

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-830 of 1999

Haroon Rashid
Petitioner through : Mr. M.M. Aqil Awan, advocate assisted by
Mr. Danish Rashid Khan, advocate.

Respondents
through : Mr. Muhammad Nishat Warsi, DAG

Date of hearing: **02.02.2022**

Date of announcement: **24.02.2022**

ORDER

Through this petition, the petitioner has assailed the findings of the Additional Secretary, Ministry of Interior, Government of Pakistan vide order dated 13.05.1997, whereby, he refused to accept the recommendation of the Federal Public Service Commission (**FPSC**) for appointment of the petitioner for the post of Inspector, Federal Investigation Agency (FIA), on the analogy that petitioner was/ is a permanent resident of Karachi vide his Domicile Certificate and Permanent Resident Certificate issued by the competent authority vide letter No.7/5643/83 dated 20.03.1983. Petitioner also seeks direction to the competent authority of FIA for his appointment as Inspector, FIA.

2. At the outset, Mr. M.M. Aqil Awan, learned counsel for the petitioner, has referred to the statement dated 11.1.2022 filed by him; and submitted that because of the order dated 29.1.2019 passed by this Court, he intimated the petitioner for instructions to pursue the matter or otherwise, as the same is pending since 1999. Per learned counsel, the letter sent to the petitioner was returned unserved with the reason that no such consignee resides at the provided address. In such a scenario, he prayed that matter may be heard and decided on merit.

3. Learned counsel for the petitioner briefed us on the case of the petitioner with the assertion that the Federal Public Service Commission (**FPSC**) advertised 26 posts of FIA Inspectors (BPS-17) through the Public notice in 1992. Per learned counsel, 04 vacancies were based on overall merit, whereas 16 vacancies were allocated for the Province of Punjab; 03 vacancies fixed for Province of erstwhile NWFP now KPK, however, 02 vacancies were given to FATA, and one vacancy for Azad Kashmir. Per learned counsel petitioner applied for the subject post based on the domicile of his father i.e. Punjab as well as on merit and was declared a successful candidate for the subject post based on the domicile of Punjab, which was subject to confirmation of his domicile certificate by the Interior Division Per learned counsel, none of the candidates was recommended against the open merit, although the petitioner stood at Sr. No.3 out of 12 selected candidates. However no appointment order was issued in favor of the petitioner, which triggered the

cause to the petitioner to institute CP No.D-1823/1995 before this Court, for the relief of issuance of the appointment order, the said petition was disposed of vide order dated 31.10.1996 with direction to the petitioner to submit a representation to the Interior Division, to decide his representation within three weeks. On the indulgence of this Court, petitioner was heard in 1997 but no order was communicated to him, constraining him to file another CP No.D-1612/1997; and this court was pleased to direct Interior Division to pass the speaking order, however, finally, they were bothered to pass the order in 1997, declined the request of the petitioner to issue his offer order for the subject post on the premise that petitioner was/is a resident of Karachi. Learned counsel for the petitioner further argued that FPSC treated the petitioner as a candidate against quota allocated for Province of Punjab under Rule-6(iii)(a) of FPSC Rules for competitive examination, 1997; and FPSC maintained that the petitioner was/is entitled to appointment against the quota reserved for Punjab province under the aforesaid rule, however, the respondent Ministry was adamant and declined to issue the letter of appointment of the petitioner against the quota reserved for Punjab Province without assigning reasonable justification. Per learned counsel, the petitioner could have been adjusted against one of the vacancies in open merit, as he had qualified 3rd position amongst 12 successful candidates. He further submitted that Interior Division could not pass an administrative order in violation of statutory Rule 6(iii)(a), refusing petitioner for appointment; that on the recommendation of FPSC, a vested right accrued in favor of the petitioner to get the appointment; that refusal of Government to appoint petitioner based on the recommendation of FPSC amounted violation of rule 10 of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974. Per learned counsel, the Government was directed to appoint the petitioner based on the recommendation of FPSC, if he otherwise did not suffer from any disqualification however that is not the case of the petitioner; that petitioner was declared a successful candidate by FPSC, he was entitled to be appointed against the post to which he had applied for. Per learned counsel, the petitioner was/is at Serial No.1 on the merit list, prepared by Selection Committee could not be ignored for appointment in preference on the merit list. Per learned counsel, on the similar cause, in several petitions, this court allowed these petitions and ordered to issue appointment order in favor of petitioners, more particularly, in view of their selection by Departmental Selection Committee; and holding fresh test for the same post, was held to be without lawful authority. Learned counsel for the petitioner referred to CPs No.D-119, 1894, 1938, 2072 of 1999 and 461,837 and 933 of 2000, in which vires of Rule 6(iii)(a) of Rules, 1997 were challenged, and aforesaid petitions were allowed by this Court vide common judgment dated 8.8.2000, Per learned counsel, FPSC subsequently got Rule 6 of the Rules 1997 amended on 18.11.2002 vide notification dated 18.11.2002 which provides that seats earmarked for prescribed provincial/regional quota to be allocated to candidates based on the domicile certificate issued by the competent authority under law and rules. Petitioner in principle, intended to enforce un-amended rule 6(iii)(a) which stood on 18.11.2002, through this petition. He further submitted that his case is similar to the case of one Syed Abu Zar Sibtain who was appointed in FIA against the seat reserved for Punjab domicile, although he possessed the domicile of Sindh. He lastly prayed for a direction to the respondents to issue the appointment order in his favor on merit as well. In support of

