IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITIONS NO. 448-P/17, 651-P, 655-P, 658-P AND 666-P OF 2019 (Against the Judgments dated 01.08.2017, 09.11.2018, 04.09.2019, 19.08.2019, 16.09.2019, passed by the Peshawar High Court, Peshawar, in W.Ps. No.2932-P/2017, 4061-P/2017, 1210-P/2019, 3768/2019 & 2412-P/2019)

District Education Officer (Female), Charsadda & others (In CP.448-P/2017)

Secretary S.S.D, FATA, Secretariat, FATA, Peshawar (Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar) and others (In CP.651-P/2019)

Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education, Peshawar and others (In CP.655-P & 658-P/19)

Director, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar and others (In CP.666-P/2019)

...Petitioners

VERSUS

Sonia Begam (In CP.448-P/2017)
Shakila Chaman (In CP.651-P/2019)
Saira Amin (In CP.655-P/2019)
Syed Amjad Rauf Shah (In CP.658-P/2019)
Raz Muhammad (In CP.666-P/2019)

...Respondents

For the Petitioners: Mian Shafaqat Jan, Addl. AG, KPK
Mr. Zaheer uddin, Sub-Divisional Education Officer, District Bajour

For the Respondents: N.R.

Date of Hearing: 29.09.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. The above-titled five Civil Petitions for leave to appeal are directed against the Judgments dated 01.08.2017, 09.11.2018, 04.09.2019, 19.8.2019 and 16.09.2019, passed by the learned Peshawar High Court in W.Ps. No. 2932-P/2017, 4061-P of 2017, 1210-P/2019, 3768/2019 and 2412-P/2019, whereby the Writ Petitions filed by the respondents were allowed with certain directions. CPLA Nos.448-P/2017 & 651-P/2019 are time barred but the other three petitions are within time wherein the controversy is more or less

the same, therefore the condonation applications i.e. CMA No.789-P/2017 and CMA No.1447-P/2019 are allowed in view of the grounds mentioned in both applications for condonation of delay.

2. The barebones of the discord between the parties are as under:-

I) C.P. No.448-P/2017 (W.P. No.2932-P/2017 in the Peshawar High Court)

The petitioners have challenged the judgment of the Peshawar High Court, passed in W.P. No.2932-P/2017, wherein the respondent/petitioner (Ms. Sonia Begum) applied for the post of Primary School Teacher ("**PST**") (Female). During the appointment process, her name was placed at Serial No.3 of the Merit List compiled for the Union Council ("**UC**") Zayam, but she was refused appointment on the sole ground that, as per her Computerized National Identity Card ("**CNIC**"), she is not a permanent resident of the said UC while according to her, she is the permanent resident of village Haji Noor, Muhammad Kalay, UC Zayam and possesses a domicile of the same UC but on her CNIC, the address of her mother's village was mentioned where her parents had only resided for 2 or 3 years. After hearing the arguments, the learned High Court remitted the petition to the District Education Officer ("**DEO**") (Female), Charsadda with the direction to consider the respondent/petitioner for appointment against the post of PST at her UC, strictly in accordance with the guidelines provided in W.P. No.3255-P/2016 which was previously decided by the same High Court, if the petitioner/respondent possesses the required qualification and merit position.

II) C.P. No.651-P/2019 (W.P. No.4061-P/2017 in the Peshawar High Court)

The petitioners have challenged the judgment of the Peshawar High Court in W.P. No.4061-P of 2017 wherein the respondent/petitioner (Ms.Shakila Chaman) applied for the post of PST having Master's Degree and PTC certificate. She qualified the aptitude test conducted through NTC and after qualifying the test, her name was listed at Serial No.8 of the Merit List, but she was dropped from the final list due to a difference between the address indicated in her domicile and her CNIC. The respondent/petitioner asserted that she has a domicile of Tehsil Salarzai and in her CNIC the permanent address of Salarzai was shown, as well as in her Permanent Residence Certificate, despite that she was dropped from the Merit List. While allowing the petition the High Court directed the official respondents to consider the respondent/petitioner for appointment against the post of PST, strictly in accordance with her merit position, in view of the judgments of the Peshawar High Court recorded in W.P. No.3253-P/2016 and W.P. No.2932-P/2017.

