

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

Muhammad Younis Tahir, J.

Civil Appeal No. 552 of 2019

(PLA Filed on 9.7.2019)

Sabeel Ahmed Chohan s/o Ch. Muhammad Bashir r/o Rahawali Mohallah Sharif Pura Gujranwala Cant, now appointed Assistant Engineer Electricity Operation sub-division City Bhimber, Azad Kashmir.

.... APPELLANT

VERSUS

1. Iftikhar-ul-Hassan s/o Bashir Ahmed Qadri r/o Sakar Garah, Tehsil Sakar Garh District Narowal Pakistan, now Kalial House No. 285 Street No. 14 Sector B/5, Azad Kashmir.

..... RESPONDENT

2. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary, having his office at New Secretariat, Muzaffarabad.

3. Public Service Commission through its Chairman having his office at New District complex, Muzaffarabad.

4. Secretary Electricity, Azad Govt. of the State of Jammu & Kashmir, having his office at New Secretariat, Muzaffarabad.

5. Chief Engineer electricity Mirpur, Azad Kashmir.

6. District Co-Ordination Officer, Gujranwala,
Pakistan.

.... PROFORMA RESPONDENTS

(On appeal from the judgment of the High Court dated
3.7.2019 in Writ Petition No. 2117 of 2017)

APPEARANCES:

FOR THE APPELLANT: Ch. Shoukat Aziz, Advocate.

FOR THE RESPONDENTS: Syed Nazir Hussain Shah
Kazmi, Advocates.

Date of hearing: 17.5.2022

JUDGMENT:

Raza Ali Khan, J.— The captioned appeal by leave of the Court, arises out of the judgment dated, 3.7.2019, passed by the High Court, in writ petition No. 2117 of 2017.

2. The brief facts forming the background of the captioned appeal are that respondent No.1, herein, filed a writ petition before the High Court, on 20.12.2017, alleging therein that he is a refugee settled in Pakistan and is a qualified Engineer. It was averred that the Public Service Commission, through advertisement No.

1/2012, invited applications against the post of Assistant Engineer electricity, BPS-17, for refugees settled in Pakistan. It was averred that in response to the said advertisement the appellant applied and participated in the test and interview and was placed at serial No.3 of the merit list. It was further averred that the candidate falling at serial No. 1, was appointed, whereas, the appellant and respondent, herein, were placed at serial No. 1 and 2 of the waiting list of the qualified candidates. It was stated that the appellant, herein, is a permanent resident of District Mirpur, having domicile of the said District, who by committing fraud has applied against the post advertised against the quota reserved for refugees settled in Pakistan, however, he has two domicile certificates; one from District Mirpur and the other from Gujranwala, which are still intact. It was next stated that previously the appellant, herein, by concealing the facts has filed the writ petition before the High Court, which was accepted

through judgment, dated 14.1.2017, and the appeal against the said judgment was dismissed, vide judgment dated 9.5.2017, by this Court. The writ petition was contested by respondents, herein, by filing the written statements, whereby they refuted the claim of the appellant, herein. The learned High Court after hearing the parties has accepted the writ petition vide impugned judgment, dated 3.7.2019 and the waiting merit list prepared by the P.S.C. was declared illegal to the extent of appellant, herein. The notification dated 26.5.2017, was set aside and the respondent was held entitled for appointment against vacant post of Assistant Engineer Electricity BPS-17 pertaining to the quota of refugees settled in Pakistan.

3. Ch. Shoukat Aziz, the learned Advocate appearing for the appellant argued that the appellant and private respondent, herein, applied against one of the posts of Assistant Engineer Electricity, BPS-17, against the quota of refugees settled in Pakistan in pursuance of

advertisement No. 1/2012. He submitted that after the test and interview, the appellant and respondent were placed at serial No. 1 and 2, respectively, of the waiting merit list. The learned Advocate further argued that this position was accepted by the respondent and he has not challenged the same for a pretty long period i.e. spreading over more than 2 years. He contended that the appellant filed a writ petition before the High Court on the ground that a post of refugees' quota has been withheld and the same was accepted and thereafter, the order of the appellant was issued and he was inducted in service. The learned Advocate further argued that the respondent challenged the legality and correctness of the appointment on the ground that the appellant is not refugee settled in Pakistan rather he is permanently settled at Mirpur. He urged emphatically that the learned High Court without taking into consideration the legality and correctness of the record and documents has declared the appointment of the

appellant, herein, as illegal while relying its judgment on an application which was filed for issuance of the copy. He maintained that the appellant though obtained domicile of his choice from Mirpur but after shifting to the original position of abode, he surrendered the domicile of Mirpur, in 2012. The learned Advocate submitted that the High Court has failed to distinguish the domicile of choice and domicile of origin and based his conclusion on misconception and misreading and non-reading of the record, which resulted in erroneous conclusion and deprivation of the appellant from his accrued/vested right. The learned Advocate further argued that the waiting list was valid only for 180 days, hence, no direction could be issued by the learned High Court in favour of the respondent. The learned Advocate further argued that the appellant, herein, had applied against some other post of Assistant Engineer, hence, the writ petition filed by him was liable to be dismissed on the ground of waiver. He urged

emphatically that the point of laches is fully attracted in the case as the respondent, herein, remained silent for a pretty long period after the issuance of the handout by the Public Service Commission, hence, the writ petition was liable to be dismissed. The learned Advocate maintained that the appellant, herein, after obtaining the domicile of District Mirpur never utilized the same, but this aspect of the case was also not taken into consideration by the High Court. The learned Advocate lastly requested that while accepting the appeal, the impugned judgment of the High Court may be set aside. The learned Advocate in support of his contention has relied upon the following cases: -

1. 2009 SCR 525;
2. 2015 SCR 1528;
3. 2003 SCR 450;
4. 2014 SCR 967;
5. 1995 SCR 259;
6. 2016 SCR 594;
7. 1997 SCR 330; and
8. 2019 SCR 949.

4. Conversely, Syed Nazir Hussain Shah Kazmi, the learned Advocate appearing for the

private respondent, forcefully, defended the impugned judgment of the High Court. He submitted that the appellant knowingly applied against the quota of refugees settled in Pakistan and after getting success, he withdrew from the domicile of Mirpur District, therefore, by no stretch of imagination, he can be treated as refugee settled in Pakistan. The learned Advocate further argued that there are plethora of judgments of this Court which have been mentioned and relied upon by the learned Judge of the High Court in support of the impugned conclusion, hence, the impugned judgment is quite in accordance with law and record, which warrants no interference by this Court. The learned Advocate argued that the appellant has failed to point out any illegality or legal infirmity in the impugned judgment, therefore, the appeal filed by him may be dismissed. The learned Advocate in support of his contention has relied upon the following cases: -

1. 1997 SCR 301;
2. 2013 SCR 795;

3. 2015 SCR 398;
4. 2017 SCR 269;
5. 2018 SCR 331; and

5. We have heard the learned Advocates representing the parties and have gone through the record of the case made available along with the impugned judgment.

