

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 1170 of 2021

BEFORE:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner: Haroon Sohail through Mr. Khadim Hussain
Soomro, Advocate

Respondent: LUMHS through Mr. Kamaluddin, Advocate

Mr. Ayaz Ali Rajpar, Asstt: A.G.

Date of hearing & decision: 01.12.2021

ORDER

ADNAN-UL-KARIM MEMON, J: -The petitioner through the instant petition has prayed as under:-

- i. *That the impugned letter No. 10548 dated 28.02.2021 whereby the admission of the petitioner in MBBS for academic session 2020-21 was cancelled by the respondent No.3 purely by misinterpreting the order dated 21.04.2021 passed in CP No. D- 272 of 2021 may kindly be set aside and the respondent No.3 be directed to allow the petitioner to continue his education as he secured the open merit seat no LUMHS-03 for first year MBBS course at Jinnah Sindh Medical University Karachi against reciprocal / merit cum choice seat reserved for the candidate of LUMHS.*
- ii. *That it may kindly be declared that the petitioner, his father and grandfather are the permanent resident of the village Choudary Nazeer Ahmed Deh 105 Nusrat Taluka Daur District Shaheed Benazirabad and the petitioner is entitled for Domicile and PRC certificate from District Shaheed Benazirabad as per the Pakistan Citizenship Act 1951 and Sindh Permanent Residence Certificate Rules 1971;*
- iii. *That the impugned Order dated 11.02.2021 passed by the respondent No.6 whereby the Domicile and PRC certificates of the petitioner have been cancelled is not in accordance with the Pakistan Citizenship Act 1951 and Sindh Permanent Residence Certificate Rules 1971, therefore, the same may kindly be set-aside.*

2. Petitioner has averred that he applied and qualified for admission in MBBS at LUMHS Jamshoro / respondent No.3 for the academic session 2020-21, and secured the open merit seat number LUMHS-03 for first-year MBBS course at Jinnah Sindh Medical University Karachi against reciprocal / merit cum choice seat reserved for the candidates of LUMHS; that the petitioner after obtaining admission deposited fees challan dated 8.2.2021; that subsequently, on a verification sought by LUMHS of Domiciles and PRCs submitted by students, the Deputy Commissioner, Shaheed Benazirabad / respondent No.6 reported that the petitioner's Domicile and PRC had been canceled; that against such cancellation, the petitioner filed CP No. D-272/2021 which was disposed of along with various other petitions whereby a common order dated 21.4.2021 was passed with direction to the petitioners to approach respondent No.7 i.e. Appellate Committee for deciding Domicile and PRC issue. An excerpt of the order is reproduced as under:-

“We after going through the various documents filed by the petitioners and the comments of the respondents, with the consent of the learned counsel for the petitioners dispose of these petitions directing the petitioners to approach aforementioned committee for redressal of their grievance. It is clear that as a result of this order any seat(s) kept vacant or in abeyance in respect of any of the petitioners should be immediately released and upon having been so released, the candidates who follow sequentially in the merit list should be offered that position as per the respective merit lists.”

In view of the above order passed in CP No. D-272/2021, the Director Admission LUMHS proceeded to cancel the admission of the petitioner; hence this fresh petition.

3. Mr. Khadim Hussain Soomro, learned counsel for the petitioner submitted that the above order dated 21.4.2021 passed in CP No. D-272/2021 applied to those seats which were kept in abeyance, and not to the seat of the petitioner; but respondent No.3 canceled the admission of the petitioner while misinterpreting said order. Learned counsel submitted that the admission of the petitioner could not have been canceled when the petitioner's appeal against the cancellation of his Domicile and PRC was pending before respondent No.7 pursuant to order dated 21.4.2021 passed in CP No. D-272/2021. Learned counsel submitted that the order passed by respondent No.6 for canceling the petitioner's Domicile was without jurisdiction as under

