

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D- 1857 of 2021

[Dhani Bux Mallah v. Federation of Pakistan & Others]

BEFORE:

JUSTICE ADNAN-UL-KARIM MEMON

JUSTICE RIAZAT ALI SAHAR

Petitioner: Through, Mr. Hatim Ali Soomro, Advocate

Respondent Through Habib-u-Rehman, Advocate
NADRA:

Mr. Ghulam Abbas Sangi, Asst. Attorney General

Date of hearing:
& Decision: 18.11.2024

ORDER

ADNAN-UL-KARIM MEMON, J - The petitioner seeks direction to NADRA authorities to change his cadre from Naib Qasid to Data Entry Operator according to his qualification.

2. The case of the petitioner is that he is son of late Qaimuddin Mallah, who served as Registration Clerk at NADRA, DRO Dadu and passed away on 16.04.2009; that he is graduate (B.A.); that after his father's death, the petitioner applied for appointment under *deceased quota* as Data Entry Operator under Rule 11-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974; that petitioner's mother repeatedly submitted applications to NADRA requesting appointment of petitioner under the deceased quota. NADRA subsequently issued an offer letter appointing the petitioner as Naib Qasid (BS-1), which he accepted due to financial hardship; that the petitioner worked diligently but struggled due to very low salary. Several applications and official correspondences were made by the petitioner and his mother requesting change of cadre from Naib Qasid to Data Entry Operator/Junior Executive, but no decision was taken. Despite completing all formalities, the petitioner's cadre has not been changed; that the petitioner alleges violation of his fundamental rights, discrimination, and neglect by NADRA authorities, claiming that he is fully deserving of change of cadre.

3. The respondents counsel submitted that the petition is not maintainable; that the petitioner has not approached the court with clean hands; that he was hired purely on contract basis; that *master-and-servant* principle applies. Learned counsel argued that contract employees have no vested right to extension or constitutional relief. NADRA service regulations are *non-statutory*; therefore cannot be enforced through Article 199 of the Constitution; that contractual employees of NADRA cannot invoke constitutional jurisdiction; that several judgments of Supreme Court and this Court support this position; that there is no provision a change of cadre; that opportunities for fresh tests were available, but the petitioner never appeared; that there is no discrimination on the part of NADRA. Petitioner was promoted from O-1 to O-2 scale on 13.01.2021 and O-2 to O-3 on 01.11.2024.

4. In view of the above facts and circumstances, although the respondents have raised objections regarding maintainability and contractual status, the petitioner's case is based on humanitarian ground arising out of *deceased quota*, which aims to support the families of employees who die in service. The petitioner, being educated son of a deceased NADRA employee has consistently pursued his case and fulfilled all formalities. He has performed his duties with honesty and has now been serving the department for several years, despite facing severe financial hardship. Without prejudice to the respondents' legal stance and touching the merits of the case, the competent authority is directed to reconsider the petitioner's case sympathetically and on humanitarian grounds, and to evaluate whether he qualifies in accordance with law and existing policies, for appointment or adjustment against the post of Data Entry Operator / Junior Executive, if he is eligible in all respects.

5. This petition stands disposed of in the above terms.

JUDGE

JUDGE