

THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1201 of 2024

[Muhammad Asif Pathan v. Province of Sindh and others]

Before:

Justice Arbab Ali Hakro

Justice Nisar Ahmed Bhanbhro

Petitioner by : Mr. Abdul Qadeer Khoso, Associate of
Mr. Sohail Ahmed Khoso, Advocate

Respondents by : Mr. Israr Ahmed Shah, Assistant Advocate
General Sindh

Date of Hearing : **22.09.2026**

Date of Decision : **22.09.2026**

ORDER

ARBAB ALI HAKRO, J. – Through the instant constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, Muhammad Asif Pathan, seeks a direction to the respondents to issue an appointment order in his favour against the deceased quota under the School Education & Literacy Department, Government of Sindh.

2. The brief facts leading to the present petition are that the petitioner’s father, the late Asadullah Khan, was a permanent civil servant serving as an Attendant at Government High School Altaf Hussain Pathan, District Khairpur, and died in service on 14.05.2004, leaving behind four legal heirs, namely his widow, one son and two daughters. At the time of his father’s demise, the petitioner was a minor, born on 03.06.2002, approximately two years old. Upon reaching the age of majority on 03.06.2020, the petitioner pursued his claim for appointment under the deceased quota. The departmental record shows that prior to attaining majority, a process was initiated, and vide letter dated 07.03.2019, the Section Officer (DQ), School Education Department, forwarded the petitioner’s case file to Respondent No.2, Director School Education (Elementary, Secondary & Higher Secondary), Sukkur Region, for processing; however, no formal appointment order was issued.

3. Aggrieved by the delay, the petitioner previously approached this Court by filing C. P. No. D-217 of 2020 (hereinafter referred to as “the earlier petition”), which was disposed of vide order dated 07.03.2023 with a direction to the Secretary, School Education & Literacy Department, Government of Sindh, to decide the petitioner’s pending application within two months. Non-compliance with the said direction constrained the petitioner to institute contempt proceedings. In those proceedings, a statement dated 30.03.2022 was submitted on behalf of the Secretary to Government of Sindh, Law, Parliamentary Affairs and Criminal Prosecution Department, along with a letter No. DQ-1(193)/337 dated 27.05.2021, issued by the Section Officer (D.Q.). In the said statement, the respondents took the stance that the petitioner’s case was not covered under the Deceased Quota Policy because he was only two years old at the time of his father’s death on 14.05.2004, his application was not submitted within two years of the civil servant’s death as contemplated under Rule 11-A of the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 (hereinafter referred to as “the Rules of 1974”), and his requisite credentials were obtained only in the year 2020 after attaining majority. Consequently, upon disposal of the contempt application with liberty reserved to the petitioner vide order dated 05.12.2023, the petitioner filed the present petition.

4. Learned counsel for the petitioner contended that the two-year limitation cap under Rule 11-A cannot be applied retrospectively to take away an accrued right of a minor legal heir whose parent died before such restrictive amendments were introduced. He relied on the judgment of the Hon’ble Supreme Court of Pakistan in *Waheed Ali Amur*¹.

5. On the other hand, learned Assistant Advocate General Sindh, referring to a concise statement dated 06.01.2025 filed on behalf of Respondent No.1, resisted the petition by submitting that under the dictum laid down by the Hon’ble Supreme Court of Pakistan in *Muhammad Jalal*², public employment under deceased quota rules without open competition

¹ *Province of Sindh v. Waheed Ali Amur* C. Ps. Nos. 482 to 503-K of 2016 (Supreme Court of Pakistan, decided on 10.08.2016).

² *General Post Office, Islamabad v. Muhammad Jalal* PLD 2024 SC 1276; Civil Petition No. 3390 of 2021, decided on 18.10.2024.

has been declared *ultra vires* the Constitution. Since Rule 11-A has been omitted, no direction for appointment can now be issued.

6. We have heard the arguments advanced by learned counsel for the petitioner and by learned AAG Sindh, and have examined the material on record.

7. The question for determination is whether the claim of the petitioner, whose father died in service on 14.05.2004 when the petitioner was a minor, survives the two-year limitation cap subsequently introduced by Rule 11-A of the Rules of 1974 and the omission of that Rule following the declaration made in *Muhammad Jalal* (n.2 above).

8. It is a settled principle of administrative law that a right accruing under a beneficial provision cannot be destroyed retroactively by subsequent restrictive amendments unless explicitly mandated by statute. In *Waheed Ali Amur* (n.1 above), the Hon'ble Supreme Court categorically observed that the two-year limitation cap introduced by Notification dated 16.09.2014 in Rule 11-A of the Rules of 1974 applies purely prospectively.