section 4 of the Pakistan Citizenship Act, 1951 the petitioner and his father were Pakistani by birth; that as per Rule 6(ii) of the Sindh Permanent Residence Certificate Rules, 1971, in case a person was not born in Sindh but his parents are domiciled in Sindh and have resided in Sindh for the period not less than 3 years, such person is entitled to a PRC in Form-C for admission to a medical college in Sindh. He submitted that it is a matter of record that the father of the petitioner was issued a domicile certificate of District Nawabshah, had obtained his education from District Nawabshah, and his CNIC shows permanent residence at Taluka Daur District Shaheed Benazirabad; that the petitioner's grandfather is also a permanent resident of Sindh Province and he was UC Nazim of 23rd Suhelio Taluka Daur District Shaheed Benazirabad, and therefore the Domicile and PRC certificate of Shaheed Benazirabad was issued lawfully to the petitioner.

4. After hearing the learned AAG Sindh, who opposed the petition, we feel that it is important to highlight certain misconceptions relating to a certificate of Domicile and a Permanent Residence Certificate (PRC). While a certificate of domicile is issued under the Pakistan Citizenship Act, 1951 read with the Pakistan Citizenship Rules, 1952, a Permanent Residence Certificate (PRC) in Sindh is issued under the Sindh Permanent Residence Certificate Rules, 1971. Section 17 of the Pakistan Citizenship Act, 1951, and Rule 23 of the Pakistan Citizenship Rules, 1952 read as under:

"17. Certificate of domicile.--The Federal Government may, upon an application being 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 he has ordinarily resided in Pakistan for a period of not less than one year immediately before the making of the application, and has acquired a domicile therein."

"23. Certificate of domicile.---The Central Government, the Provincial Government or a District coordination officer other than in Islamabad capital territory or Chief Commissioner Islamabad capital territory or an authorized officer may on the application made to it on 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-I 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 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."

5. From Section 17 of the Pakistan Citizenship Act, 1951 it appears that a domicile certificate is intended for such class of persons who are originally not the citizen of Pakistan, have migrated to this country after the emergence of Pakistan, and during the specified period, have abandoned their domicile of origin and have ordinarily resided in Pakistan for not less than one year, either to reside therein permanently or to acquire citizenship of Pakistan. In the present case, the petitioner is a citizen of Pakistan by birth, and except for purposes of obtaining admission in a medical college, he would not require any domicile certificate for citizenship.

6. Apparently, a domicile certificate of a person issued under Section 17 of the Act of 1951 is to show that his place of domicile is Pakistan, and it is not intended to be a certificate of the Province or district of his 'permanent residence' within Pakistan. It may be noted that Article 15 of the Constitution recognizes the essential unity and integrity of the nation and reinforces the concept of one nation by providing that every citizen shall have the right to move freely throughout Pakistan and to reside and settle in any part of the country. In other words, Section 17 of the Act of 1951 does not require a fresh domicile certificate after one has already been issued.

7. We are of the considered view that when a person is certified as domiciled in Pakistan, and who is permanently residing in one Province goes to another Province to reside there permanently or indefinitely, his domicile in Pakistan does not undergo any change, nor does it acquire a new certificate of domicile. There is a distinction between the concept of domicile under the Pakistan Citizenship Act and the place of 'permanent residence' of a person within Pakistan since the former relates to the status of a person and involves a question of law while the latter is a question of fact. The country of domicile and the place of permanent or ordinary residence within the

country are altogether different concepts. In the case of Muhammad Yar Khan v. Deputy Commissioner/Political Agent, Loralai and another (1980 SCMR 456), the Honorable Supreme Court elaborates and explained the distinction and has held as under:-

“(7) Having said this; however; we may as well make it clear that a citizen of Pakistan, in view of the exigencies and the complexities of the present-day life, may indeed be genuinely in need of obtaining a domicile certificate but that would only mean that he is the domicile of Pakistan, and not of a Province or a part of Province. It is our experience, however, and the present case would seem to furnish a concrete instance; that in the domicile certificates granted by the District Magistrate the grantee is often mentioned to be the domicile of a particular Province or part of the Province, which is wholly incorrect.”