III) C.P. No.655-P/2019 (W.P. No.1210-P/2019 in the Peshawar High Court.

The petitioners have challenged the judgment of the Peshawar High Court passed in W.P. No.1210-P/2019. The respondent/petitioner (Ms. Saira Amin) applied for the post of PST for GGCMS Muslim Abad, GGPS Afridi Abad, GGPS Malik Abad situated in UC Mashogagar which were allocated one seat each, along with GGPS Mashogagar Badabher No.1 which was allocated two seats. The respondent/petitioner (Ms.Saira Amin) being resident of said UC applied for one of the posts and after qualifying the aptitude test, she secured the top position in GGCMS Mashogagar Muslim Abad, second position at GGPS Malik Abad and GGPS Afridi Abad, and fourth position at GGPS Mashogagar Badabher No.1 falling within the same UC for which she possesses the domicile. Despite that she was disqualified for the said UC, being an alleged outsider according to her CNIC. While allowing the petition, the learned High Court directed the official respondents to consider the petitioner/respondent for appointment against the post of PST at her UC, strictly in accordance with her merit position.

IV) C.P. No.658-P/2019 (W.P. No.3768/2019 in the Peshawar High Court)

The petitioners have challenged the judgment of the Peshawar High Court passed in W.P. No. 3768/2019. The respondent/petitioner (Syed Amjad Rauf Shah) applied for one of seven vacant posts of PST allocated in UC

Hazar Khwani-II, Peshawar, and was placed at Serial No. 8 of the Merit List. He pleaded in his petition before the High Court that one Muhammad Amir, who was at Sr. No. 3 of the Merit List, did not join the post as he was appointed as Theology Teacher and therefore he may be appointed against the left over post of PST as he came next in the Merit List. The petition was disposed of by the learned High Court with directions to the official respondents to consider the respondent/petitioner for appointment against the vacant post of PST within thirty (30) days.

V) C.P. No.666-P/2019 (W.P. No.2412-P/2019 in the Peshawar High Court)

The petitioners have challenged the judgment of the Peshawar High Court passed in the W.P. No.2412-P/2019. The respondent/petitioner being a resident of Urmar Bala (UC-47) applied for the post of two schools, namely Government Primary School Charakh Ghari Chandan and Government Primary School Chandan Payan, in the said UC. He appeared in the aptitude test and secured third and fourth positions for the said schools. He was denied the opportunity of job for the reason that in his old CNIC, his permanent address was provided as District Charsadda. The learned High Court while allowing the petition issued directions to the department to consider the respondent/petitioner for the post of PST in accordance with law and his merit position.

3. The Additional Advocate General for KPK ("**Addl. AG KPK**") argued that the impugned judgments of the High Court suffer from material illegality and are also in violation of Section 3 of the Khyber Pakhtunkhwa (Appointment, Deputation, Posting and Transfer of Teachers, Lecturers, Instructors and Doctors) Regulatory Act, 2011 ("**2011 Act**"). It was further contended that the learned High Court failed to properly interpret the law and also disregarded the advertisements. It was further contended that, while rendering the impugned judgments, the learned High Court failed to examine whether the respondents are the permanent residents of the UC from which they applied for the post.

4. Heard the arguments. The substratum of the impugned judgments passed by the learned High Court is predominantly based on the judgment dated 16.11.2016 rendered by the same High Court in W.P. No.3255-P/2016 in an identical set of circumstances wherein the merit position of the respondents was not denied, but their names were excluded from the merit list for the reason that as per their CNICs, the said respondents were not permanent residents of their respective UCs, on the contrary, the respondents in the said writ petition submitted their certificates of domicile as valid proof of their permanent abode in their respective UCs. The learned High Court in the same judgment also dilated upon Section 3 of the 2011 Act and observed that the petitioners before the High Court are permanent residents of the place mentioned in their domicile certificates, as the CNIC indicates two different places of dwelling of a person i.e. permanent address and temporary dwelling place, while the term

domicile denotes a fixed permanent residence of a person, therefore, any address mentioned in the CNIC would not bring any change in the permanent residence disclosed by a person in their domicile certificate, hence the petitioners/respondents cannot be denied appointment on the ground that they are not permanently settled in the relevant UC.