his contentions, he relied upon the cases of *Azizullah Memon v. Government of Sindh*, **1991 PLC (CS) 862**, *Mohammad Farooq Memon v. Government of Sindh*, **1986 CLC 1408**, *Nawaz Ali Shar v. Province of Sindh*, **1988 PLC (CS) 337**, *Rao Mansoorul Haq v. Headmaster Government High School*, **NLR 2001 Ser.155**, *Mohammad Mukhtara Tikka v. Government of Punjab*, **1988 SCMR 1509**, *Government of Sindh v. Abdul Jabbar*, **2004 PLC (CS) 99**, *Munir Ahmed v. Minister for Home and Tribal Affairs*, **2007 PLC (CS) 679**, *Malik Wazir v. Shafiq Ahmed*, **PLD 2007 SC 595**, *Sarfaraz v. Mohammad Aslam*, **NLR 2001 Civil 435**, *Abdul Mannan v. Haji Karam Illahi*, **PLJ 1981 SC 537**, and *Khawaja Fakharuddin v. Hussainuddin Qureshi*, **PLD 1980 Lah. 778**.

4. Mr. Muhammad Nishat Warsi, learned DAG, has raised the question of the maintainability of the instant petition on the premise that this petition is hit by the principles of estoppel as well as res judicata. Per learned DAG, the petitioner was nominated by FPSC for the post of Inspector / Investigation against the direct recruitment quota reserved for Punjab province, subject to confirmation of his domicile certificate; and petitioner was subsequently found to be a permanent resident of Karachi, however, petitioner at the time of submission of application, he had produced an affidavit of his father with the assertion that he was born in Rawalpindi in March 1928 and was a permanent resident of Rawalpindi till 1951, based on the aforesaid factum, petitioner claimed appointment against the provincial quota of Punjab; that the petitioner was a permanent resident of Karachi, therefore, he was not eligible for appointment against the domicile of Sindh Province. Learned DAG further pointed out that the matter was also referred to the Ministry of Interior for resolving such anomaly, who conveyed their authoritative decision vide office memorandum dated 12.3.1996 with the finding that the petitioner was a permanent resident of Karachi and not that of Punjab Province thus could not be accommodated for the subject post reserved for Punjab; that the recommendations of FPSC for appointing the petitioner were conditional i.e. subject to the verification of the domicile certificate of the petitioner; that mere recommendation of the FPSC does not confer any right upon the petitioner in the light of policy decision of Government of Pakistan vide office memorandum dated 26.8.1968; that since the petitioner himself possesses domicile of Sindh Province, he cannot claim appointment based on the domicile of other Province, merely for the reason that his father had been residing in Rawalpindi for certain period, similarly there is no provision in law for claiming two domiciles of different origins at the same time. Learned DAG also submitted that in compliance with the directions of this court in CP No.D-1612/1997, the matter was referred to the President of Pakistan for the final decision as required under Sr. No.7 Chapter XV (Federal Public Service Commission) of Estacode; that the President of Pakistan was pleased to disapprove the recommendations of FPSC in terms of Sr. No.5 (b) of Schedule IV-A of the Rules of Business 1973; that the order passed by the Additional Secretary of the Interior Division dated 13.5.1997 was strictly under law and facts, moreover the legality of the said order cannot be challenged at this belated stage. He prayed for dismissal of the instant petition.