6. Admittedly, the post of Assistant Engineer Electricity, BPS-17, reserved for refugees settled in Pakistan, was advertised vide advertised No. 1/2012. It appears from the record that later on, in the said advertisement an amendment was made, whereby the last date of submission of application was fixed as 14th March, 2013, instead of 15th February, 2013. In pursuance of this advertisement, inter alia, the appellant and the private respondent also applied and in the result of test and interview the candidate obtaining merit position was appointed and the appellant and respondent, herein, were placed at serial No. 1 and 2 of the waiting merit list, respectively. Thereafter, the appellant, herein, filed a writ petition before the

High Court, on the ground that the Electricity Department had withheld one post of the Assistant Engineer BPS-17, which was vacant at the time of the aforesaid advertisement. The writ petition was accepted whereby a direction for appointment of the appellant, herein, was issued. The judgment of the High Court was assailed before this Court, which remained upheld by this Court. The private respondent, herein, filed writ petition No. 2117/2017, before the High Court claiming therein, that the appellant, herein, is permanently residing at Mirpur and is the domicile holder of the said District. It was further claimed that the appellant, herein, is holder of dual domicile certificates; one from District Mirpur and the other from Gujranwala, therefore, he was not entitled to apply for appointment against the post reserved for refugees settled in Pakistan. The learned High Court has accepted the writ petition filed by the respondent, herein, on the ground that as per record, the appellant, herein,

is domicile holder of District Mirpur and he applied for appointment against the disputed post which was reserved for refugees settled in Pakistan, without cancellation of his earlier Domicile, hence, was not entitled to apply against the post. The learned High Court has set aside the waiting list as well the appointment to the extent of appellant

7. The term 'domicile', relates to a general legal concept which comes into the ambit of Private International Law. The word 'domicile' has been derived from Latin word, 'doma' as expounded in *Miss Rukhshanda Aslam v. Nomination Board of Azad Jammu and Kashmir*, PLD 1986 SC AJK 1. It denotes; that a person has been living in a particular territory since his birth or has been continuingly living in that area since some specific period of time. Domicile has been categorized as domicile of origin, domicile of choice as pronounced in the case reported as *Qamar Afzal vs. Muhammad Ashfaq Khan*, (PLD 1979 SC AJK 96) and

domicile of dependence—a minor or mentally incapacitated person carries with, upon whom they depend. Domicile connects a man with a particular legal system of a territory determining his personal status, his rights and obligations emanating from that very territorial constitutional and legal system. The concept of ‘domicile’ is not a legal concept of an ordinary kind or importance rather its nature roots back to ancient times and customary laws and is of a fundamental nature. In the present world, more people tend to adopt economic and forced migration due to ease of travelling, availability of abundant information about social and economic opportunities in *other* lands, abruption of wars and law and order situations in resident lands. It determines one’s rights, obligations and legal implications in a particular state, province, territory or area with respect to permanent living, state sponsored education, acquisition and holding of land and property, government job, government pension, territorial

or state incomes, payment of taxes, marriage, divorce, voting, interpretation of will, judicial jurisdiction and many other constitutional and legal rights and obligations also attached to status of domicile. When any dispute arises as regard to determination of any right or obligation which is conditioned upon some specific domicile then such conflict of laws pose challenge to Court to first determine the domicile status of the party. The Constitution protects the rights of all State Subjects subject to adherence to law, District quota in Government service has to be maintained as required by statute for protection of rights of candidates holding respective domiciles. Issuance of wrong and illegal state subjects or domicile and usage of same adversely affect the rights of persons who are entitled to quota in jobs of a functional unit and narrows the opportunities and wrongly increase the competition for the genuine candidates of respective functional unit.

8. The applicant annexed PC/2 filed by the father of the appellant for cancellation of domicile certificate, reveals he is a refugee from occupied Kashmir due to 1965 war. His father settled along with his parents in District Gujranwala, Pakistan and obtained job in year 1980, against refugee's quota in Government of AJ&K in Food Department. However, later on, he applied for issuance of domicile certificate of District Mirpur, which was issued on 16.12.1991, as mentioned in Annexure PC/3. Though the proposition becomes narrower in presence of the admitted fact that the father of appellant is a refugee of year 1965 and in light of the notifications dated 12.3.1972 and 24.8.1972, dealing with the subject of quota in the Government service. Further, the appellant was appointed as Assistant Engineer in the electricity department of the Government of AJ&K, after filing of a writ petition by him on the ground that the department had withheld a post at the time of requisition to Public Service

Commission, and the appellant being at first position of the waiting list could not be appointed. The High Court admitted his writ petition and issued direction for his appointment. In this backdrop, we would like to take up all the issues which had been raised at bar or could be considered for interference in the judgment made by the learned High Court. But we will ensure resolution of the factual controversy as well as the legal interpretation strictly in accordance with merit despite being sympathetic, as the Courts are meant to administer the justice purely in accordance with statutory provisions and principles of law enunciated by the Superior Courts.

9. In Azad Jammu and Kashmir, the domicile is regulated by section 5, of the State Subject Act, 1980 and rule 7 of the Azad Jammu and Kashmir State Subject Rules, 1980. We deem it appropriate to reproduce herein both, supra provisions, which are as under:

5. Certificate of domicile. – The Council or any other authority specified by the

Council may, upon an application made to it in the prescribed manner containing the prescribed particulars, grant a certificate of domicile to any person in respect of whom it is satisfied that the facts stated in the application are correct and that the applicant has been continuously residing in Azad Jammu and Kashmir for a period of not less than five years and intends to live permanently in Azad Jammu & Kashmir.”

Rule 7 of the Azad Jammu and Kashmir State Subjects Rules, 1980 speaks as under: -

7. Certificate of domicile. – (1) Any District Magistrate in Azad Jammu & Kashmir may issue a certificate of domicile in the manner prescribed below: -

(a) An application for a certificate of domicile shall be made in Form ‘P’ (Appendix III) in duplicate. It shall be accompanied an affidavit affirming the truth of the statement made in it.

(b) The District Magistrate may demand such evidence as he may consider necessary for satisfying himself that the facts stated in the application are correct and that the applicant has been continuously residing in Azad Jammu and Kashmir

for a period of not less than five years and intends to live permanently in Azad Jammu & Kashmir.

2.

3”

A juxtaposed examination of both provisions manifests that a person applying for issuance of domicile certificate must demonstrate that he has been living in Azad Jammu and Kashmir for a period of not less than five years and he intends to live in Azad Jammu and Kashmir permanently. There are a number of judgments of this Court, wherein the principle laid down in the provisions supra, have been endorsed that for obtaining the domicile certificate in Azad Jammu and Kashmir, the applicant has to prove five years continuous residence and intention to live permanently in Azad Jammu and Kashmir, for reference reliance may be made to the case reported as *Beenish Bashir vs. Deputy commissioner/District magistrate & 6 others* (2014 SCR 327). Relevant extract from the report is reproduced here, which is under: -

“In clause (b) of Sub Rule (1) of the above referred rule, one of the required conditions is that of applicant’s continuous residence in the Azad Jammu and Kashmir for a period of not less than 5 years and further intention to live permanently in the Azad Jammu and Kashmir. For this purpose, the applicant under the prescribed form of application will have to undertake that:

'میں آزاد جموں و کشمیر میں مسلسل عرصہ ----- سال -----
 ماہ ----- سے رہائش پذیر ہوں اور میں آزاد جموں و کشمیر کا
 ڈومیسائل حاصل کرنے کے سلسلہ میں بیان دیتا ہوں اور اقرار
 کرتا ہوں کہ اپنی بقیہ زندگی میں آزاد کشمیر میں مستقل رہائش
 رکھوں گا!'

According to statutory provisions, for obtaining the domicile certificate of Azad Jammu and Kashmir, 5 years continuous residence is required. The appellant has surrendered her domicile of choice on 7.2.2012. In the light of peculiar facts of this case, it will be deemed that the appellant was not residing in AJ&K till the time when she surrendered the domicile certificate of choice. For obtaining the domicile certificate in the Azad Jammu and Kashmir, she will have to prove 5 years’ continuous residence.”

A few more judgments of this Court may be quoted here, i.e., *Beenish Bashir v. Deputy Commissioner/District Magistrate & 6 others*, (2014 SCR 327), *Miss Shahida Bano v. Azad Government* (1997 SCR 301), *Maria Tazarat v. Abid Hssain Dar* (PLD 2006 SC (AJ&K) 10).

