents’ domicile or, if the parents of a migrant candidate have not migrated to Pakistan, by the candidate’s own residence and education in the province of domicile. The question whether a married female candidate can be deemed to share her husband’s domicile has been considered, and it was decided that for direct recruitment, a married female candidate’s domicile may be accepted as that of her husband. (emphasis supplied)

³⁰ Hadayat Ullah v. Federation of Pakistan 2022 SCMR 1691 and Ajit Singh v. State of Punjab (1999) 7 SCC 209.

³¹ Barbara Geddes, *Politician’s Dilemma: Building State Capacity in Latin America* (University of California Press 1994) and Paul P Craig and Adam Tomkins (eds), *The Executive and Public Law: Power and Accountability in Comparative Perspective* (Oxford University Press 2006).

The above shows that a married candidate not yet in service may opt for either her own or her husband's domicile, and once chosen, that domicile is final for service terms. However, to assess O.M. 1975's applicability to a civil servant already in service, three objections raised by the learned Additional Attorney General must be addressed: (i) the advertised post was for initial recruitment not direct recruitment; (ii) direct recruitment implies first entry into service; and (iii) allowing an in-service female civil servant to change domicile risks disrupting seniority and service structure.

Direct Recruitment and Initial Recruitment are interchangeable terms

18. Having clarified the distinct applicability of O.M. 1975 to female civil servants, it is essential to address the terminology surrounding recruitment, particularly the distinction or lack thereof between "direct recruitment" and "initial recruitment," which forms a critical basis for the arguments advanced. Service rules in Pakistan recognize three modes of appointment³²: (i) initial recruitment, (ii) promotion, and (iii) transfer. Initial recruitment is defined as an appointment made otherwise than by promotion or transfer, typically through examination, test, or interview conducted by the Commission.³³ Notably, the term "direct recruitment" is absent from any Pakistani law or regulation. However, Indian service jurisprudence³⁴ employs a parallel classification comprising (i) direct recruitment, (ii) promotion, and (iii) transfer, with direct recruitment statutorily defined identically to Pakistan's initial recruitment. This semantic and functional equivalence is reinforced by frequent interchangeable use of "direct recruitment" and "initial recruitment" in various Pakistani departmental manuals and service documents.³⁵ Hence, it is legally unsound to treat these terms as distinct; they are interchangeable in both meaning and application.

³² Rule 3, Punjab Civil Servants' (Appointment and Conditions of Service) Rules, 1974; Rule 3, Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and Rule 3, Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and Rule 3, Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 1979.

³³ Wahiduddin v. Province of Sindh 1980 PLC (C.S.) 390; Section 2(1)(d), Punjab Civil Servants Act 1974 provides that "initial recruitment" means appointment made otherwise than by promotion or transfer"; Section 2(1)(d), Sindh Civil Servants Act, 1973 provides "initial appointment" means appointment made otherwise than by promotion or transfer; Section 2(1)(d), Khyber Pakhtunkhwa Civil Servant Act 1973 provides "initial appointment" means appointment made otherwise than by promotion or transfer; Section 2(1)(c), Balochistan Civil Servants Act 1974 provides "initial appointment" means appointment made otherwise than by promotion or transfer; Section 2(1)(c), Civil Servants Act 1973 provides "initial appointment" means appointment made otherwise than by promotion or transfer; Section 2(j), Punjab Enforcement and Regulatory Authority (Appointment and Conditions of Service) Regulations, 2024 provides "Initial recruitment" means the appointment made other than by promotion or transfer of the employees; from any other service/ department.

³⁴ The Mysore State Civil Services Rules, 1957; I.P.S. (Regulation of Seniority Rules, 1954) and R. N. Nanjundappa v. T. Thimmiah AIR 1972 SC 1767.

³⁵ Part II of O.M. No. 3/69/2000-CP-7, dated 27-03-2001; Part F of Extract from para 6 of Estt. Secretary's D.O letter No.1/9/73-F. IV dated 22-10-1973; Estt. Div. O.M.No.15/38/52-SE II, dated 29-1-1954; Estt. Div. O.M.No.1/9/74-ARC dated 12-9-1974; Estt. Div. O.M No. 3/59/2003-R.2, dated 24-10-2003; Estt. Div. O.M.No.56/2/48-Estts. (ME), dated 19-10-1948; Estt. Div. O.M.No.2/5/77/WC/R-IX, dated 11-1-1978; Estt. Div. O.M. No.11/1/81-R.5, dated 20-8-1981; Part F Estt. Div. O.M. No. 9/1/73-R.5, dated 22-8-1984; Estt. Div. O.M. No. 5(1)11/67-D.V., dated 21-3-1968;

Scope of Direct Recruitment: Fresh Entrants vs In-Service Applicants

19. Initially, the Court was inclined to accept the learned Additional Attorney General's interpretation that "direct recruitment" signifies only first entry into service. However, a deeper review of government service structures reveals that in-service civil servants, with a NOC from their parent department, may apply for vacancies designated for "direct recruitment". Thus, "direct recruitment" encompasses two categories: (i) fresh entrants from outside the service, and (ii) in-service candidates seeking appointment to new posts. Hence, the terms "initial recruitment"/"direct recruitment" cannot be strictly confined to a fresh candidate entering service for the first time as the same could equally involve an in-service candidate through an open competition.³⁶ Therefore, "direct recruitment"/"initial recruitment" does not exclusively mean first entry into service.