5. We have heard the learned Counsel for the parties, perused the material available on record and case-law cited at the bar.

6. The primordial questions raised in the present proceedings are as under:-

- i) Whether the Petitioner possesses the required qualification for the post of Inspector BS-16 in the Federal Investigation Agency as per recruitment Rules?
- ii) Whether the petitioner succeeded in the FPSC Examination-1992 and his candidature was rightly recommended to the respondents for appointment as Inspector FIA based on the quota reserved for the province of Punjab?
- iii) Whether the petitioner is a permanent resident of the Province of Sindh and could be appointed on the quota reserved for another province?
- iv) Whether the recommendation of FPSC was/is binding upon the President of Pakistan being the competent authority under the law?

7. To address the aforesaid propositions, we have to look at the matter in its entirety. A perusal of the record reflects that the petitioner had applied for the post of Inspector (BPS-16) in FIA, through FPSC vide advertisement dated 13.11.1992, published in the daily newspaper "Dawn". Per petitioner, he appeared in the written test on 15.03.1993 and was declared a successful candidate, thereafter he was called for the interview on 25.04.1994 and was selected for the appointment to the post of Inspector FIA BPS-16 on the quota reserved for Province of Punjab based on the domicile of his father. Petitioner further averred that his name was appearing on the merit list, at Sr. No.3 out of 12 selected candidates. The result sheet further carried a note that 2 candidates bearing Roll No.1014 i.e. the petitioner and bearing Roll No.1220 i.e. Abduzar Sibtain could be issued the offer of appointment after confirmation of their domicile Certificate. The petitioner was issued a letter of recommendation for appointment against the post of Inspector FIA against the province of Punjab quota as the FPSC had at the time of submission of his application form, treated him as a candidate against the province of Punjab quota, however, no appointment letter was issued. The petitioner being aggrieved by and dissatisfied with inaction on the part of D.G FIA filed C.P No.D-1823/1995, which was disposed of vide order dated 31.10.1996 with direction to file an exhaustive representation within 15 days before the FIA office and after hearing the petitioner pass final order within three weeks by the Ministry of Interior or office of the Director-General FIA. In compliance with the said order, the petitioner filed a representation before D.G FIA but his representation did not respond in any manner constraining him to file a contempt application. The DG FIA appeared before this Court and committed to disposing of the representation of the petitioner. Accordingly, the petitioner was called upon to appear before the Additional Secretary Interior Division on 06.05.1997, where he was heard but no order was communicated, resultantly, he had filed another petition No.1612/1997 before this Court and during the pendency of this petition, the Interior Division under covering letter dated 05.08.1997 filed the decision of the Additional Secretary dated 13.05.1997 and said petition was disposed of by a consent order. The petitioner was intimated that a summary had been floated through Establishment Division for obtaining the orders from the President of Pakistan

being competent authority; however, no order was communicated to him, compelling him to approach this Court on 14.5.1999.

8. We have also perused the decision dated 13.05.1997 passed by the Additional Secretary, Ministry of Interior, Government of Pakistan in the following manner:-

"The Honorable High Court of Sindh at Karachi in constitution petition No. 1823/95 of 31.8.1995 in the case of Haroon Rashid s/o Rashid Ahmed Khan, Muslim, adult resident of 40-N, block-2, PECH Society, Karachi Versus Federation of Pakistan through Secretary Interior, Islamabad and others was pleased to direct vide order dated 31.10.1996 that the petitioner may within a period of 15 days submit a representation to the Federal Investigation Division, Government of Pakistan, Islamabad appending all relevant documents with the said representation. That being done, the petitioner would be accorded a hearing within a further three weeks' time and a final order would be passed by such Division, the order being speaking one. The matter was taken up by the Interior Division as the Federal Investigation Division has since ceased to exist and the Federal Investigation Agency has been placed under the Interior Division.

2. *In pursuance of the above orders of the Honorable High Court of Sindh, Karachi, the petitioner was directed vide this Office letter No.9/4/95- Estt/(FIA), dated 16-4-1997 to present himself before the Additional Secretary Interior on 30-4-1997. The petitioner failed to appear on this date and, therefore, he was given another opportunity vide this office letter of the same number, dated 30-4-1997, to appear on 6-5-1997. The petitioner presented himself in the Interior Division on 6-5-1997 and 8-5-1997. He submitted a representation dated 6-5-1997 (Annex-'A'). Briefly the representation stated as under :*

(i) that the petitioner has already been treated by the FPSC as domicile of Punjab vide FPSC letter dated 10-3-1990.