8. The learned Full Bench of Baluchistan High Court in the case of Mubashar Mehmood and others Vs. Home and Triable and others (PLD 2018 Balochistan 49) have held that the powers of the Deputy Commissioner to cancel the Domicile Certificate are limited and governed by the Act of 1951 and the Rules of 1952. There are two circumstances under which a citizen can be deprived of his citizenship under the Act of 1951. Firstly, if the Central Government is satisfied that the Certificate has been obtained through fraud and misrepresentation or on the grounds mentioned under Section 16 of the Act of 1951 and, secondly, if he is convicted for an offense under section 177 of the Pakistan Penal Code (XLV of 1860) "(P.P.C.)", being prosecuted under Rule 26 of the Rules of 1952.

9. The requirement of a Permanent Residence Certificate [PRC] for obtaining admission to a medical college in Sindh emanates from Rule 2 of the Sindh Permanent Residence Certificate Rules, 1971. The eligibility for the grant of such PRC is governed by Rule 6 thereof which provides:

“6. No person shall be eligible for grant of a certificate in Form ‘C’ unless—

(i) he was born in any area forming a part of Sind, and further—

(a) in the case of a person of legitimate birth, at the time of his birth, his father was domiciled in Sind, or if he was born after the death of his father, the latter, at the time of his death, was domiciled in the Sindh, or

(b) in the case of a person of illegitimate birth, his mother, at the time of his birth, was domiciled in Sindh; or

(ii) in the case of a person who was not born in Sind—

(a) his parents are domiciled in Sind, and have resided in Sind for a period of not less than 3 years; or

(b) if his parents are not domiciled in Sind, he is domiciled in Sind, and further has either resided in Sind or has been educated in Sindh for a period of not less than 3 years; or

(iii) his father or mother is in the service of the Government of Sindh and has put in not less than one year service as such.”

From the above Rule, it is apparent that a domicile certificate issued to a person under the Pakistan Citizenship Act which shows his place of residence as Sindh, may at best be a piece of evidence in considering his eligibility for a PRC in Form-C under Rule 6 of the Sindh Permanent Residence Certificate Rules, 1971; it is not a pre-condition for granting a PRC in Form-C.

10. Having clarified the legal position above, we refrain from giving a finding at this stage on the merits of the order passed by respondent No.6 for canceling the petitioner's domicile and PRC. The reason is that the matter of the petitioner's domicile and PRC is presently pending in appeal before a forum pursuant to an order passed by this Court in C.P. No. D-272/2021, and the present petition only seek redress against the cancellation of his admission to a medical college by the LUMHS pending such appeal.

11. Apparently, the cancellation of the petitioner's admission to the medical college is on the premise that while disposing of C.P. No. D-272/2021 this Court had observed that “*any seat(s) kept vacant or in abeyance in respect of any of the petitioners should be immediately released*”. However, from a reading of that order in its entirety, it appears that such observation was made with regards to the petitioner of a connected petition for whom a seat in the medical college had been reserved under an interim order passed by the Court. In any case, the said observation was not intended to disrupt the studies of a petitioner who was well into the academic session. In

our view, the cancellation of the petitioner's admission in the medical college is premature when questions raised to his domicile and PRC are still pending decision before a forum to whom it was referred by the Court.

12. Consequently, we allow this petition by setting aside the impugned letter No. 10548 dated 28.02.2021 whereby the admission of the petitioner in MBBS for the academic session 2020-21 was canceled by respondent No.3. The petitioner shall be permitted to continue his studies in the First year M.B.B.S./B.D.S. at the college in which he had secured admission.

JUDGE

JUDGE

Karar_hussain/PS*