10. The contention of the learned counsel for the appellant that the application for cancellation of domicile certificates was filed before the Deputy Commissioner on 10.1.2012, before the date of submission of applications and on this application, the process was completed but the cancellation of the requisite certificates was not carried out, upon which the father of the appellant filed another application on 10.2.2018 and after filing of this application, the order dated 12.2.2018, was issued, whereby the domicile certificates were cancelled for having been withdrawn, whereas the High Court has erroneously observed that the appellant, herein, applied for cancellation of the domicile certificates on 10.2.2018, however, this

observation of the learned High Court is contrary to record. From the perusal of the record, it reveals that the file of the High Court contains two applications filed by Ch. Muhammad Bashir Ziai, the father of the appellant, herein. The first application is available at page 115 marked as Annexure "A/4" as per contents of this application the applicant requested that he has been permanently shifted to District Gujranwal Pakistan, therefore, the Domicile Certificate of District Mirpur may be cancelled. The second application is available at page 114 (Annexure A/3) appears to have been filed on 10.2.2018. From the contents of this application, it reveals that the same was filed in continuation of the previous one. It is stated in this application that earlier the applicant submitted an application on 10.1.2012, for cancellation of the domiciles of his family apart from his own one and although the proceedings on that application were initiated but the requisite domiciles certificates have not been

cancelled so far, therefore, these domicile certificates may be directed to be cancelled. We have no cavil with the argument of the learned counsel for the appellant that the application for cancellation of domicile certificate on behalf of the appellant had been filed on 10.1.2012, prior to the advertisement of the disputed post, but on one hand, this application was merely a photocopy before the High Court and on the other hand no order on this application was passed till the submission of application for appointment against the post in question. We do not want to bog down in the discussion whether the appellant, herein, had filed any application for cancellation of domicile certificate or not and whether that application was filed before or after the advertisement, we just have to see the relevant question whether the appellant at the time of submission of application against the post was holding the domicile of refugee settled in Pakistan or not. Admittedly, the appellant at the time of filing of the application was in

possession of dual domicile certificates i.e. the domicile of District Mirpur and the domicile of District Gujranwala, Pakistan, as is evident from the applications for cancellation of domicile certificates filed by the father of the appellant himself.

11. The Annexure PG/2-PG, of the High Court file, reflects that appellant, his sisters and brother were issued domicile certificates of District Mirpur in 2007, the same year when the appellant got admission in Mirpur University of Science and Technology, Mirpur. As there is no record available with the file to substantiate the fact that on which quota i.e., open merit, refugee's or Mirpur's quota, the appellant got admission in MUST University, so we are unable to comment or conceive exact position in definite terms to relate it with present factual and legal controversy. However, it is in our judicial notice that seats are reserved in professional colleges on the basis of District quotas as well as the other categories.

The father of the appellant applied for cancellation of the domicile certificates issued in his favour and his family, in year 2012, interestingly, happened to be the same year when advertisement No.1/2012, dated 21.12.2012, was issued by the AJK Public Service Commission against the posts of Assistant Engineers, Electricity. There is another aspect of the case, that the appellant obtained the domicile certificate from district Gujranwala on 24.12.2011, even before filing of application for cancellation of his domicile certificate with Deputy Commissioner Mirpur, which was filed on 10.01.2012. The domicile of the appellant obtained from District Mirpur, on basis of his father's domicile certificate, was his domicile of origin. The domicile obtained from District Gujranwala, would be termed as domicile of choice. Under law the person who seeks to obtain the domicile of choice has to prove that he has abandoned the domicile of origin. Further statutory provisions, require that the person

who seeks to obtain domicile has to fulfill certain conditions necessary for issuance of certificate. The appellant was issued domicile certificate from District Gujranwala, under the Pakistan Citizenship Act, 1951, read with Rule 23 of the Pakistan Citizenship Rules, 1952. It would be appropriate to reproduce the relevant rule, which is as under:

“23. Certificate of domicile.—The Central government, the Provisional government or any District Magistrate authorized by the Provincial Government in this behalf may on application made to it in this behalf issue a certificate of domicile in Form P-1 in the manner following.-

- (a) An application for a certificate of domicile shall be made in Form ‘P’ in duplicate. It shall be accompanied by an affidavit affirming the truth of the statements made in it and affirming further that the applicant had not migrated to India after the first day of March, 1947 or that, having so migrated, had returned to Pakistan under a permit for resettlement or permanent return issued by an officer authorized by the Government of Pakistan.

- (b) Any Authority to whom an application is presented may demand such evidence as it may consider necessary for satisfying itself that the facts stated in the application are correct and that the applicant has been continually resident in Pakistan for a period not less than one year and intends to live permanently in Pakistan.
- (c) The authority shall pass such orders on the application as it deems fit.”

The appellant, obviously, could not be able to get domicile certificate without showing that he had been living continuously in Pakistan for a period not less than one year, whereas actually he was studying in MUST university in 2011, as per the educational transcripts filed by himself. Further, he had obtained the domicile of Gujranwala before cancellation of his domicile certificate of origin. Though, under rule 23 of the Pakistan Citizenship Rules, 1952, *supra*, it is essential for a person to live continuously in Pakistan for one year before applying the domicile certificate, but under the law, in AJK prescribes a longer period for availing or

changing of domicile from one category to another category.

In the referred cases, the controversy was that one side of the parties had domicile of origin from one of the Districts of AJ&K, had opted to or allegedly opted to obtain domicile of choice from Pakistan and later on, again obtained domicile of AJ&K. In the instant case eventuality is otherwise, the appellant who was the holder of domicile certificate of District Mirpur, as a refugee, has been inducted into service of Government of AJ&K on the basis of refugee residing in Pakistan. Though the Act, 1980 or the Rules 1980, do not provide or distinguish between 'domicile of origin' and 'domicile of choice' but as mentioned above the same are creation of Private International Law. It has been laid down in *Beenish Bashir's* case, supra and other judgments that a person who had abandoned his domicile of origin by obtaining domicile certificate from Pakistan, has to live continuously for five years in AJ&K to revive his

domicile of origin. If for the sake of argument, it is presumed that a refugee settled and living in AJK, intends to change his domicile and obtain domicile of choice, on the same footing, and deriving the analogy from settled legal position that a applicant must be living in Azad Jammu and Kashmir for five years, then a refugee also must live for five years in other place to make him eligible for issuance of domicile of choice, i.e., refugee settled in Pakistan. But, in the existing legal regime relating to State Subject and Domicile, read with Notifications, supra, the same cannot be allowed, as due to change of domicile of origin to domicile of choice, as refugee settled in Pakistan may adversely affect the refugee quota and benefits available to the refugees settled in Pakistan, under Notification dated 24.08.1972. In this context we can safely conclude that the appellant was not a refugee settled in Pakistan and was domicile holder of

refugee settled in Azad Kashmir, Mirpur district. His domicile of district Mirpur has not been cancelled till the filing of application with Public Service Commission for the post of assistant engineer. He had not been living in Gujranwala continuously for not less than five years at the time of issuance of domicile of Gujranwala, as he was studying in MUST University from 2007 to 2012.

12. Now we come to the legal position, which has made this category narrower as we mentioned earlier. The proposition may be conveniently resolved in light of the Notifications 12.3.1972 and 24.8.1972, which were issued to determine and clarify the quotas of different functional units in government service. Both the notifications mentioned above are reproduced herein below: -

"از دفتر چیف سیکرٹری، سروسز اینڈ جنرل ایڈمنسٹریشن ڈیپارٹمنٹ،
آزاد حکومت ریاست جموں و کشمیر۔

نمبر انتظامیہ 4526-4476-ج-س 72 مورخہ
12-3-1972

سرکاری ملازمتوں میں علاقہ وار/ضلع وار کوٹہ

کونسل قرارداد نمبری 71/48 کی روشنی میں سرکاری ملازمتوں میں علاقہ وار
کوٹہ حسب ذیل مقرر کیا گیا ہے۔

1	مہاجرین جموں و کشمیر مقیم پاکستان	25 فیصد
2	ضلع میرپور	30 فیصد
3	ضلع پونچہ	25 فیصد
4	ضلع مظفر آباد	20 فیصد

2۔ پسماندہ علاقوں کے لئے ملازمت میں دس فیصد نمائندگی کے سلسلہ میں
نوٹیفکیشن مجریہ زیر نمبر انتظامیہ/34-3003/سی-ایس/671 مورخہ 16-3-1971
کونسل قرارداد محولہ بالا کی روشنی میں منسوخ تصور فرمایا جائے۔ اب انہیں
اپنے اپنے ضلع کے کوٹہ ہی میں کھپایا جائے گا۔

3۔ ضلعی دفاتر میں ایک بنیادی اصول کے طور پر اسی ضلع کے باشندے
بھرتی کیے جائیں گے۔

ایڈیشنل سیکرٹری "

" سروسز اینڈ جنرل ایڈمنسٹریشن ڈیپارٹمنٹ،

آزاد حکومت ریاست جموں و کشمیر۔

نمبر انتظامیہ/16364-26424-ج/س 72 مورخہ
24-8-1972

نوٹیفکیشن:

ملازمت میں ضلع وار نمائندگی سے متعلق دفتر ہذا نے زیر
انتظامیہ/4526-4476-ج/س 72 مورخہ 12-3-1972 و نمبر انتظامیہ 12666-
12716/ج/س 72 مورخہ 5-7-1972 احکام جاری کر دیئے ہیں۔ چونکہ معاملہ
زیر بحث میں مقامی اضلاع اور مہاجرین کے حقوق کا سوال پیدا کیا گیا ہے اس لئے
جباب صدر حکومت نے اس سلسلہ میں درج ذیل احکامات صادر فرمائے ہیں:-

1۔ جو شخص مقبوضہ کشمیر کے کسی علاقہ سے نکل کر آزاد کشمیر میں
آباد ہو گیا اس کو مقامی اور اسی ضلع کا سمجھا جائے گا جس ضلع میں وہ آباد ہے۔

2۔ اور وہ شخص جو مقبوضہ کشمیر کے کسی علاقہ سے نکل کر پاکستان
کے کسی علاقہ میں رہائش پذیر ہوا اس کو آزاد کشمیر میں مہاجر کی حیثیت حاصل

ہو گی۔ اگرچہ بعد میں سروس یا تجارت یا کسی اور وجہ سے آزاد کشمیر میں بھی
رہائش رکھتا ہو۔

3۔ 1965ء کے مہاجرین کو آباد ہونے تک آزاد کشمیر میں بھی مہاجر سمجھا
جائے گا۔

ایڈیشنل چیف سیکرٹری "

The notifications dated 12.3.1972 and 24.8.1972, dealing with the subject of quota in the Government service, specifically provide “refugees of Jammu & Kashmir settled in Pakistan” and “refugees from occupied Kashmir settled in Pakistan”, respectively.

Clause 1, postulates that refugees settled in any district of Azad Jammu and Kashmir shall be as permanent residents of the district where they settled in as such. Category No. 2 clarifies that refugees settled in Pakistan shall be treated as refugees in AJ&K despite the fact he later on settled in AJK for the purpose of the service, trade or otherwise. Clause 3, clarifies that the refugees of 1965, shall be treated as refugees in AJK till settlement. Clause 3, is very much and explicitly applicable to the case of the appellant. As per the appellant’s own version and appended record, the father of the appellant migrated from occupied Jammu and Kashmir due to 1965 war and settled in District Mirpur and filed application for grant of domicile certificate of

Mirpur as per clause 1, wherein he claimed that he was living in Mirpur since twenty six years, hence, he was granted domicile of district Mirpur. Later on, he obtained State Subjects of some of his family members on the address of Mirpur. Further, he applied for grant of domicile certificates of district Mirpur for his daughters and son, along with the appellant in 2007, and the domicile certificates were issued accordingly. On the basis of admitted facts and attending circumstances, in light of the category No. 3 of the Notification dated 12.08.1972, it may be safely declared that the father of the appellant was refugee of 1965, and could be regarded as refugee settled in Pakistan till his settlement, but after his permanent settlement in district Mirpur and obtaining all legal documents from Mirpur, he is refugee settled in Azad Jammu and Kashmir and domicile holder of district Mirpur. The appellant was not entitled to apply against the quota reserved for the refugees settled in Pakistan. Our this view finds support from the

case reported as 2013 SCR 795, the relevant portion of the cited case is reproduced as under:-

“9. We have heard the learned counsel for the parties, the learned amicus-curiae and perused the record. It is an admitted fact that the father of the appellant originally was a resident of district Mirpur, who was forced to migrate from Mirpur to district Sargodha, Pakistan, at the time of construction of Mangla Dam in the decade of 1960. The appellant was born in Sargodha and all along remained resident of said district, so admittedly he is domicile of district Sargodha, Punjab, Pakistan.”

13. Since it is proved that the appellant was not refugee settled in Pakistan and simultaneously holder of two domiciles at the relevant time, hence, in our considered view, the appellant, herein, was not legally competent to apply for the post in dispute in light of the rule of law laid down by this Court in an unreported judgment titled *Muhammad Qasim vs. Masood Iqbal and others* (Civil PLA No. 279 of 2018 announced on 10.10.2018). The relevant portion of the cited case is reproduced as under:-

“6. I have considered the arguments of the learned counsel for the parties and examined the record made available. According to the admitted fact, the respondent obtained domicile certificate from Kasur on 16.10.2001 and on surrendering, it has been cancelled on 30.10.2017, while holding this domicile, the petitioner obtained domicile from Bhimber on 30.3.2010, thus, it is clear that without cancellation of previous obtained domicile from Kasur, he has obtained another one. The argument advanced by the learned counsel for the petitioner that the domicile was issued in his minority and he had no knowledge about the same nor it has been used, appears to be incorrect as the documents produced by the other side clearly speak that he being domicile of Kasur has applied for more than 13 positions advertised by Federal Public Service Commission and Punjab Public Service Commission. Leaving aside the controversy, it is clear that till 30.10.2017, he was holding domicile certificate issued from Kasur and during holding of this domicile the

issuance of another domicile from Bhimber is against law. The cases referred to by the learned counsel for the petitioner has no nexus with his version rather the proposition is otherwise.”

There is a certification issued by the District Magistrate, on 6.12.2017, available at page 139 of the paper book, according to which domicile certificate in favour of the appellant, herein, is stated to be issued on 10.8.2007, and this certificate is still intact. So, it can safely be said that the appellant, herein, was holder of domicile pertaining to District Mirpur, hence, he was not entitled to apply for the post in question.

14. As a result of the minute examination of the record pertaining to the State Subject and Domicile of the Appellant, we have come to the conclusion that the Appellant obtained State Subject Certificate from District Magistrate Mirpur on the basis of the State Subject Certificate issued in favour of his father. Likewise, the Appellant obtained Domicile

Certificate from District Mirpur on the basis of State Subject Certificate issued in favour of his father as well as in his own favour. In the aforementioned state of affairs, it is clearly proved rather these facts are admitted on the part of the Appellant that the Appellant and his father have opted themselves to be the refugees settled in Azad Jammu and Kashmir in term of clause 1 of the Notification dated 24.08.1972 (which is reproduced hereinabove at page 28). Clause 1 of the said Notification is reproduced hereunder afresh:-

- 1- جو شخص مقبوضہ کشمیر کے کسی علاقہ سے نکل کر آزاد کشمیر میں آباد ہو گیا اس کو مقامی اور اسی ضلع کا سمجھا جائے گا جس ضلع میں وہ آباد ہے۔
- 2-
- 3- 1965 کے مہاجرین کو آباد ہونے تک آزاد کشمیر میں بھی مہاجر سمجھا جائے گا۔

The act of obtaining State Subject Certificate by the father of the Appellant and the Appellant is a proof of the fact that they have opted for permanent settlement in Azad Jammu and Kashmir. In accordance with rule 2(b) of Azad Jammu and Kashmir State Subject Rules 1980, the authority i.e. District Magistrate concerned

has been authorized for issuance of the State Subject Certificate as well as Domicile Certificate in favour of applicants residing in the territory of Azad Jammu and Kashmir. For the purpose, the definition of District Magistrate in Rule 2(b) of the Rules is mentioned hereunder:

“(b) “District Magistrate” means a District Magistrate of a district in Azad Jammu and Kashmir and such other person as may be designated as such by the Council for such area as it may specify by a notification in the official Gazette for the purposes of these rules.”

The rule 4 *ibid* provides the procedure for issuance of the State Subject Certificate, same is reproduced as under:-

“4. State Subject Certificate.- (1) Any person claiming to be a State Subject may be granted a State Subject Certificate by the *District Magistrate concerned* in the manner prescribed below:-

- (a)-----
- (b) -----

For the purpose of grant of State Subject Certificate in favour of refugees settled in Pakistan, the authority for granting State Subject i.e. District Magistrate concerned was authorized separately by the AJK Council vide Notification dated 23rd August 1993, which is as under:-

“No. L-6/9/91-AJK: In exercise of powers conferred by clause (b) of rule 2 of the Azad Jammu and Kashmir State Subject Rules, 1980, and in superession of Azad Jammu and Kashmir Council’s Notification No. L-6/9/91-AJKC dated the 12th April, 1993, the Azad Jammu and Kashmir Council is pleased to designate, Deputy Commissioner (Rehabilitation), Mirpur, as District Magistrate for the purpose of these rules.