(ii) that his father Late Rashid Ahmed Khan belonged to Punjab and owned property in the District of Rawalpindi.

(iii) that his case is similar to the case of one Syed Abu Zar Sibtain who is claimed to have been appointed in FIA against the seat reserved for Punjab domicile although he possessed the domicile of Sindh.

3. *Heard the petitioner. He has claimed that his father belonged to Rawalpindi District and owned property. In support of his claim, he submitted a photocopy of a passport purported to be that of his father wherein the latter's birthplace has been shown as Rawalpindi. He has also submitted a photocopy of a title document purporting to transfer the title of certain shop premises located in Rawalpindi Cantonment from his grandfather to his father and others. Both the documents are, however, not attested. The petitioner also produced a copy of the FPSC letter No.CE/2348/89-CSS, dated 10-3-1990 (Annex-'B') stating that his domicile has been accepted by the Commission as that of Punjab for the purpose of allocation on the basis of competitive examination 1989.*

4. *Also perused letter No. F.4-251/92-R-III, dated 19-10-1994 from the FPSC addressed to Mr. Haroon Rashid stating that he has been recommended by the Commission for consideration for appointment to the post of Inspector (BPS-16) FIA, Interior Division, subject to the following among other conditions (Annex-'C'):-*

"Your recommendation against the subject post is provisional subject to confirmation of your domicile certificate by the Interior Division."

5. *The representations of the petitioner, both written and verbal, the letter as presented during the hearing, have been given due consideration. It is not known on what basis the FPSC issued the letter bearing No.CE/2348/89-CSS, dated 10-3-1990 to the candidate (Haroon Rashid) declaring him to be a domicile of Punjab for the purpose of allocation on the basis of competitive examination, 1989. However, having accepted him (Haroon Rashid) as domicile of Punjab, it is not again known as to why the same FPSC vide their letter dated 19.10.1991 (as*

mentioned above) while recommending his appointment as Inspector FIA made it condition to the confirmation of his domicile certificate by the Interior Division.

6. *The petitioner submitted & a copy of his domicile of Karachi (Annex-'D'). There is no reason to doubt the authenticity of this domicile. As regards the claim of the petitioner regarding his father's origin, this in no way puts the authenticity of his Karachi (Sindh) domicile to any doubt. As regards the earlier FPSC declaration that Haroon Rashid has been accepted as domicile of Punjab, it is for the FPSC to clarify the position. The issue regarding the case of Syed Abu Zar is also to be clarified by the FPSC.*

7. *The Interior Division, on the basis of the documents produced by the petitioner and personal hearing afforded to him, confirms the authenticity of his Karachi domicile issued by the competent authority vide No.7/5643/83, dated 30-3-1983."*

9. The aforesaid factum of the case, make it very clear that the petitioner is a permanent resident of Karachi, he applied for the subject post based on the Punjab domicile certificate of his father, and FPSC had accepted his candidature provisionally under rule 6(a)(iii) of the Rules as discussed supra, which reads that in the case of a candidate whose father belongs by birth or origin to a Pakistan Province/area it is immaterial where he/she has received his/her education or has resided. Such a candidate will be considered for appointment against the quota of vacancies reserved for the province/area to which his/her father belonged; as per learned DAG, the aforesaid rule was subsequently amended on 18.11.2002 vide notification dated 18.11.2002, however, before such amendment, the candidature of the petitioner was recommended for the post, subject to confirmation of his domicile certificate by the Interior Division; and petitioner wants to take benefit of the subject rule, which was finally declared ultra vires the first proviso to, Art.27(1) of Constitution by this Court in the case of Zulfiqar Ali Shaikh v. Federal Public Service Commission and others, 2002 PLC (CS) 1594, by declaring that tying down a candidate to an a of birth or origin of his father, in circumstances, was not permissible upon any rational basis and was liable to be struck down as being violative of Art.25 of Constitution and directed the FPSC to allocate seats to different candidates on basis of their permanent residence or area in which they had lived and acquired a substantial part of their education irrespective of area to which their fathers belonged, against the aforesaid judgment, the Hon'ble Supreme Court of Pakistan allowed the appeal and remanded the case to this court for a fresh hearing on the ground that Attorney General was not issued the notice under Order XXVII A Rule 1 CPC, such judgment of the Hon'ble Supreme Court of Pakistan is reported in **PLD 2002 SC 167.**