5. According to the lexicographers, the terms "Domicile" and "Residence" have been defined in the following context and perspective:

I. Domicile

1. **Black's Law Dictionary (Ninth Edition), at page 558**

> Domicile**.** The place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere. A person has a settled connection with his or her domicile for legal purposes, either because that place is home or because the law has so designated that place.

2. **Words and Phrases (Permanent Edition), Volume 13, at page 425 - 426**

> Person's "domicile" is place where he has his permanent home or principal establishment, to which place he has, whenever he is absent, intention of returning. Vehrs v. Jefferson Ins. Co., La.App., 168 So.2d 873, 877.
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> The place in which a person has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose, but with a present intention of making it his permanent home, unless and until something which is unexpected and uncertain shall occur to induce him to adopt some other permanent home is his "domicile." Caldwell v. Shelton, 221 S.W.2d 815, 817, 32 Tenn.App. 45.

3. **Corpus Juris Secundum, Volume XXV, At pages 2-3**

> The word "domicile" is derived from the Latin **"domus,"** meaning a home or dwelling house. Domicile is the legal conception of home, and the term "home" is frequently used in defining or describing the legal concept of domicile.
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> Domicile is the relation which the law creates between an individual and a particular locality or country. What has been said to be the most comprehensive and correct definition which would be given is that, in a strict legal sense, the domicile of a person is the place where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning.
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> Domicile has also been defined as that place in which a person's habitation is fixed, without any present intention of removing therefrom, and that place is properly the domicile of a person in which he has voluntarily fixed his abode, or habitation, not for a mere special or temporary purpose, but with a present intention of making it his permanent home.
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> **§ 2. Domicile and Residence Distinguished**
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> While the terms "domicile" and "residence" are frequently used synonymously, or said to be synonymous, and "residence" and "legal residence" have been defined in language similar to that used in defining "domicile", "domicile" and "residence" are not, when accurately precisely used, convertible terms. "Domicile" is a larger term, of more extensive signification and has been said to be used more in reference to personal rights, duties, and obligations; and residence is of a more temporary character than domicile.

That there is a difference in meaning between "residence" and "domicile" is shown by the fact that a person may have his residence in one place while his domicile is in another and that he may have more than one residence at the same time but as appears in §3 infra, only one domicile.

II. Residence

1. **Black's Law Dictionary (Ninth Edition), At page 1423**

1**.** The act or fact of living in a given place for some time <a year's residence in New Jersey>. Also termed *residency*. 2**.** The place where one actually lives, as distinguished from domicile <she made her residence in Oregon>. *Residence* usu. just means bodily presence as an inhabitant in a given place; *domicile* usu. requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously. Cf. Domicile (2). [Cases: Domicile 2.] 3. A house or other fixed abode; a dwelling <a three-story residence>. 4. The place where a corporation or other enterprise does business or is registered to do business <Pantheon Inc.'s principal residence is in Delaware>. [Cases: Corporations 52, 503(1), 666.]

2. **Words and Phrases (Permanent Edition), Volume 37, At pages 318 to 319**

The word "residence" means the place where one resides, or sits down or settles himself, and is largely a matter of intention not involving dominion over the particular spot or domicile. Nevertheless it ordinarily implies something of permanence or continuity at least for an indefinite period, to the exclusion of other contemporaneous residence. In re Duren, 200 S.W.2d 343, 350, 355 Mo. 1222, 170 A.L.R. 391.

To create "residence" actual, bodily presence in county or place, combined with freely exercised intention of remaining there permanently or for an indefinite time, at least are necessary. Lewis v. Lewis, 176 S.W.2d 556, 559, 238 Mo.App. 173.

"Residence" means place where one resides, an abode, dwelling, or habitation, especially a settled or permanent home or domicile, and is made of fact of abode and intention of remaining. Reaume & Silloway v. Tetzlaff, 23 N.W.2d 219, 221, 315 Mich. 95.