One-Time Domicile Choice for Female Candidates: Purposive and Gender-Sensitive Interpretation of Domicile in Direct Recruitment

20. An exception to the general principle under O.M. 1971 whereby the domicile of a civil servant stands frozen upon entering the civil service, has been carved out in the case of female officers who marry during service. Recognizing the constitutional values of equality, dignity, and the realities of social mobility that accompany marital life, a limited concession is provided whereby a woman officer may, only once, adopt the domicile of her husband if she seeks appointment to a post through direct recruitment. This exception acknowledges that marriage often entails a change in residence and social identity, and aims to accommodate such transitions without violating the broader principle of domicile integrity. However, this option is strictly a one-time concession in the entire service tenure of the female officer. Once exercised, the new domicile (based on husband's domicile) stands frozen and remains immutable regardless of whether the officer is subsequently divorced, widowed, or remarries a person from another province. This safeguard ensures that the exception does not evolve into an instrument of circumvention or manipulation, and preserves the constitutional scheme of fair and equitable representation across the Federation.

Estt. Div. O.M. No. D. 210/84. R.5, dated 3-6-1986; Estt. Div. O.M.No.54/12/57-ME, dated 14-7-1951; Estt. Div O.M No. 4/6/2004-R.2, dated 4-05-2005; Estt. Div. D.O letter No.4/4/80-R.2, dated 31-10-1985; Estt. Secretary's D. O letter No.4/3/78-R. II, dated 7-8-1978; Estt. Secretary's D.O Letter No.5-PD.VI/85, dated 17-9-1987; Estt. Div. O.M. No.9/7/80-A.III, dated 23-9-1980; Estt. Div. O.M. No.4/3/80-R. II dated 8-5-1986; Estt. Div. O.M No.4/8/90-R.2, dated 2-9-1990; Estt. Div OM No. 4/10/2006-R-2, dated 01-08-2007; Estt. Div. OM No. 4/15/2006-R-2, dated 22-5-2007; Estt. Div. OM No. 3/17/2005-R-2, dated 26-09-2006; Estt. Div O.M.No.1/22/66-D. V dated 17-10-1966; Estt. Div. O.M.No.2/51/78.D.III, dated 11-7-1979 and Estt. Secretary's D.O., letter No.4/20/74-A IV, dated 11-12-1974.

³⁶ Dr. P. Dananjayan v. The Principal (Writ Appeal No. 1423 of 2019).

21. The learned Additional Attorney General's contention that permitting the respondent's change of domicile would destabilize the civil service structure would have been correct if the respondent remained in the same service structure, however, the "direct recruitment" of in-service candidates involves new pay scales, distinct terms, and a separate seniority list. Such recruitment neither alters existing service conditions nor infringes on vested rights. We are conscious of the fact that the respondent would be accorded a benefit due to the change of her domicile as the advertised post was not for the KPK domicile holders, therefore her batchmates holding the KPK domicile were deprived to take part in the "direct recruitment" process but as the respondent has changed the domicile legally on the basis of her marriage and O.M. 1975 allows the domicile of the husband to be considered for "direct recruitment", no such discrimination exists as her case is distinguishable from that of her colleagues in the same cadre. It is well settled law that statutory provisions must be harmoniously interpreted, avoiding redundancy.³⁷ Where two interpretations exist, one favouring the rights of civil servants and the other favouring the State, the one beneficial to the civil servants prevails.³⁸ In interpreting the O.M. at hand, this Court has adopted a women-centric approach, consistent with Article 25(3) of the Constitution of Pakistan, which explicitly permits affirmative measures in favour of women. Such an interpretation advances substantive equality by recognizing historical and structural disadvantages faced by women, and ensures that the law is applied in a manner that promotes gender justice and inclusion. A purposive, gender-sensitive reading under Article 25(3), 34 and 35 of the Constitution supports allowing female candidates, whether fresh or in-service, a one-time, informed choice of domicile for "direct recruitment" under O.M. 1975. Once this choice is exercised the domicile is once again frozen for the purposes of the civil service. Any subsequent change in the marital status of a female civil servant (if any), would have no bearing on the domicile and her domicile of choice is frozen for the purpose of remaining service and for any posts arising out of "direct recruitment" in the future. Consequently, rejecting the respondent's matrimonial domicile was legally unsustainable. Applying this to the instant case, given that the respondent has exercised the option to choose her domicile, this would be treated as a one-time choice only in matters of direct recruitment to a higher post during service.

