

IN THE HIGH COURT OF SINDH, AT KARACHI

Constitution Petition No. D-1306 of 2026

{IHSAN ALI SHAIKH V/S PROVINCE OF SINDH & OTHERS}

Before: *Mr. Justice Muhammad Saleem Jessar.*
Mr. Justice Abdul Hamid Bhurgari

Petitioner	:	Ihsan Ali Shaikh through Mr. Wakeel Ali Shaikh Advocate
Respondents	:	State through Mr. Muhammad Kamran Baloch A. A.G., Sindh
Date of Hearing	:	01.10.2026
Date of announcement	:	23.10.2026.

J U D G M E N T

MUHAMMAD SALEEM JESSAR, J:- Through this Petition, the Petitioner has claimed following relief:

(a) To direct the Respondent No 2 to 3 to convene the meeting of DRC and complete the Scrutiny of the case of petitioner for appointment against deceased quota.

(b) To direct the respondent No 2 to 3 to issue appointment order to the petitioner for any suitable post against deceased quota of his father namely Late Muhammad Ayub Shaikh, bailiff of District & Sessions Court, Larkana.

(c) To grant any other adequate and equitable relief in view of the above stated facts and circumstances of the case.

(d) To award cost of the petition.

2. Learned Counsel for the Petitioner argued that father of Petitioner namely Muhammad Ayub was employee of District & Sessions Court Larkana; that he was appointed as Bailiff vide appointment order dated 25.07.1994; that Petitioner's father died on 23.03.2022, while he was in service; that after the death of his father, petitioner applied for appointment under deceased quota before District & Sessions Judge Larkana through application dated 23.08.2023, which was forwarded to learned Registrar of Sindh High Court, but to no fruitful results, hence he maintained instant petition. He contended that Petitioner was entitled for a job under deceased quota, but

the right has been denied without any fault on the part of Petitioner. He lastly prayed that by allowing this petition, the Respondents may be directed to issue appointment order to the Petitioner under deceased quota.

3. Learned Assistant Advocate General, while referring to the statement filed by learned Registrar of this Court and learned District & Sessions Judge Larkana contended that policy in vogue for appointment of children of the deceased employees was revised in compliance to the dicta laid down by Honorable Supreme Court in the case of **General Post Office, Islamabad and others v. Muhammad Jalal (Civil Petition No.3390 of 2021) reported as PLD 2024 SC 1276, (GPO Case)** wherein learned Apex Court declared the appointments of the widow/widower, wife/husband or child of civil servants in different grades, who died during service or became permanently disabled/invalidated/ incapacitated for further service and retired from service, without open advertisement, competition and merit as discriminatory and ultra vires to the Articles 3,4,5(2),18,25(I) and 27 of the Constitution of Islamic Republic of Pakistan, 1973 (Constitution); that the Federal and Provincial Governments were directed to withdraw such rules. He contended that pursuant to the judgment referred supra the Administration Committee of Sindh High Court in its meeting decided to withdraw such policy and communicated its decisions vide letter dated 05.12.2024. He contended that at present there was no policy in vogue to accommodate the children of deceased employees, as such Respondent No 3 cannot issue appointment order to the Petitioner. He therefore, prayed to dismiss the petition.

4. Heard arguments of learned Counsel for the parties and perused the material made available before us on record.

5. From perusal of record, it transpired that petitioner sought his appointment under deceased quota and there is no denial to the fact that petitioner's father was employee of sub-ordinate judiciary and he died while in service on 23.03.2022 and obituary to that effect was issued by learned District & Sessions Judge Larkana through its office letter dated 29.03.2022. Policy to appoint children of the employees who died while in service or became incapacitated to further perform the job was introduced in by the Government of Sindh in the year 2002. No provision for appointment of children of deceased employees existed under the Sindh Judicial Staff Service Rules, 1992; however, was borrowed from Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974 (APT Rules). Rule 11- A (since omitted) of APT Rules, was relevant provision for appointment of children of deceased or incapacitated employees. The language contained in said rule obligated the administrative department to make appointment of one of the children of the employee who died while in service or retired on ground of invalidation to further perform the job. It would be conducive to reproduce Rule 11-A for academic purposes; which reads as under:

"11-A.- Where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his/her children or, as the case may be, spouse (when all the children of the deceased employee are minor) shall be provided job who applies within a period of two years of death or declaration of invalidity or incapacity of civil servant on any of the basic pay scales No. 1 to 15 in the Department where such civil servant was working:

Provided that such appointment shall be made after fulfilment of formalities are required in the requirement rules and holding interview, for the post applied for:

Provided further that the cut of date shall be within two years of the death of the officer or official.

Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notifications dated 11.3.2008 and 17.7.2009 of these rules."

6. From provisions of above referred rule, it is crystal clear that in case of death of a civil servant while in service or he is declared invalidated or incapacitated for further service, one of his/her children or as the case may be, spouse when all the children of the deceased employee are minor shall be provided job who applies within a period of two years of death or declaration of invalidity or incapacity of civil servant on any of the basic pay scales No. 1 to 15 in the Department where such civil servant was working. Such appointment shall be made after fulfilment of formalities as are required under the appointment rules.

7. The policy to appoint one of the children of the deceased employees remained in force until 2024, when such provisions of law or rules were declared to be ultra vires to the provisions of the Constitution in GPO Case (Supra). Honorable Supreme Court of Pakistan further directed the federal and provincial governments to struck off the said rules. The Administrative Committee of this Court pursuant to the judgment in GPO Case (Supra) revised the policy for appointment of children of deceased and in service employees, as such doors for future appointment under said quota stood closed.

8. It is a settled principle of law, that the judgment passed by a Court of Law operatives prospectively unless directed otherwise, this Cannon of Law would equally apply to the GPO Case (Supra) and it would therefore not affect the rights of the bereaved family of deceased or incapacitated employees who died prior to the date of pronouncement that is 26.09.2024. In other words the *ratio decidendi* of GPO Case judgment would not affect the rights of those children, where the employee died while in service or became incapacitated to perform further service prior to the said date. The crucial date for such purpose would be the death of employee itself. If the employee

had died prior to 26.09.2024 one of his children will be entitled for job as the policy to accommodate the children of deceased employee who died while in service or retired on the ground of invalidity or incapacity to further perform the service was in force at that time.

9. Honorable Supreme Court in the GPO Case (Supra), observed that the provisions of Rule 11-A of APT Rules were ultra vires to the Constitution as said rules did not provide for the open competition in service and created a room for induction in service of the members of bereaved family in grade 1 to 15 without any competitive process. The Federal and Provincial governments failed to comprehend the intent of the judgment and decided to omit the referred provisions. Rule 11 - A of the APT Rules envisaged for the appointment of a member of the bereaved family in grade 1 to 15. Under the Service Laws the posts in grade 1 to 4 normally do not require any specific qualification, as same fall within the category of Naib Qasid, Chowkidar or Malhi, but for the positions in grade 5 to 15 the skilled staff is required, therefore, appointment against said posts required qualifications coupled with skills, required to be examined and assessed as is done under the general recruitment process. It would have been better that the Rule 11 - A of the APT Rules would have been amended to make induction in civil service to these posts on deceased quota on open merit and through transparent process as is provided for the recruitment under general category rather its omission.

10. A holistic review of Rule 11- A (since omitted) of Sindh APT Rules, led to an inference that under said rule, appointment to the service under deceased quota was not an automatic phenomenon but it was subject to fulfillment of the appointment rules and included the conduct of interview. In fact, it provided for a competitive process.

11. The effect of case of GPO Case (Supra) came under discussion before Honourable Supreme Court of Pakistan, while dealing with a similar issue of appointment under deceased quota in the case of *Zahida Parveen v. The Government of Khyber Pakhtunkhwa and others* in C.P.L.A No.556-P/2024, decided on 17.03.2025, wherein it was held that the judgment passed in GPO Case (Supra) shall not operate retrospectively. It was held that:

“11. For completeness of record, it is clarified that the judgment of this Court reported as General Post Office, Islamabad and others v. Muhammad Jalal (PLD 2024 SC 1276) has struck down Rule 10(4) of the Rules as being ultra vires the Constitution but has no application on appointments that have been already made. It is well settled that the judgments of this Court operate prospectively, unless declared otherwise. Therefore, the present case remains unaffected by the said judgment”.

12. In another case bearing Civil Petitions No.804-K to 807-K of 2025 (Re-**The Registrar, High Court of Sindh, Karachi and another v/s. Rehana and others**) the Honorable Supreme Court of Pakistan elaborately discussed the impact of judgment of GPO Case (Supra) and upheld the consolidated Order dated 30.04.2025 passed by Learned Division bench of this Court, authored by one of us (**Mr. Justice Muhammad Saleem Jessar**), with the following observations:

“8. Nevertheless, an important facet cannot be lost sight of that the judgments of this Court has prospective effect unless declared otherwise. The prospective declaration of law cannot reopen the past and closed matters to avoid or prevent the multiplicity of proceedings and undermining the doctrine of finality of judgments. The doctrine of prospective overruling originated from American Judicial System, which allows to overrule or overturn/set aside a precedent that should no longer be considered a good law. The doctrine of prospective overruling demonstrates a substantial evolution and expansion in legal jurisprudence which allows this Court to render verdicts without prejudice to the past decisions. In the case of Sakhi Muhammad and another vs. Capital Development Authority, Islamabad (PLD 1991 S.C 777), it was held by this Court that the consequence of the Supreme Court judgment was that as from the date of decision all courts subordinate to the Supreme Court and all executive and quasi-judicial was in force for dealing the appointments on deceased/retired employees’ quota but in all fairness, the said decision neither can affect the past judgments of this Court on the same subject nor its decision can be enforced with retrospective effect to subside/overrule, nullify or quieten down the effect or existence of original decision passed on 17.04.2024, which attained finality much earlier. The law declared by this Court will apply to the cases arising in future but the cases which have attained finality are protected and all actions taken contrary to the declaration of law prior to its date of declaration shall be deemed to be valid and binding. Therefore, in our view, the learned High Court rightly passed the order for implementation of its judgment and the Registrar, Sindh High Court and District Judge, Larkana had no lawful justification to challenge the order.

10. As a result of the above discussion, we do not find any illegality, perversity, or impropriety in the impugned order passed by the learned High Court. The Civil Petitions are dismissed and leave is refused.”

13. Honorable Supreme Court of Pakistan while dealing with the identical issue has rendered an esteemed pronouncement dated 02.09.2025 in the cases of **Province of Sindh through Chief Secretary and others Vs. Izhar Ali & others (C.A No 106 - K to 111 - K & 650 - K of 2024)**. It was held that:

“7. If we look into the pith and substance and genre of aforesaid Rule, it unambiguously divulges that it was a beneficial acclimatization of the children of deceased, invalidated, or incapacitated civil servants which was deep seated, and in vogue for last many years under the APT Rules. The terminology “beneficial legislation” allude to the laws, rules or regulations premeditated to vouch for the well-being of individuals and the populace. The Courts are obligated to interpret such laws, rules

and regulations moderately and judiciously to make sure that the objectives of such legislation are enforced and implemented pragmatically. In order to achieve this task and safeguard underlying principle, a dynamic purpose oriented and liberal approach is inevitable to argument its end result. Even if a word or provision of any beneficial legislation may be interpreted in two ways that one protects and conserves the benefit but one does not or it allows diverse interpretations, then the dominant option is to pick and choose the interpretation which prospers and withstands the benefit rather than deprive it. One more important principle that cannot be lost sight of is that the philosophy of beneficial interpretation indoctrinates farther than extended connotation to the words of such beneficial provisions if such an interpretation brings into line with the legislative intent and primary objectives. It is also well known percept of beneficial construction that it should be interpreted with proactive dynamic approach to syn and live up to primary intended raison d'être. In order to achieve its inner self, the beneficial provision should be interpreted shield the rudimentary aspiration which is in fact an apathy of beneficial construction with generous approach and reading it with widest conceivable denotation to protect the interests of beneficiaries of beneficial statute/provision. At times, statutes do not assimilate every situation coherently and in such scenario, the tool of beneficial construction allows the judges to alleviate the incongruences but without carrying its quintessence. So far all intent and purposes, the High Court in its strength of mind rightfully extended the benefit of beneficial provision according to the spirit of law prevailing at the time of deciding the constitution petitions. "

14. Honorable Federal Constitutional Court while seized with **F.C.P.L.A.Nos.508, 591, 346, 347, 348, 589, 267, 593, 130 AND 353 OF 2025** (The Province of Sindh *Versus* Muhammad Rizwan Khan & others) was pleased to set at rest the controversy, by upholding the plethora of judgments passed by this Court and authored by one of us (**Justice Muhammad Saleem Jessar**) and held that:

"4. As noted above, petitioner is aggrieved of acceptance of writ petitions of the respondents by learned Sindh High Court. The controversy pertains to the fact that respondents are spouse/children of the deceased Sindh civil servants and sought appointments on the basis of Rule 11-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 (the Rules). The Supreme Court of Pakistan vide judgment passed in case reported as General Post Office, Islamabad and others Vs. Muhammad Jalal (PLD 2024 SC 1276) struck down Rule 11-A ibid and petitioner now seeks benefit thereof on the basis that since the Rule is no longer in the field, no appointment can be made. The nub of the controversy is that at the time when the judgment of the Supreme Court of Pakistan supra was handed down, had the right accrued in favour of the respondents? In this regard, the relevant event, which resulted in the accrual of the right, was the death of the civil servant. As and when the death of a civil servant takes place, one of the children and/or spouse acquires the right to be appointed in the civil service. The process of application and/or a formal appointment letter are administrative acts. Since right had accrued in favour of private respondents, hence judgment of the Supreme Court does not come in their way for appointment on deceased employee children/spouse quota. It is trite law that judgments of the