3. **Corpus Juris Secundum, Volume LXXVII, At pages 292 to 293**

The word "residence" implies, involves, or carries with it the idea of a place of abode, a place of living, or a home, and it has been said that it is impossible to consider the term and disassociate it from the elements of home and habitation, and that a definition of the term from which all the elements of home and habitation are excluded, as a matter of no consideration, is beyond the ordinary conception. Nevertheless, a person may have his residence in one place and his permanent home or domicile in a different place, and a person's residence may be in a place where he does not dwell or abide. Usually, however, the word "residence" means that a person has his home in a particular place, and it has been said that the term is employed in the law to denote that a person dwells in a given place. Ordinarily, but not necessarily, a man's residence is his home, and is where he actually dwells, and the term may imply the house or dwelling in which a person lives or resides.

6. The expression "domicile" would reflect a person's status as a citizen of a particular state or country, whereas the expression "permanent residence" is a pure question of fact with regard to residence in a particular area. In line with Section 16 of the Pakistan Citizenship Act, 1951 ("**Citizenship Act**"), the Federal Government may by order deprive any such citizen of his citizenship if it is satisfied

that he obtained his certificate of domicile or certificate of naturalization under the Naturalization Act, 1926 by means of fraud, false representation or the concealment of any material fact. Whereas under Section 17 of the Citizenship Act, the Federal Government grants 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 making an application and has acquired a domicile therein. The issuance of domicile certificate under Section 17 of the Citizenship Act read with Rule 23 of the Pakistan Citizenship Rules, 1952 makes it evident that a particular person is a domiciliary of Pakistan. In the case of Joan Mary Carter v. Albert William Carter **(PLD 1961 SC 616)**, this Court held that whatever might be the difficulties in giving a precise legal definition to the word "domicile" it appears to us that it must have some relation to the word from which it is derived, namely, domes home. The two most important conditions, which have been generally accepted to be the conditions that must be fulfilled for effecting a change of domicile, namely, the physical fact of residence and the present intention of making that place a permanent home, were fulfilled in the present case and whatever might have been the domicile of origin of the respondent upon the satisfaction of these conditions, he acquired a legal domicile in Pakistan. While this Court in the case of Muhammad Yar Khan V. Deputy Commissioner-Cum-Political Agent Loralai and Another **(1980 SCMR 456)**, held that the words "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 certificate therein" would need a bit of clarification. It is a well-settled principle of Private International Law, to which reference is necessary, as "domicile" has not been defined in the Act, that every person carries the domicile of the country in which he is born such that, so long as he does not intentionally and by the exercise of free volition choose the domicile of another country, he carries the domicile of his origin and that to prove that he had acquired another domicile of his choice he must show that he had intentionally taken a decision in that behalf in the sense that he had taken abode therein with the intention of making it his permanent residence. The Court has also quoted the excerpts from the book “Private International Law” (Seventh Edition) by Cheshire page 151, under the caption "The Acquisition of a Domicile of Choice" as under:-

> "The two requisites for the acquisition of afresh domicile are residence and intention. It must be proved that the person in question established his residence in a certain country with the intention of remaining there permanently. Such an intention, however, unequivocal it may be, does not per se suffice. These two elements of factum et animus must concur, but this is not to say that there need be unity of time in their occurrence. The intention may either precede or succeed the establishment of the residence. The emigrant forms his intention before he leaves England for Australia, the emigre who flees from persecution may not form it until years later.
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> Since residence and intention must concur they should logically be examined, but it will be found that in practice it is difficult, if not impossible, to keep them in watertight compartments. It is not residence per se, but residence accompanied by a certain intention, that constitutes domicile, and since au fond the requirement of residence is satisfied by mere presence the crucial inquiry in a contested issue centres upon the mind of the de cujus. Strictly speaking, residence is a fact, though a necessary one, from which intention may be inferred.
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> This much is clear, however, that a person's residence in a country is prima facie evidence that he is domiciled there. There is presumption in favour of domicile, which grows in strength with the length of the residence. Indeed, residence may be so long and so continuous that, despite declarations of a contrary intention, it will raise a presumption that is rebuttable only by actual removal to a new place. A man cannot gainsay the natural consequences of permanent residence in a country by, for example, declaring in his will that he does not intend to relinquish his formal domicile in another country.
>
> On the other hand, time is not the sole criterion of domicile. Long residence does not constitute nor does brief residence negative domicile. Everything depends upon the attendant circumstances, for they alone disclose the nature of the person's presence in a country. In short, the residence must answer "a qualitative as well as a quantitative test". Thus in Topp v. Wood, what it was held that a residence of twenty-five years in India did not suffice to give a certain John Smith an Indian domicile because of his alleged intention ultimately to return to Scotland, the land of his birth".