³⁷ Waqar Zafar v. Haji Mazhar Hussain Shah PLD 2018 SC 81 and Aftab Shahban Mirani v. Muhammad Ibrahim PLD 2008 SC 779.

³⁸ Mohsin Ali Hasani v. Government of Pakistan 1990 SCMR 1685.

Validity of Experience Certificate, NOC, and Domicile Documentation

22. The learned Additional Attorney General's objection to the respondent's experience certificate on the ground that it was issued without a substantive appointment or promotion is without merit. While earlier certificates were issued by the Executive Director, PIMS, and the Additional Secretary, MNHS, the competent authority under Section V(5), (6), and (9) of the PMDC Regulations is the Pakistan Medical and Dental Council ("PMDC").³⁹ The PMDC issued a certificate on 31.10.2023, confirming that the respondent possesses 6 years, 4 months, and 29 days of teaching experience.⁴⁰ This certification was issued after duly considering her performance of duties as a designated Assistant Professor under an "internal arrangement". It was argued that the term "internal arrangement" does not connote that the respondent was posted as an Assistant Professor, hence her experience as such is not countable. However, in light of the certificates issued by PIMS, MNHS, and PMDC, the term "internal arrangement" is at best an indoor policy of PIMS and has no bearing on the rights of the respondent. No justifiable explanation has been given by PIMS or MHNS regarding the term "internal arrangement". In this background, the PMDC certificate remains valid and unchallenged, and has achieved finality.⁴¹ Hence, the FPSC cannot override or disregard the jurisdiction and findings of the duly designated certifying authority.

23. In view of the above reasons, and not for the reasons given in the impugned judgment, this petition is hereby dismissed. Consequently, the orders of the FPSC dated 02.10.2014 and 10.07.2024, whereby the respondent's candidature was rejected, are set aside. It is pointed out that a seat of Associate Professor is still vacant. The petitioner is, therefore, directed to consider the case of the respondent for appointment for the post of Associate Professor on her Balochistan domicile strictly in accordance with law and after complying with all codal formalities within a fortnight of the receipt of this judgment.

Real role of the Supreme Court and its Judges.

24. The Supreme Court is not merely a forum for resolving disputes; it is the constitutional conscience of the nation, tasked with producing progressive and principled jurisprudence that breathes life

³⁹ Section V(5), (6) and (9), Pakistan Regulations for the Appointment of Faculty/Teachers/Examiners/Principals/Deans/Vice Chancellors in Undergraduate and Postgraduate Medical and Dental Institutions and Medical Universities, 2018.

⁴⁰ Yaquab Ali Khan v. Federal Public Service Commission 2019 SCMR 413.

⁴¹ Section V(9)(iv), Pakistan Regulations for the Appointment of Faculty/Teachers/Examiners/Principals/Deans/Vice Chancellors in Undergraduate and Postgraduate Medical and Dental Institutions and Medical Universities, 2018.

into the Constitution and bridges the distance between law and the lived realities of the people. It is the ultimate guardian of fundamental rights and the final sentinel against executive or legislative overreach. Judges of this Court are not passive interpreters of text, they are the custodians of liberty, equality, and institutional independence. The Court must remain alive to the evolving aspirations of society and innovate new remedies to advance justice.

25. Judges are to act with integrity and courage, to resist all encroachments, external or internal that threaten to erode the autonomy of the judiciary or subvert the rule of law. Judges must not fall prey to the lure of small, short-term benefits, whether of elevation, power, or personal comfort that may accrue if they speak the language of authority rather than that of the Constitution. Such benefits are illusory and transient. The true reward of a judge lies in preserving the dignity of the institution and the trust of the people. It is also the solemn duty of judges of this Court to call out, with moral clarity and institutional courage, those among their ranks who surrender to the power of the day at the cost of constitutional principles. Critique from within, when rooted in fidelity to the Constitution, is not disloyalty, it is the highest form of service to the judicial institution. History is a vigilant witness. It does not remember those who accommodated power, but those who stood resolute in defense of principle. The jurisprudential legacy of a judge is not built on appeasement but on principled defiance when the soul of justice is imperiled. Courts must never become tools of expediency. Rather, they must be lighthouses of constitutional morality and guardians of democratic integrity. History will not absolve judges who abandon their constitutional duty; it will remember them not as dispensers of justice, but as collaborators in injustice.

26. A copy of this judgment be dispatched to the petitioner for immediate compliance of the judgment.

Judge

Announced.

Islamabad,
17th June 2025.

Judge

Judge

Approved for reporting.

Sadaqat