Supreme Court operate prospectively and not retrospectively¹. Even-otherwise, the Supreme Court in a subsequent decision², clarified that the judgment reported as PLD 2024 SC 1276 supra does not take away the accrued rights and/or set aside the past and closed transactions. In view of above position of law, we do not find any legal infirmity in the reasoning handed down by the learned Sindh High Court, in the impugned judgment, warranting interference."

15. Adverting to the case of Petitioner. Perusal of record further revealed that Petitioner's father died while serving in year 2022 and he applied for extending him the benefit of prevailing policy in year 2023, though it has been denied by Learned District & Sessions Judge Larkana that petitioner's case either was pending or forwarded to the Registrar of this Court, but admittedly a right in favor of the family of deceased employee had occurred, moment he died. It was incumbent upon the department (District & Sessions Judge Larkana) to transfer such right to the bereaved family without any expense or delay. Petitioner's right to appointment cannot be done away under any excuse. The employment in a civil service is a source of earning livelihood for the families; denial whereof in a casual erodes the foundation of good governance. It is the duty of the administrative department in which deceased employee worked to inform in time to his family the accrual of any of the benefits or rights in their favor on account of the bereavement of employee while in service. The father of the Petitioner was a Bailiff a low capacity employee and Petitioner too appears to be a layman, the laxity on the part of the department to provide relief to the bereaved family available under the law cannot in any manner be attributed to the Petitioner, which tilts to the Respondents as is apparent from their conduct as the department has failed to decide fate of application moved by Petitioner in year 2023. The Department has acted with gross negligence in Petitioner's case; he should have been given equal treatment as meted out to the children of other employees who were extended benefit of policy and rules during the intervening period. It is duty of the concerned department to provide all benefits in time to the bereaved family, the provisions of employment under deceased quota were a beneficial subordinate legislation and cleared an ambiguity in existing service rules regarding the appointment of children of employees who died during service or became incapacitated to perform the service further, thus the interpretation of such legislation would be construed in a liberal prospective. Moreover, the Honorable Federal Constitutional Court in the case of **The Province of Sindh Versus Muhammad Rizwan Khan & others** (Supra) has protected right for appointment which accrued before the pronouncement of Honorable Supreme Court in GPO Case (Supra), as such Petitioner's entitlement under deceased quota shall remain unaffected, irrespective of the omission of policy.

16 It is evident from record that Petitioner's request for appointment was declined by applying the judgment of Honorable Supreme Court in GPO Case (Supra)

retrospectively. This resulted in miscarriage of justice and deprived petitioner of his right in service. Since the claim of the petitioner as to his entitlement for job was not denied and during the intervening period members of hundreds of the bereaved families were extended benefit of Rule 11-A of APT rules by inducting one of the nominees from the family in service, therefore, depriving petitioner of the right to job would tantamount to discrimination and offend his fundamental rights guaranteed under articles 4, 9, 25 and 27 of the Constitution.

17. We have carefully examined case of the petitioner; in our view denial of job to the Petitioner under deceased quota would be an act of discrimination, as it appeared from record that the petitioner was not dealt in accordance with law, which offended his fundamental rights enshrined under Articles 4, 5, 9, 25 and 27 of the Constitution. This Court, being custodian of the fundamental rights, cannot shut its eyes when reaches to a conclusion that action on the part of a statutory body or organization resulted in infringement of fundamental rights of a person. Though the appointment process is an internal mechanism of the department, wherein this court sparingly interferes but would not hesitate to step in when a right to job otherwise available under the law was declined in a slipshod manner.

18. For the reasons discussed hereinabove, we are of the considered view that petitioner has made out a case to exercise the powers of judicial review conferred under article 199 of the Constitution. Petitioner's entitlement for appointment under deceased quota required consideration in the light of the policy and rules applicable at the time, when the father of the petitioner passed away and Petitioner applied for job. We, therefore, **allow** this petition and direct the Respondent No 3 to consider the case of Petitioner for appointment under deceased quota in accordance with law and applicable rules and decide it within a period of Three months' time from date of this order.

Office is directed to communicate copy of this Order to the Respondents for compliance. The Petitions stand disposed of in the above terms.

Judge
Head of Constt. Benches

Dated: 23.10.2026
Karachi
Approved for reporting

Judge