Having regard the aforesaid state of law, had the Appellant or his father having the status of refugees settled in Pakistan, in that event, the State Subject Certificate must have been issued in their favour by the District Magistrate who was authorized as the Deputy Commisioner

Rehabilitation, in accordance with Notification dated 23rd August 1993, reproduced hereinabove. As mentioned hereinabove that as per (Annexure “PG/2-PG”) of the High Court file, the Appellant, his sisters and brothers were granted Domicile Certificate of District Mirpur in 2007. This Domicile Certificate was granted in favour of Appellant and his family in accordance with Section 5 of AJK State Subject Act 1980 readwith Rule 7 of AJK State Subject Rules 1980, having regard the aforesaid state of fact and law, the Appellant as well as his father and other family members shall be deemed to be *domicile of origin* of District Mirpur. In order to obtain Domicile Certificate dated 24.12.2011 from Gujranwala, the Appellant have surrendered his domicile of Mirpur which is Domicile of origin of the Appellant. The term of *Domicile of origin* as well as the procedure for surrender of “*domicile of origin*” and adoption of “*domicile of choice*” have been defined in an elaborate and comprehensive Judgment of this

Court in the case of “Qamar Afzal” [PLD 1979 SC AJK 96], relevant portions whereof are reproduced hereunder:-

At page 98:

To have a correct approach to the issue involved, it would be but fair to determine as to what ‘domicile’ implies and imports and how it is lost or kept in abeyance:

“(Domicile) is a derivation of Latin word ‘domus’ meaning a home or a dwelling place its relationship which in law creates between individual and a particular locality or a country.”

A person shall be said to be domiciled of a locality where he intends to live permanently and considers that place as his principal or permanent home. ‘Domicile’ of a person therefore, shall be determined while taking into account the intention of a person manifested by his conduct to show whether he has adopted a mental attitude to settle down at a particular place permanently and make that place as his permanent home. So in every case and the

question of domicile is to be decided on the facts of that particular case and no hard or fast rule can be laid down to have a universal definition of the word 'domicile'.

Domicile is of three types:

- (1) Domicile of origin;
- (2) Domicile of choice; and
- (3) Domicile of adoption.

What is a domicile of origin and domicile of choice?

The domicile of origin of a person is that which he at his birth acquires from his parents and once it is ascertained in law, it clings to the person until he chooses to divest himself of it by substituting a domicile of choice for the domicile of origin. In the first place, there is a strongest possible presumption in favour of continuance of domicile of origin and it has been rightly said by Lord Macnaghten that its character is more enduring, its hold stronger and less easily shaken off". This observation is found in Private International Law by G.C.Cheshire, Fourth Edition, p.171. Thus, in law a person is presumed to carry the domicile of origin until it is proved that he has abandoned that

domicile with the intention to set up at a place permanently with the intention to make that place a permanent home and make a fortune for him. The domicile of choice is 'acquired by combination of facts and intention. The fact is residence and the intention in that the residence should be permanent'. It, therefore, follows that the domicile of origin can be discarded for domicile of choice by intention to reside at the place of domicile of choice permanently."

At page 101:

It is correct that a person may abandon his domicile of origin and acquire a domicile of choice absolutely good in the eye of law and retain that domicile of choice as long as he pleases and may then again change his mind and determine either to substitute another domicile of choice for that which he means to abandon or to resume his domicile of origin by for abandonment of the domicile, two things are necessary; the abandonment in fact, and the

intention that abandonment shall be final and permanent.”

Having regard to the aforesaid state of law taking into consideration the case of the Appellant, the Appellant in existence of the “*Domicile of Origin*” of District Mirpur which he obtained in 2007 and without surrender Domicile of origin, the Appellant obtained the Domicile of District Gujranwala Pakistan which is “*Domicile of choice*” and thereafter submitted application for the surrender of Domicile of District Mirpur on 10.01.2012. Keeping in view the rule of law reproduced hereinabove, in presence of “domicile of origin” and without completing the procedure for abandonment of the “domicile of origin”, the act of adoption of “domicile of choice” on the part of Appellant is illegal.

15. We have the opportunity to take into consideration the law relating to the “citizenship which includes Domicile”. So far the State of Jammu and Kashmir or Azad Jammu and

Kashmir are concerned, the law relating to the citizenship is contained in Notification No. I-L/84 dated 20th April 1927, the same has been defined as "STATE SUBJECT" in Article 2 of Azad Jammu and Kashmir Interim Constitution 1974, which is to the following effect:-

Notification

[Dated the 20th April, 1927]

No. I-L/84. The following definition of the term "State Subject" has been sanctioned by His Highness the Maharaja Bahadur, (*vide Private Secretary's letter No. 2354, dated, the 31st January, 1927, to the Revenue Member of Council*) and is hereby promulgated for general information:-

The term "State Subject" means and includes—

CLASS I: All persons born and residing within the State before the commencement of the reign of High Highness the late Maharaja Gulab Singh Sahib Bahadur, and also persons who settled therein before the commencement of Samvat year 1942, and have since been permanently residing therein.

CLASS II: All persons other than those belonging to Class-I who settled within the State before the close of Samvat year 1968, and have since permanently resided and acquired immovable property therein.

CLASS III: All persons, other than those belonging to Classes I and II permanently residing within the State, who have acquired under a *rayat-nama* any immovable property therein or who may hereafter acquire such property under an *Ijzat-nama* and may execute a *rayat-nama*

after ten years continuous residence therein.

CLASS IV: Companies which have been registered as such within the State and which, being companies in which the Government are financially interested or as to the economic benefit to the State or to the financial stability of which the Government are satisfied, have by a special order of High Highness been declared to be State Subjects.

Note I: In matters of grant of State scholarships, State lands for agricultural and house building purposes and recruitment to State Service, State Subjects of Class-I should receive preference over other classes and those of Class-II of Class-III, subject however, to the order dated 31st January 1927, of High Highness the Maharaja Bahadur regarding employment or hereditary State Subjects in Government Service.

Note II: The descendants of the persons who have secured the status of any Class of the State Subjects will be entitled to become the State Subject of the same Class. For example if 'A' is declared a State Subject of Class-II his sons and grandsons will ipso facto acquire the status of the same Class-II and not of Class-I.

Note III: The wife or a widow of a State Subject of any Class shall acquire the status of her husband as State Subject of the same Class as her husband, so long as she resides in the State and does not leave the State for permanent residence outside the State.

Note IV: For the purpose of the interpretation of the term "State Subject" either with

reference to any law for the time being in force or otherwise, the definition given in this Notification as amended up to date shall be read as if such amended definition existed in this Notification as originally issued.

The procedure for issuance of the State Subject Certificate and Domicile has been provided in Azad Jammu and Kashmir State Subject Act 1980 and the State Subject Rules 1980 (relevant provision whereof has been reproduced earlier). The aforesaid enactments were framed by Azad Jammu and Kashmir Council and after coming into force of 13th Constitutional Amendment under Article 51(2) the aforesaid enactments shall be deemed to have been enacted by Azad Jammu and Kashmir Assembly and the Government as the case may be. The power to amend the State Subject Act, 1980 and Rules framed thereunder now vest to the Azad Jammu and Kashmir Legislative Assembly and the Government as well. We have come across the various instructions issued from time to time by the Board of Revenue Azad Jammu and Kashmir Government. In accordance with the provisions

of the State Subject Act 1980 and the Rules framed thereunder in 1980 Board of Revenue of Azad Jammu and Kashmir is not vested with any power so as to issue any instructions or directions. Under Section 9 of the State Subject Act 1980, the Rules making power vest in the Azad Jammu and Kashmir which shall now vest to the Azad Jammu and Kashmir Government. The instructions and directions for grant of State Subject Certificate and Domicile Certificate issued by the Board of Revenue Azad Jammu and Kashmir from time to time are reproduced here under:-

آزاد حکومت ریاست جموں و کشمیر

بورڈ آف ریونیو، مظفر آباد

[گشتی مراسلہ نمبر: ب آ ر / 5879-5904 / 2003 مورخہ 25.10.2003]

