

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR,
JUDICIAL DEPARTMENT.

Writ Petition No. 183-P/2016.

Dr. Shama Hidayat...vs...Chairmain PSC.

JUDGMENT

Date of hearing.....05.04.2017.....

Petitioner(s) by Mr. Danial Chamkani, Advocate,

Respondent (s) by _____

ROOH-UL-AMIN KHAN, J:- Through the instant constitutional petition under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973, Dr.Shama Hidayat, petitioner herein, has asked for issuance of an appropriate writ directing the respondents to include her name in the merit list and properly conduct her interview for the subject post.

2. Brief account of the instant matter is that, respondent No.2, invited application from the eligible candidates to fill up 337 posts of Medical Officer in Health Department as well as 33 post of Medical Officer (Female), vide advertisement No.01/2015 dated 01.01.2015. The petitioner having the requisite qualification, applied for the post of Medical Officer

(Female). She was allotted Roll Number for enabling her to appear in the written test. She did appear in test and secured 41 out of total 100 marks, but was telephonically informed by the respondents regarding her ineligibility for interview, on the ground that her husband belongs to FATA, whereas she was having the domicile of District Abbottabad, thus her name was deleted from the list of candidates to be called for interview. Hence this petition.

3. Arguments heard, record perused.

4. Record divulges that, to fill up 395 Posts of Medical Officer (BPS-17) including female in Health Department an advertisement was published in the daily newspaper. The petitioner having the prescribed qualification, applied for one of the same and after going through the written test/examination, successfully qualified by securing 41 out of total 100 marks, however, she was not called for interview on the sole ground that she has married to one Dr. Neem Jan, who belongs to tribal area i.e. FATA, while her own domicile certificate has been issued from District Abbottabad, hence was not called for interview as she has secured 41% mark in the ability test, whereas the candidates who got 46% marks from Zone-1 were shortlisted and called for viva-voce.

5. The fact remained undisputed that the petitioner is permanent resident of Abbottabad and got married to Dr. Naeem who belongs to tribal area having the domicile of FATA, however, after her marriage she has not acquired the domicile of her husband's abode and appeared in the competitive examination on the basis of her own domicile and her candidature was rejected on the ground that under Paragraph-20 (e) of Khyber Pakhtunkhwa Public Service Commission Regulations, 2003, the petitioner was required to acquire domicile of her husband. For ready reference, the text of paragraph 20 (e) is reproduced which runs as under:-

“A female candidate, if married before entry into government service shall acquire the domicile of her husband. If otherwise she will possess her own domicile.”

Bare reading of the above quoted provision will make it abundantly clear that after getting into marriage, the female candidate is provided a choice either to get the domicile of her husband's abode or to continue with her own domicile. By not acquiring the domicile of her husband, she cannot be deprived to possess and rely on her own domicile for entering into government service.

6. The controversy with regard to interpretation of paragraph-20 (e) of Khyber Pakhtunkhwa Public Service Commission Regulations, 2003 was brought before this court in Civil Revision No. 1202-P/2012 which was set at naught in the following words:

“The above mentioned provision of paragraph-20 (e) clearly enumerate and bound down it in a mandatory language that a female candidate when married before entering into the Government service she shall acquire the domicile of her husband. Though the word used in the said provisions as “Shall” but in case of a married female candidate if she fails to comply with the above criteria or mandatory provisions, the consequences which any such female candidate has to suffer is itself embodied in the said provisions in the second sentence which reads as “if otherwise she will possess her own domicile.” Meaning thereby that in case a female candidate fails to acquire the domicile of her husband she will be considered on her own domicile in the matter of appointment for public post.”

7. The learned AAG was of the view that at the time of marriage of a female candidate she is bound to acquire the domicile of her husband whereas the provision "*if otherwise she will possess her own domicile*" is meant for a woman who is already in service and got married later on, therefore she is allowed to acquire the domicile of her husband or to continue with her own domicile. We are not persuaded by the arguments of learned AAG because the said provision of law is never meant to follow the domicile of her husband rather she has been provided an option to select either domicile i.e. of her husband or her own. Vice versa, after entering into marriage by the spouses, none is under obligation to abandon his own domicile and to adopt and acquire the domicile of the other because if the husband after marriage abandon his permanent residence and shifted to the residence of his wife, in such a situation he shall not be bound to change the domicile because he has settled with his wife. Needless to say that if a person once entered in service on basis of his domicile, he could not change it for purpose of acquiring another job in government service. In case in hand, no doubt the petitioner got married into the tribal area but her domicile at District Abbotabad is still intact.

8. In view of the above discourse, the petitioner is entitled to be considered for appointment against the quota reserved for women candidates for the post of Medical Officer in Zone-5. Thus the instant petition is allowed. Petitioner's name be included in the list of candidates for interview and the respondents are directed to consider the petitioner for appointment against the post of Medical Officer in Zone-5 strictly on the basis of her own domicile, if otherwise eligible.

*Announced on;
5th of April, 2017.*

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