7. The Latin expression "*Animus manendi*" conveys 'the intention of remaining.' To establish or get hold of a domicile, a person should have an abode at a particular place with the intent to be there for an unlimited period. In order to thrash out this particular aspect, the concept of *animus manendi* is a crucial component and a benchmark to resolve the question of dwelling and whether a person has elected any particular place for his abode rests on the facts of each case separately. The term 'residence' envisions a constituent of permanency in residence and does not connote occasional or intermittent dwelling for any particular period at any particular place. By and large, the domicile of a person can be the residence but the residence may or may not be the domicile or mere residence is not domicile. There is also no concept under the Citizenship Act for two simultaneous domiciles of the same person who may inhabit at many places but he can have one domicile only which indicates his permanent place of dwelling, whereas residence is a more flexible notion than domicile. The plainest definition of "domicile" has been given by Chitty, J. in Cragnish v. Craignish [1892] 3 Ch. 180, observing "that place is

properly the domicile of a person in which his habitation is fixed without any present intention of removing therefrom." However, in the case of Central Bank of India Vs. Ram Narain **(AIR 1955 SC 36)**, the learned Court held that this definition, however cannot be said to be absolute one. The term 'domicile' lends itself to illustrations but not to definition. In English Law most of the jurists agree that two constituent elements for existence of domicile are (1) a residence of a particular kind, and (2) an intention of a particular kind. There must be the factum and there must be the animus. The residence need not be continuous but it must be indefinite, not purely fleeting. The intention must be a present intention to reside forever in the country where the residence has been taken up. It is also a well-established proposition that a person may have no home but he cannot be without a domicile. The law may attribute to him a domicile in a country where in reality he has not. In other words, one of the constituents giving birth to domicile of a person is the place where he was born. In the case of Arvind Kumar vs State of U.P. & Others (**(2011) ILR 3 ALL 1350**), the learned Court placed reliance on the judgment in the case of Flowers v. Flowers, (1910) 1.L.R. 32, wherein it was held that a mere casual residence in a place for a temporary purpose with no intention of remaining is not covered by the word "resides". The expression "resides" implies something more than "stay" and implies some intention to remain at a place and not merely to pay it a casual visit, while in the case of Jagir Kaur vs. Jaswant Singh (1963 AIR 1521=1964 SCR (2) 73), the learned Court observed that a person would be said to reside at a place when it is not a flying visit to or a casual stay in a particular place. There shall be animus manendi or an intention to stay for a period, the length of the period depending upon the circumstances of each case.

8. According to the definition provided in clause (e) of Section 2 of the National Database and Registration Authority Ordinance, 2000 ("**NADRA Ordinance**"), a "citizen" means a person who is, or is deemed to be a citizen of Pakistan, under the Citizenship Act and in clause (k), "National Identity Card" means a card issued under sub-section (1) of Section 14 and, where the context so admits, includes an identity card issued under the National Registration Act, 1973 (old law). The Citizenship Act was promulgated to make provisions for citizens of Pakistan, whereas the NADRA Ordinance was premeditated to provide for the registration of persons and establishment and maintenance of

multipurpose databases, data warehouses, networking, interfacing of databases and related facilities. Section 46 of the NADRA Ordinance puts forward that this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force. What is extremely dominant and assertive to ruminate or mull over is that the Citizenship Act, as well as the NADRA Ordinance are both special laws relating to special subjects. The Citizenship Act pertains to the grant of citizenship of Pakistan, whereas the NADRA Ordinance relates to the registration of persons and issuing of national identity cards according to their domain and mandate.