گشتی مراسلہ:

ہمارے مشاہدے میں آیا ہے کہ جو لوگ بوجہ ملازمت یا کاروبار آزاد کشمیر کے دیگر اضلاع میں مقیم ہیں ان کو سرٹیفکیٹ پشتمی باشندہ ریاست یا ڈومیسائل کے اجراء کے سلسلہ میں کچھ ابہام پایا جاتا ہے اور عارضی سکونت کی بنیاد پر آئے روز ایسے لوگ ڈومیسائل سرٹیفکیٹ کے حصول کے خواہاں ہوتے ہیں۔

چنانچہ اس ابہام کو دور کرنے کی خاطر بذریعہ مراسلہ ہذا ہدایت کی جاتی ہے، جیسا کہ دریں بارہ حکومتی سطح سے بذریعہ محکمہ سروسز بھی ہدایات جاری شدہ ہیں، جن پر سختی سے عمل کرنے کی ضرورت ہے۔ آئندہ کے لیے کسی بھی ایسے فرد/افراد کو محض آزاد کشمیر کے کسی ضلع میں کاروبار یا ملازمت کے باعث عارضی سکونت کی بنیاد پر ڈومیسائل سرٹیفکیٹ جاری نہ کیا جائے اور نہ ہی اس ضلع سے سرٹیفکیٹ پشتمی باشندہ ریاست جاری کیا جائے بلکہ سرٹیفکیٹ پشتمی باشندہ ریاست یا ڈومیسائل سرٹیفکیٹ متعلقہ اشخاص کے اصلی سکونت ضلع سے ہی جاری کیے جایا کریں۔

اسی طرح جو لوگ پاکستان میں بسلسلہ ملازمت یا کاروبار مقیم ہوں، ان کو بھی سرٹیفکیٹ پشتمی یا ڈومیسائل سرٹیفکیٹ اپنے Respective District سے ہی جاری کیے جائیں۔ ہدایات بالا کے مطابق عملدرآمد کو بہر صورت یقینی بنایا جائے۔

دستخط بحروف اردو

(حفیظ الرحمان شیخ)

سینئر ممبر، بورڈ آف ریونیو

آزاد حکومت ریاست جموں و کشمیر
بورڈ آف ریونیو، مظفر آباد

[گشتی مراسلہ نمبر: ب آ / اول / این - اے - 33 / 98 مجریہ 09.01.1998]

گشتی مراسلہ:

بورڈ آف ریونیو کے نوٹس میں آیا ہے کہ ضلعی سطح پر ڈپٹی کمشنر/ ڈسٹرکٹ مجسٹریٹ صاحبان کی جانب سے جاری شدہ بعض پشتنی سرٹیفیکیٹ میں درجہ اول، دوئم یا سوئم کا اندراج نہیں کیا گیا جو ایک سنگین غلطی ہے۔ جس کے نتیجے میں جہاں ایک طرف بے جا غلط فہمیاں جنم لے سکتی ہیں وہاں ریاستی باشندگان کے جائز حقوق بھی متاثر ہونے کے خدشات موجود ہیں۔ چنانچہ سرٹیفیکیٹ پشتنی باشندہ ریاست کے اجراء سے متعلق ریاستی سطح پر جو قواعد و ضوابط نافذ العمل ہیں ان میں نوٹیفیکیشن نمبر I-L/84 مورخہ 20 اپریل 1927 بکری بھی شامل ہے اس میں سرٹیفیکیٹ پشتنی باشندہ ریاست کی بڑی واضح definition دی گئی ہے اور اس میں سرٹیفیکیٹ پشتنی باشندہ ریاست درجہ اول، دوئم، سوئم اور چہارم کا واضح تذکرہ درج ہے۔ ماضی میں اسی طریقہ کار کے مطابق سرٹیفیکیٹس کا اجراء ہوتا رہا ہے۔

قواعد متذکرہ بالا میں اس امر کی تشریح موجود ہے کہ ایسے تمام افراد جو مہاراجہ گلاب سنگھ کے دور کے آغاز سے قبل ریاست کے اندر پیدا ہوئے اور مستقلاً رہائش پذیر رہے اور ایسے لوگ بھی جو 1942 بکری کے آغاز سے قبل مستقلاً ریاست میں مقیم تھے 1st Class State Subject ہوں گے۔ اسی طرح Class-I اور Class-II کے علاوہ جملہ ایسے افراد جنہوں نے اجازت نامہ کے حصول کے دس سال بعد رعیت نامہ حاصل کر کے ریاست کی حدود میں جائیداد حاصل کر کے رہائش اختیار کی ہو Class-III State Subject ہوں گے جبکہ Class-IV رجسٹرڈ کمپنیز وغیرہ سے متعلق ہے۔ اس طرح قانوناً سرٹیفیکیٹس پشتنی باشندہ ریاست میں قواعد کے مطابق متذکرہ الصدر درجہ بندی کا اندراج بہر حال لازمی ہے۔

لہذا بالا صورتحال کی روشنی میں جملہ ڈپٹی کمشنر صاحبان اضلاع کو بذریعہ مراسلہ ہدایت کی جاتی ہے کہ وہ باشندگان ریاست کو قواعد کی منشاء کے مطابق سرٹیفیکیٹ پشتنی باشندہ کا اجراء کریں اور سرٹیفیکیٹس میں بلحاظ کیٹگری درجہ اول، دوئم اور سوئم کے اندراج کو یقینی بنائیں تاکہ متعلقہ افراد کو مستقبل میں کسی قسم کی قانونی پیچیدگیوں کا سامنا نہ کرنا پڑے۔

دستخط: جروف انگریزی
نعیم احمد شیراز
سینئر ممبر، بورڈ آف ریونیو

آزاد حکومت ریاست جموں و کشمیر
بورڈ آف ریونیو، مظفر آباد

[گشتی مراسلہ نمبر: ب آ / اول / این - اے - 33 / 98 مجریہ 09.01.1998]

سرکلر:

مشاہدہ میں آیا ہے کہ بعض اوقات باشندہ ریاست سرٹیفیکیٹ بالخصوص مہاجرین کے باشندہ ریاست سرٹیفیکیٹ گواہان کے بیانات پر ہی جاری کر دیئے جاتے ہیں اور کوئی دستاویزی ثبوت شامل نہیں کیا جاتا، جس سے غیر مستحق لوگ میں سرٹیفیکیٹ کا اجراء کروا لیتے ہیں جو محکمہ کی بدنامی کا سبب بنتے ہیں۔ اندریں حالات ہدایت کی جاتی ہے کہ باشندہ ریاست سرٹیفیکیٹ کے اجراء سے قبل دستاویزی ثبوت از قسم نقولات ریکارڈ مال، راشن کارڈ وغیرہ شامل مسل ہونا چاہیے۔ جس سے یہ پایا جاتا ہے کہ درخواست دہندہ واقعی ریاست جموں و کشمیر کا باشندہ ہے۔ محض زبانی شہادت پر انحصار نہ کیا جائے اور بغیر دستاویزی ثبوت سرٹیفیکیٹ کے اجراء کی صورت میں اگر کسی غیر مستحق شخص کو سرٹیفیکیٹ جاری ہو گیا تو ایسے افسر کے خلاف تادیبی کارروائی عمل میں لائی جائے گی۔

دستخط: جروف اردو
(انفخار حسین کاظمی)
سینئر ممبر، بورڈ آف ریونیو

آزاد حکومت ریاست جموں و کشمیر
بورڈ آف ریونیو، مظفر آباد

”مظفر آباد“

مورخہ 07 ستمبر 2001

نوٹیفکیشن:

نمبرس ب/شعبہ دوئم/1057-1157/2001: جناب صدر آزاد جموں و کشمیر نے کابینہ کے فیصلہ اور اجلاس منعقدہ 31.03.2001 کی روشنی میں حالیہ جاری تحریک آزادی کشمیر کے نتیجے میں متبوضہ کشمیر سے آنے والے مہاجرین باشندگان ریاست جموں و کشمیر کو تعلیمی/فنی اداروں میں داخلہ اور نامزدگی کے علاوہ ملازمت کے حصول کے سلسلہ میں انکے ریاستی باشندہ ہونے کے ثبوت کے طور پر سرٹیفکیٹ ریاستی باشندہ کے بجائے محکمہ بحالیات آزاد حکومت ریاست جموں و کشمیر سے باقاعدہ جاری شدہ راشن کارڈ کو قابل قبول قرار دیئے جانے کی منظوری صادر فرمائی ہے۔