9. Following this principle, this Court in *Nadir Ali Khoso*³ specifically analyzed a scenario where the father of the petitioner died before the restraining clause envisaging a two-year cap was incorporated into Rule 11-A. In *Nadir Ali Khoso* (n.3 above), this Court held that where the civil servant passed away prior to the introduction of the restrictive two-year cap, the limitation period to apply for a job after the death of the father is not applicable to the case of such a petitioner, and that a minor legal heir cannot be deprived of the benefit of employment merely because of circumstances beyond his control. In the present case, the petitioner's father died on 14.05.2004, long before the two-year limitation cap was introduced into Rule 11-A. Therefore, as held in *Nadir Ali Khoso* (n.3 above), the limitation of two years is inapplicable to the petitioner, and the rejection of his case by the Law Department and the School Education Department solely on the ground

³ *Nadir Ali Khoso v. Province of Sindh* C. P. No. D-110 of 2022 (High Court of Sindh, decided on 15.11.2023).

of minority and non-compliance with the two-year cap was legally unsustainable.

10. Regarding the reliance placed by learned AAG Sindh on *Muhammad Jalal* (n.2 above), the effect of that judgment has been the subject of detailed judicial examination in subsequent proceedings before the Hon'ble Supreme Court and was ultimately settled by the Federal Constitutional Court of Pakistan in *Muhammad Rizwan Khan*⁴. The Federal Constitutional Court has authoritatively settled that the declaration of unconstitutionality in *Muhammad Jalal* (n.2 above) applies prospectively and does not extinguish past vested or accrued rights. The critical event that crystallizes an accrued right under the deceased quota is the death of the civil servant while in service prior to 26.09.2024, and administrative delays or pending litigation cannot operate to deprive a citizen of a right that had already crystallized under the prevailing legal framework prior to that cutoff date.

11. To give effect to this position and alleviate hardship, the Government of Sindh issued a formal Notification dated 30.04.2026 through the Services, General Administration & Coordination Department (Regulations Wing).⁵ The said Notification explicitly saves accrued benefits, providing that where a right or benefit of employment against the deceased quota had accrued prior to 26.09.2024, the legal heir shall not be deprived of such benefit and all such pending or accrued cases shall be examined, considered and decided at the level of the Administrative Department, strictly on merit and in accordance with the provisions of the omitted Rule 11-A of the Rules of 1974, as saved by the said Notification. In the present case, since the petitioner's father died in service on 14.05.2004 and the petitioner reached majority and applied well before 26.09.2024, his claim represents an accrued right falling squarely within the protection guaranteed by the Notification dated 30.04.2026 as interpreted in *Muhammad Rizwan Khan* (n.4 above) and in line with the reasoning in *Nadir Ali Khoso* (n.3 above).

⁴ *The Province of Sindh v. Muhammad Rizwan Khan* F.C.P.L.A. Nos. 508, 591, 346, 347, 348, 589, 267, 593, 130 and 353 of 2025 (Federal Constitutional Court of Pakistan).

⁵ Notification dated 30.04.2026 issued by the Services, General Administration & Coordination Department (Regulations Wing), Government of Sindh.

12. In view of the above legal and factual position, the rejection of the petitioner's case on the grounds of limitation and minority cannot be sustained; the view taken in letter No. DQ-1(193)/337 dated 27.05.2021, to the extent that it declines the petitioner's claim on those grounds, is accordingly set aside. However, in light of the executive scheme envisaged under the Notification dated 30.04.2026, the matter must be remitted to the competent administrative authority for formal decision on merit in accordance with the saved provisions.

13. Accordingly, the instant petition stands disposed of with the direction that the matter be remitted to Respondent No.1, Secretary, School Education & Literacy Department, Government of Sindh, for consideration and decision on merit. Respondent No.1 shall examine the petitioner's claim under the saved Rule 11-A of the Rules of 1974, keeping in view the binding principles laid down in *Waheed Ali Amur* (n.1 above), the judgment of this Court in *Nadir Ali Khoso* (n.3 above), and the Federal Constitutional Court's judgment in *Muhammad Rizwan Khan* (n.4 above). The petitioner's application shall not be rejected on the ground of the two-year limitation cap or minority at the time of his father's death. Respondent No.1 shall pass a well-reasoned, speaking order after providing an opportunity of personal hearing to the petitioner, within ninety (90) days from the date of receipt of a copy of this order, and shall communicate the decision to the petitioner.

14. The office is directed to communicate a copy of this order to Respondent No.1 through all available modes, including electronic transmission, for immediate compliance.

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Abdul Basit