9. The merit position of the respondents was not disputed by the petitioners before the High Court, despite that, they were not considered for appointment on an inarticulate excuse that according to the CNICs the respondents were not permanent residents of their UCs, although their permanent dwelling was evident at their UCs by means of certificates of domiciles which were also overlooked and disregarded without any rhyme or reason. Nothing alleged by the learned Addl. AG KPK, whether the judgment passed in W.P. No.3255-P/2016 was challenged at any point of time in this Court and/or whether any appeal is pending in this Court and, if so, then what is its present status. On the contrary, the judgment in W.P No. 2932-P/2017 demonstrates in paragraph No.4 that Miss Abida Safdar, Addl. AG representing the official respondents frankly admitted that the controversy with regard to the appointments in similar matters (W.P. No. 3255-P/2016) has already been set at naught by the Peshawar High Court which has attained finality and the respondents/department have adopted the procedure enlightened by this Court (Peshawar High Court) in the above referred judgment.

10. The 2011 Act was promulgated to regulate by law appointments, postings and transfers at local level of teachers serving in primary, middle, secondary and higher secondary schools, lecturers in colleges and instructors in technical institutions and doctors in health facilities and to ensure the availability of teachers in schools, lecturers in colleges and instructors in technical institutions and the doctors in health facilities, and to regulate deputation of doctors abroad and to provide for matters connected therewith or ancillary thereto. In Section 2 (definition clause), Clause (a), defines the “Commission” which means the Khyber Pakhtunkhwa Public Service Commission and

under clause (c) “Government” means the Government of the Khyber Pakhtunkhwa, while Section 3 has direct nexus with the appointment, posting and transfer of primary school teachers, which *inter alia* provides that the vacancy of primary school teacher shall be filled in from the candidates belonging to the UC of their permanent residence mentioned in their CNIC and domicile, on merit and if no eligible candidate in that UC is available where the school is situated, such appointment shall be made on merit from amongst eligible candidates belonging to the adjacent UCs, provided that on availability of a vacancy, a primary school teacher, appointed from the adjacent UC, as referred to, shall be transferred against a vacant post in a school of the UC of his residence within a period of fifteen days.

11. The learned Addl. AG KPK also referred to a consolidated order passed by this Court on 8.10.2019 in Criminal Appeal No. 1-P of 2019 and in some connected Civil Petitions which highlights the issue of appointment of the private respondents as Primary School Teachers in UC Hazar Khawani-I. The above order depicts that the writ petitions of candidates were disposed of by the High Court with the directions to get the domiciles verified and then to consider the matter of appointment of said candidates as Primary School Teachers in the concerned UC. After verification of the domiciles by a Committee the department refused to appoint them and a result thereof, contempt petitions were filed before the High Court and the department was directed by the High Court to appoint the candidates. This Court in the aforesaid Order noted that, according to the report of the Committee, the domiciles did not appear to be genuine because they had been prepared after the closing date of applications for the advertised posts and in many cases the addresses of the relevant persons were not those of the concerned UC. This Court further observed that be that as it may, in a majority of the present cases the High Court had issued directions requiring the department to consider the matter of appointment as Primary School Teachers, though this Court also referred to Section 3 of the 2011 Act, but without setting aside or reverting the directions given by the High Court in contempt proceedings to the department, disposed of the aforesaid appeal and connected petitions with a clarification that, while considering the matter of appointment of the private respondents, the appellants/petitioners shall adhere to the above mentioned statutory requirements. It is clear from the niceties of the aforesaid order itself

that this Court had neither set aside, nor reverted the directions given by the High Court in contempt proceedings which still hold the field.