دستخط بحروف انگریزی
(اسٹنٹ سیکرٹری دوئم)
بورڈ آف ریونیو

آزاد حکومت ریاست جموں و کشمیر
سرورسز اینڈ جنرل ایڈمنسٹریشن ڈیپارٹمنٹ، مظفر آباد

”مظفر آباد“

مورخہ 25 اگست 1997

نوٹیفکیشن:

نمبر انتظامیہ/آر/اے-4(259) شعبہ قواعد/91: جناب صدر، آزاد جموں و کشمیر نے کابینہ کے فیصلہ مورخہ 09.04.1997 کی روشنی میں نوٹیفکیشن نمبر انتظامیہ/اتج-6(51) شعبہ اول/86 مورخہ 2 اپریل 1986 کی شق ”19 الف“ کے بعد بذیل نئی شق ”19 ب و 19 ج“ درج کیے جانے کی منظوری صادر فرمائی ہے۔

19 (ب) پاکستان کے فنی و پیشہ وارانہ ادارہ جات میں نامزدگی کی خاطر ضلع وار کوٹہ کے لیے مستقل سکونت سرٹیفکیٹ (Permanent Residence Certificate) کی شرط کو لازمی قرار دیا گیا ہے۔ متذکرہ سرٹیفکیٹ کے اجراء کی بنیاد پر ہی ایسی نامزدگیاں عمل میں لائی جائیں گے۔ یہ سرٹیفکیٹ بذیل شرائط پورا ہونے کی صورت میں متعلقہ ضلع کے ڈپٹی کمشنر جاری کریں گے۔

- (i) متعلقہ شخص کا خاندان مستقل کون سے ضلع میں آباد ہے۔
- (ii) اُس کی آبائی جائیداد کہاں واقع ہے اور آبائی قبرستان کہاں ہے۔
- (iii) اگر کسی دوسرے ضلع میں عارضی رہائش رکھتا ہو اور کسی عزیز کا انتقال ہو جائے تو وہ کوئی جگہ تدفین کرتے ہیں۔
- (iv) سروس میں آتے وقت کون سے ضلع کے کوٹہ کے خلاف ملازمت میں آئے تھے۔
- (v) اسلامی تہوار و عیدین وغیرہ منانے کے لیے عزیزوں کے پاس عام طور پر کہاں جاتے ہیں۔
- 19 (ج) محکمہ تعلیم نامزدگیوں کے متعلقہ قواعد میں مطابقت برقرار رکھنے کی کارروائی کرے گا۔

دستخط بحروف اردو
(سید احمد حسین شاہ)
سیکشن آفیسر سرورسز (قواعد)

The juxtaposition perusal of Section 9 of State Subject Act and the Rules framed thereunder would show that the Board of Revenue of Azad Jammu and Kashmir is not recognized by any of the aforementioned enactment and is not vested any power to be exercised by it in relation to the grant of State Subject Certificate and Domicile. By now it is settled rule of law that any instructions have been issued by the same authority which is vested with the power to make rules, then the instructions must carry the weight of rules and shall have equal binding force as that of the Rules. Any policy decision or instruction contrary to Rules cannot be construed as a valid Rules. In the case in hand, under Section 9 of the Act, the Rules making power vest in the in the Council now it shall be construed Government of AJK. The Board of Revenue was not competent to issue any such policy or instructions. Keeping in view the aforesaid perspective of the matter instruction contained in Circular dated 25.10.2003,

27.01.2014, 09.01.1998 issued by the Board of Revenue did not have any statutory force or backing. Be that as it may, the aforesaid instructions provides the procedure for issuance of State Subject Certificate and Domicile Certificate but at the same time the aforesaid instructions should have been issued by an authority competent to make Rules which does not vest in the Board of Revenue Azad Jammu and Kashmir. So far the instructions contained in Notification dated 07.09.2001 and 25th August 1997 are concerned, the same have been issued by the Government which is vested with the Rule making power.

15. As for as the objection as regard to attraction of laches is concerned, the respondent had no knowledge of the fact that the appellant applied for the post, or filed writ petition. Later on, on appointment of the appellant, the respondent who was next to the appellant in the waiting list probed and got to know about the domicile status of the appellant. Further, it

would be very imprudent to expect from candidates to start collecting copies of the applications and appended documents of the other candidates to dig out validity of the documents, their eligibility to apply and preempt to challenge. Obviously, once a candidate is appointed then other candidate may come forward to challenge the eligibility and appointment. Therefore, principle of laches and estoppel do not attract. So far as the question of waiver raised by the learned counsel for the appellant is concerned, has no substance as nowhere from the record it appears that the respondent, herein, has ever applied for some other post of Assistant Engineer B-17. Similarly, the question of laches also cannot be attracted in the case in hand, as the grievance of the respondent, herein, is not against the selection process conducted for the disputed post rather his grievance was in relation to eligibility of the appellant regarding filing of application against

the disputed post, therefore, the question of laches does not arise.

16. Having regard the aforesaid state of law in the State of Jammu and Kashmir, we are mindful of the fact that in the State of Jammu and Kashmir, the law relating to the "State Subject" shall be deemed to be a law relating to the citizenship applicable in any other State or country. The law of State Subject is a substantive right of the people of the State of Jammu and Kashmir. The Class-I State Subject can only be granted to a person born and residing within State before the commencement of the reign of His Highness the late Maharaja Ghulab Sing and also person who settled therein before the commence of sumvat year 1942, and have since been permanently residing therein, the Class-II State Subject can also be granted to the person other than those belonging to Class-I who settled within the State before the close of sumvat year 1968, and have since permanently resided and acquired immovable property

therein, likewise all other persons, other than those belonging to class-I and class-II permanently residing within the State, who acquired under a *riyat-nama* any immovable property therein or who may hereafter acquire such property under and *ijazat-nama* and may execute a *riyat-nama* after 10 years continuous residence. Similarly, companies who have registered in the State in which the Government are financially interested or as to the economic benefit to the State or to the financial stability of which the Government are satisfied have been declared to be the Class-IV State Subjects. Notes-I to IV appended to the Notification No. I-L/84, provides that every class of State Subject shall have preference to the other and descendants of persons of any class of the State Subjects will be entitle to become the State Subjects of the same class. The wife or widow of a state subject of any class shall acquire the status of her husband as State Subject of the same class as her husband, so long as he

resides in the State and does not leave the State for permanent residence outside the State. On the basis of aforementioned state of law, we have observed that the Rules for grant of State Subject Certificate and the Domicile framed are not comprehensive. It is essential that the instructions issued by Board of Revenue from time to time and the Notification issued by the Azad Jammu and Kashmir Government should have been incorporated in the Rules known as “Azad Jammu and Kashmir State Subject and Domicile Rules”

17. While deciding the case we are constrained to note that the subject of grant of State Subject Certificate and the Domicile Certificate has been a constant subject matter of the various judgments pronounced by this court and this Court time and again have made observations and laid down a comprehensive rule of law for grant of State Subject Certificate and the Domicile Certificate which is binding on all executive and judicial authorities throughout