10. On post-remand proceedings, this Court maintained its earlier view in its **judgment dated 07.3.2002** passed in CP No.D-1653,1648,1626 of 2000, 2419,2361,2494 of 2001 and 118 of 2002, against this judgment FPSC filed Leave to Appeal No.1,11,717 to 723 of 2002 before the Honorable Supreme Court and the leave was granted vide order dated 14.10.2002. Per learned counsel, during the pendency of the above appeal, FPSC got Rule 6 of the Rules 1997 amended on 18.11.2002 vide notification dated 18.11.2002 which provides that seats earmarked for prescribed provincial/regional quota to be allocated to candidates based on the domicile certificate issued by the competent authority under law and rules.

11. Prima-facie, at this stage the benefit of Rule 6 of the Rules 1997 cannot be given to the petitioner for the reason that firstly the said rule has already been declared ultra vires the first proviso to, Art.27(1) of Constitution, secondly the said rule had already been amended in the year 2002.

12. Besides the above, the Interior Division floated a summary for the Prime Minister on 14.1.1999 on the above subject; and the competent authority disapproved the recommendation of FPSC to the extent of the petitioner for the appointment of the petitioner as Inspector (BS-16) in FIA, in terms of Rules of Business 1973. The law on the subject is very clear in its terms that where the President does not accept the advice of the Commission, he shall inform the Commission accordingly, which means, the recommendations of FPSC could be rejected by the competent authority and in this case, the recommendations of FPSC has been rejected vide office memorandum dated 09.6.1999, and prima facie the petitioner has not assailed the rejection of his candidature by the competent authority. An excerpt of the Office Memorandum dated 09.06.1999 is reproduced as under:

“Subject: Nomination of Mr. Haroon Rashid, Rolle No.1014 for appointment as Inspector (BS-16) in FIA against the quota of Punjab

The undersigned is directed to refer to the Interior Division Summary for the Prime Minister bearing u.o. No.9/4/95-Estt. (FIA), dated 14.1.1999 on the above subject and to state that the competent authority has been pleased to disapprove the recommendations of FPSC (Annex-I&IV) in terms of S.No.5(b) of Schedule V-A of the Rules of Business, 1973 with respect to the appointment of Mr. Haroon Rashid, as Inspector (BS-16) in FIA.”

13. Progressing further, the recommendation of the FPSC was based on the analogy that the father of the petitioner belonged to the Province of Punjab and remained the permanent resident of Rawalpindi till 1951. Surprisingly, no post was allocated to merit / Sindh Province.

14. Prima facie, the respondents have no justiciable reason to allocate the quota for the province of Sindh in terms of Article 27 of the Constitution, however, the reason is obvious. The record reflects that favorites were accommodated on the recommendation of the Placement Bureau during the period of 1988 to 1990, who were/are still in service of the Ministry of Interior, which indicates that the number of posts falling with the share of Sindh province/merit quota was consumed in advance by the nominees of the Placement Bureau that is why no post of Inspector BPS-16 was allocated to merit/Sindh Province.

15. In principle, the respondents have no justifiable reason not to allocate the seats on merit/Province of Sindh, which is a sheer discriminatory attitude on the part of respondents and violative of Article 27 of the constitution. However, the petitioner has not raised this question in this petition, therefore no further deliberation is required on our part.

16. The main grievance of the petitioner is that he was recommended by FPSC against the Punjab quota, following the domicile of his father. The respondents did not accept the stance of the FPSC and took the stand that the petitioner had obtained a

domicile of Sindh Province in his name, therefore, he could not be recommended against the Punjab quota; besides that recommendation of the FPSC regarding the domicile of the petitioner has been overturned by the President of Pakistan, which means that petitioner is now to be considered against the domicile of Sindh (Urban), whereas, unfortunately, there was no post of Sindh (Urban) quota advertised by FPSC. Prima-facie the irony of the respondent department could not be cured on the touchstone of Article 27 of the Constitution.

17. In the light of the above facts and circumstances of the case, and observation made in the preceding paragraphs, this petition has become infructuous due to rejection of the advice of FSPC by the President of Pakistan, which decision has not been called into question through the instant petition, therefore we are not inclined to issue the Writ of Mandamus against the respondents, at this point.

18. This petition stands dismissed with no order as to costs, leaving the petitioner at liberty to assail the vires of the Office Memorandum issued by the Interior Division, Government of Pakistan, before the appropriate forum under the law.

JUDGE

JUDGE

Nadir*