12. By and large, the domicile of a person is treated as a parent document for recruitment in order to ascertain the permanent abode. Here all the respondents unequivocally asserted that they possess the domiciles of the concerned UCs as a matter of course and also offered valid justifications for the intermittent change of address with further affirmation that the place of their permanent residence is as per their domiciles. It is translucent from the provisions contained under the Citizenship Act that neither a person can obtain multiple domiciles, nor the law approves or allows any such act or practice. If the jobs are given merely considering the CNIC without considering the address on the domicile then it would create various complications and complexities and even in the case of temporarily shifting or in case of a rented house, the person will be forced every time to apply for fresh domicile with the address of changed abode and in such eventuality, he will be neither here nor there but unfortunately a rolling stone, who would never be able to secure a job due to the alleged discrepancy and his candidature will be rejected every time, meaning thereby that if he will apply on CNIC address, he will be rejected due to difference in domicile address and if he will apply on domicile, again he will be rejected due to different address on CNIC which will somehow or the other lead him out of arena, sometimes due to address on CNIC and sometimes on the basis of address on certificate of domicile which cannot be the same in each and every case as a rule due to different circumstances which include temporary dwelling despite having permanent address at the place of domicile. So for all intents and purposes, the weightage and preference should be given firstly to the certificate of domicile which cannot be ignored without due consideration. In our considerate view, no restrictive or dissuading interpretation of Section 3 of the 2011 Act can be accentuated or overextended to nullify and abolish the effect of certificate of domicile and/or to give preference to the CNIC over the domicile and if it is done, then it will render the entire concept of a domicile redundant and meaningless in the recruitment process. We have also noticed that according to the Corrigendum issued pursuant to original advertisement published in Daily Mashriq and Aaj on 22.1.2016 and 24.1.2016 respectively, one more condition was added that female candidates may apply also on the basis of husband's domicile. So far

as the CPLA No.658-P/2019 arising out of judgment in W.P No.3768/2019 is concerned, the candidate claimed to be placed at Serial No. 8 on the merit list out of seven vacant posts and Muhammad Amir, who was at Serial No. 3, opted for some other job, therefore, the directions given by the learned High Court to consider the candidature of Syed Amjad Rauf Shah on the vacant post, who was next in line on merit within the same recruitment process, seems to be a rational conclusion in the present set of circumstances.

13. One more crucial aspect cannot be lost sight of that all the respondents were allowed to compete in the aptitude tests for appointment on adhoc/contract or permanent basis as per advertisement; they qualified the test; some of them secured top positions and collectively all of them were declared eligible but they were dropped from the merit list. If the department had any doubt with regard to the address as mentioned in the domiciles and CNIC, then why due diligence was not done at the time of scrutiny of application forms or at the time of shortlisting the candidates which was an appropriate stage to vet all the credentials and antecedents of each candidate and, in case of any objection, the candidate could be confronted and asked to remove the objection before joining the recruitment process. Thus, the conduct of the department is not above board. Nothing was said regarding any vetting of documents made before allowing the candidates to appear in the aptitude test and despite qualifying the test on the basis of documents submitted by them and securing marks on merits, they were denied the job opportunity at the eleventh hour which is also against the doctrine of legitimate expectation. According to the judgment in the case of Uzma Manzoor and others v. Vice-Chancellor, Khushal Khan Khattak University, Karak and others **(2022 SCMR 694)**, this Court held while exploring and surveying the doctrine of legitimate expectation that this doctrine connotes that a person may have a reasonable expectation of being treated in a certain way by administrative authorities owing to some uniform practice or an explicit promise made by the concerned authority. In fact, a legitimate expectation ascends in consequence of a promise, assurance, practice or policy made, adopted or announced by or on behalf of government or a public authority. When such a legitimate expectation is obliterated, it affords locus standi to challenge the administrative action and even in the absence of a substantive right, a legitimate expectation may allow an individual to

seek judicial review of a wrongdoing and in deciding whether the expectation was legitimate or not, the courts may consider that the decision of public authority has breached a legitimate expectation and if its proved then the court may annul the decision and direct the concerned authority/person to live up to the legitimate expectation. This doctrine is basically applied as a tool to watch over the actions of administrative authorities and in essence imposes obligations on all public authorities to act fair and square in all matters encompassing legitimate expectation. As per Halsbury's Laws of England, Volume 1(1), 4th Edition, paragraph 81, at pages 151-152, it is prescribed that "A person may have a legitimate expectation of being treated in certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an implied representation or from consistent past practice." In the case of R. v. Secretary of State of Transport Exporte Greater London Council (1985) 3 ALL.ER 300, it is propounded that "Legitimate, or reasonable, expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. The expectation may be based on some statement or undertaking by or on behalf of the public authority which has the duty of taking decision."

14. In the wake of the above discussion, we do not find any irregularity or perversity in the impugned judgments passed by the learned High Court. The civil petitions are therefore dismissed and leave is refused.

Judge

Judge

Judge

Islamabad the
29th September, 2022
Khalid
Approved for reporting.