AJK and they are under obligation to act in accordance with law laid down by the Supreme Court in view of Article 42-B of Interim Constitution of Azad Jammu and Kashmir. For the purpose, we may have advantage to refer various judgments of this Court on the subject, namely the case of “Qamar Afzal” [PLD 1979 SC AJK 96], the case of “Rakshanda Aslam” [PLD 1986 SC AJK 1], the case of “Fouzia Hussain Abbasi” [1995 CLC 1761], the case of “Atta Ullah Atta” [1996 CLC 1551], the case of “Shahida Bano” [1997 SCR 301], Reference No. 1 of 1997 [1998 SCR 255], the case of “Iqbal Razaq Butt” [1998 SCR 387], the case of “Pervez Akhter” [2000 SCR 452], the case of “Iffat Siddique Sulehari” [PLJ 2003 SC AJK 106], the case of “Maria Tazaraq” [PLD 2006 SC AJK 10], the case of “Naila Bashir” [2013 SCR 785], the case of “Imran Ali” [2013 SCR 795], the case of “Uroosa Nawaz” [2014 SCR 614], the case “Tariq Javed” [2015 SCR 653], the case of “Zulfiqar Ali” [2016 SCR 1139]. While examining the aforesaid

judgments, we have come across to a very sad state of affairs, that the rule of law laid down by this Court from time to time with regard to the grant of State Subject Certificate and Domicile Certificate has not been implemented in letter and spirit. Executive Authority have no other alternative but to act in aid of Supreme Court, persons responsible for non-implementation of the judgment of the Supreme Court can be punished for contempt for disobedience of the Judgment of the Supreme Court and if it is found that the executive authorities are unable to act in aid of Supreme Court, the judgment of the Supreme Court is not implemented, then such situation would be open to be construed as impasse for deadlock and would amount to very unhappy situation reflecting failure of Constitutional authority. In the aforesaid state of affairs, we are mindful of the fact that the rule of law laid down by this Hon'ble Court time and again on the subject of State Subject and Domicile has not been complied with. Fact

remains that in view of Article 42-A(3) all executive and judicial authorities throughout in Azad Jammu and Kashmir shall act in aid of Supreme Court and take immediate steps to implement the rule of law laid down by this Court in its judgments. Therefore, to achieve an object that the rule of law laid down by this Court from time to time shall not be violated and the increasing litigation pertaining to the State Subject and Domicile day by day should be curtailed and the public at large should be provided the fruits of the rule of law laid down by this Court. Since, we have taken judicial notice of the fact that subject of nationality/State Subject has been the legislative power of Azad Jammu and Kashmir Council in view of item 1 of Schedule III of AJK Interim Constitution 1974 and on the basis of aforesaid authority the AJK Council have enacted AJK Council State Subject Act 1980 and AJK State Subject Rules 1980. The aforesaid enactment have not been amended keeping in

view the rule of law laid down by this Court in the judgments referred to above, resultantly, the public at large is not being benefited of the rule of law of this Court. After 13th Constitutional amendment 2016, the subject with respect to nationality, citizenship etc. is the authority of Azad Jammu and Kashmir Government. Now the Azad Jammu and Kashmir Government in accordance with Article 51(2) (as amended), of Interim Constitution of Azad Jammu and Kashmir 1974, is in a position to make suitable amendments in Azad Jammu and Kashmir State Subject Act, 1980, and the Azad Jammu and Kashmir State Subject Rules, 1980, keeping in view the due regard to the rule of law laid down by this Hon'ble Court from time to time reflected in the judgment referred to hereinabove.

18. We have also perused the application along with the documents filed by the appellant, herein, for grant of permission. The perusal of the same reveals that all these documents were not part of the file of the High Court, therefore,

the same cannot be allowed to be considered for the first time before this Court.

19. The learned High Court in the impugned judgment observed that from the Court fee stamp, the application as well as the report of Patwari appears to have been filed on 13.2.2018, which clearly indicates that these documents were prepared in 2018, this observation of the High Court is incorrect and contrary to record as the appellant, herein, applied for obtaining the copy of the application as well as the report of Patwari and for this purpose he deposited Court fee on 13.2.2018, which is the obvious fact, that he had applied for the copy of the earlier application on the said date and the learned Judge in the High Court has misconstrued the same. However, this mistake does not affect the proposed conclusion as the moot point whether the appellant was holding the domicile of District Gojranwala during submission of application for appointment on the disputed post, has already

been resolved in the preceding paragraphs. The appellant has failed to substantiate his version through any cogent and reliable evidence. The case law referred to and relied upon by the counsel for the appellant has no nexus with the case in hand as those cases are based upon distinguishable facts.

20. There is another aspect of the case, which has come to the surface in the instant case and has also been noticed in the previous cases decided by this Court. Though, in this case the certificate of choice has not been issued by any authority in AJK, however, as pointed earlier, in many cases the authority issued the domicile of choice in absence of cancellation of domicile certificate of origin or vice versa, without adhering to the relevant law. When the law has provided in clear terms by this Court that without cancellation certificate of domicile of origin or choice, the domicile of other functional unit cannot be issued and may be issued only in case, continuous living for five

years and further intention to live continually in future in the functional unit of choice is established. Reliance may be made to Beenish Bashir's case (2014 SCR 327). The practice of changing of the domicile certificates for availing greener pastures in a manner alien to law cannot be appreciated and endorsed by the Courts.

21. While taking into consideration the overall state of law relating to State Subject Certificate and Domicile applicable in the Azad Government of the State of Jammu and Kashmir, we are of the view that the procedures relating to the grant of State Subject Certificate and Domicile are on the one hand vague and on the other having inherent defects. We therefore are constrained to invoke the inherent powers vested to this Hon'ble Court under Article 42-A of AJK Interim Constitution Act 1974 in order to do complete justice and issue direction to Azad Government of the State of Jammu & Kashmir and for making suitable amendments in the law

referred hereinabove; particularly, for providing the procedure with regard to the grant of State Subject Certificate and the grant of Domicile Certificate in favour of the State Subjects either residing in the territory of the Azad Jammu and Kashmir including the refugees of Jammu & Kashmir settled in Azad Jammu & Kashmir territory or the refugees of Jammu & Kashmir settled in Pakistan in the following manner:-

- (i) The matters provided in the Circulars issued by the Board of Revenue dated 25.10.2003, 27.01.2014, 09.01.1998 and the matter provided in Notification dated 07.09.2001, 25.08.1997 shall be incorporated and made part of the Azad Jammu and Kashmir State Subject Rules 1980 in suitable manners.
- (ii) No State Subject Certificate or Domicile shall be granted in favour of any person having the status of refugees settled in Azad Jammu and

Kashmir or refugees settled in Pakistan, unless the applicant does not provide the proof relating to his ancestral immovable property in any part of the State of Jammu and Kashmir to which the applicant claims his or her permanent residence. In order to obtain the certified copy with regard to the revenue record owned by such person situated in any part of occupied part of the State of Jammu and Kashmir, the procedure provided in Article 96 of Qanoon-e-Shadat Order 1984 as adopted in Azad Jammu and Kashmir shall be followed.

- (iii) Any document issued by any statutory authority in favour of refugees while entering into the territory of Azad Jammu and Kashmir or territory of Pakistan shall also be taken into consideration.

- (iv) While granting Domicile Certificate, all the prerequisites mentioned in Notification dated 25th August 1997 shall be fulfilled and all the prerequisites mentioned in Notification dated 25th August 1997 shall be made part of the Rules for the purpose of granting Domicile Certificate.
- (v) Powers relating to Appeal, Review or Revision under Section 10 of the Act shall be exercised by a committee consisting of at least 3 persons and the Chairman of the committee shall be a person having judicial experience of the status of District and Session Judge who is qualified to be the Judge of the High Court. The period for decision of any Appeal, Review or Revision shall be specified which shall not be more than 03 months.
- (vi) Any matter with regard to grant or refusal of State Subject Certificate or

Domicile Certificate shall be decided not more than a period of 06 months.

(vii) While granting a State Subject Certificate or Domicile Certificate, the officer granting the State Subject Certificate or Domicile Certificate shall append a certificate at the foot of the proceedings certifying the observance of the procedure relating to the grant of State Subject Certificate or Domicile Certificate.

(viii) A penalty shall also be provided to be inflicted upon the officer granting the State Subject Certificate or Domicile Certificate in case at any stage it is proved that the officer concerned did not adopted all reasonable means and that the certificate was not issued by ensuring that no fraud, false representation or concealment of any material fact was made.

(ix) A Comprehensive procedure shall be provided for prosecution of a person, alongwith providing a penalty of punishment not less than 3 years, who obtained a State Subject Certificate by means of fraud, false representation or the concealment of any material fact or the persons who assist any such person in obtaining a State Subject Certificate or Domicile Certificate on the basis of fraud, false representation or the concealment of the material fact.

The upshot of the above discussion is that finding no force in this appeal, it is hereby dismissed. No order as to costs.

JUDGE JUDGE JUDGE

Muzaffarabad
28.7.2022