

THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 216 of 2016

[Khadim Hussain Ujjan v. Federation of Pakistan and others]

Before:

Justice Arbab Ali Hakro

Justice Muhammad Osman Ali Hadi

Petitioner by : Mr. Sardar Akbar F. Ujjan, Advocate

Respondents by : Mr. Syed Naveed Ahmed Shah, Deputy Attorney General along with Muhammad Suleman Dahri, Additional Deputy Manager (Legal), SEPCO, Sukkur

Date of Hearing : **25.08.2026**

Date of Decision : **25.08.2026**

ORDER

ARBAB ALI HAKRO, J. – The petitioner, through the instant Constitutional Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has challenged the Office Order dated 06.01.2016, which cancelled his appointment as Assistant Lineman (BPS-03) under the Employees Children Quota ab initio and further directed the recovery of salary and benefits received by him during the period he remained in service. The petitioner seeks restoration in service and a declaration that the impugned order is illegal, without lawful authority and of no legal effect.

2. Briefly stated, the facts emerging from the record are that the petitioner's father, Sultan Ahmed Ujjan, was employed in WAPDA/SEPCO as an Assistant Lineman. He was convicted in a murder case, and consequent upon the conviction and the sentence of life imprisonment, which was upheld by this Court, his services were terminated with effect from 28.10.2006, vide office order dated 04.11.2006. Thereafter, he died in jail custody on 11.07.2013. The petitioner applied for appointment under the Employees Children Quota. After processing his case and an interview, he was appointed as Assistant Lineman (BPS-03) on a contract basis, vide order dated 22.09.2015, under Category "C". He joined service, remained on duty, and was also sent for training. Subsequently, SEPCO received information

that the petitioner's father had already been terminated from service prior to his death; therefore, the case did not fall within Category "C" of the Employees Children Quota. Consequently, vide impugned order dated 06.01.2016, the petitioner's appointment was cancelled ab initio, and recovery of salary and benefits was also ordered.

3. The respondents, in their para-wise comments, have primarily contended that the petitioner's father was admittedly terminated from service due to a conviction in a murder case, and that, in view of the WAPDA Office Order dated 08.04.2004, children of employees removed, dismissed or terminated from service are not entitled to appointment under the Employees Children Quota. It is their case that the petitioner's appointment was made due to an inadvertent clerical mistake and, upon discovery of the true factual position, was rightly cancelled. The respondents further maintained that the petitioner was never eligible under Category "C", and therefore no enforceable right accrued in his favour.

4. Learned counsel for the petitioner argued that the petitioner had never concealed any material fact. According to him, the application form itself contained an endorsement by the departmental officer stating that the petitioner's father remained in service from 15.03.1982 to 28.10.2006 and was terminated due to a conviction in a murder case. He submitted that all relevant facts were available to the department before issuance of the appointment order; therefore, the allegation of concealment or fraud is wholly baseless. He further argued that the petitioner was appointed after scrutiny of documents, verification, and an interview, and remained in service for about three months. He contended that cancellation of service without issuance of show-cause notice or affording an opportunity of hearing violated Articles 4 and 10-A of the Constitution and offended settled principles of natural justice. Reliance was placed upon **Executive District Officer (Education), Rawalpindi**¹ to argue that services could not be terminated on vague allegations after an appointment had already been made.

5. Conversely, the learned Deputy Attorney General and Law Officer appearing for SEPCO supported the impugned action. They argued that

¹ Executive District Officer (Education), Rawalpindi v. Mst. Rizwana Kausar and others (2011 PLC (C.S.) 1296)

eligibility under the Employees Children Quota was governed by the WAPDA Office Order dated 08.04.2004, and that paragraph 6 categorically excluded children of employees who had been removed, dismissed or terminated from service. It is submitted that the petitioner's father ceased to be an employee on 28.10.2006, whereas his death occurred in 2013, long after the termination of service. Therefore, the petitioner was never eligible under Category "C". They further submitted that no vested right could arise from an appointment made contrary to law, and that an illegal appointment could always be withdrawn by the competent authority.

6. We have heard learned counsel for the parties at considerable length and have carefully examined the pleadings, documents placed on the record, policy governing Employees Children Quota and the precedents cited at the Bar.

7. The pivotal question for determination is whether the petitioner fulfilled the eligibility criteria prescribed under the WAPDA Office Order dated 08.04.2004. The said office order revived the 20% quota for children of WAPDA employees and classified eligible persons into various categories. Category "C" relates to a child of an employee who died or became incapacitated due to reasons arising during service. More importantly, paragraph-6 of the same policy unequivocally provides that employees who were removed, dismissed or terminated shall not be treated as WAPDA employees for the purpose of the quota, and their children shall not be entitled to appointment against the reserved quota.

8. The language employed in paragraph-6 is plain, clear and mandatory. Where statutory rules, policy instructions having a statutory flavour, or service regulations prescribe disqualifying conditions in explicit terms, neither administrative convenience nor sympathetic considerations can override them. Courts are bound to give effect to the plain meaning of such provisions. Admittedly, the petitioner's father was terminated from service on account of a conviction in a criminal case, with effect from 28.10.2006. The termination order has not been disputed by the petitioner. Equally undisputed is the fact that he died in jail custody in July, 2013, almost seven years after severance of his employment relationship with WAPDA/SEPCO. Therefore, on the date of his death, he was no longer an employee within the

contemplation of the policy. The petitioner's case thus falls squarely within the exclusionary clause contained in paragraph-6 of the policy.

9. The contention that appointment was issued after due scrutiny also does not advance the case of the petitioner. It is a settled principle of law that no right can flow from an order that is contrary to law. If an appointment is made in violation of a mandatory eligibility condition, it does not create any vested or indefeasible right. Reference may profitably be made to **Engineer-in-Chief Branch through Ministry of Defence**², wherein the Supreme Court held that an authority competent to issue an order is equally competent to rescind it, and that no perpetual right can be claimed on the basis of an illegal order. A similar principle was reiterated in **Executive District Officer (Education), Rawalpindi**³, wherein it was held that where the basic order is without lawful authority, the superstructure built thereon cannot survive. The principle of locus poenitentiae does not protect a benefit conferred in violation of law. The same view was echoed in **Muhammad Nadeem Arif**⁴.

10. As regards the reliance placed upon **Mst. Rizwana Kausar** (supra), the said judgment is clearly distinguishable. In that case, appointments were sought to be cancelled on vague allegations of being “bogus”, “fake”, or “irregular”, without any specific charge of concealment, lack of qualification, or the existence of a disqualifying factor. The Supreme Court found that no substantive illegality had been established. In the present matter, however, the disqualification is neither vague nor disputed; rather, it arises directly from paragraph-6 of the governing policy. Therefore, the ratio of the aforesaid case does not assist the petitioner. On the contrary, paragraph-6 of the judgment itself recognizes distinction between cases involving a specific disqualification and those involving only procedural irregularities.

11. The next aspect concerns alleged concealment and fraud. We have noted that the respondents' own application bears an endorsement from the departmental officer concerned, indicating that the petitioner's father remained in service from 15.03.1982 to 28.10.2006 and was terminated for involvement in a murder case. This materially weakens the respondents' assertion that the petitioner procured employment by deliberate concealment.

² Engineer-in-Chief Branch through Ministry of Defence v. Jalaluddin (PLD 1992 SC 207)

³ Executive District Officer (Education), Rawalpindi v. Muhammad Younas (2007 SCMR 1835)

⁴ Muhammad Nadeem Arif v. Inspector General of Police, Punjab (2011 SCMR 408)

The record instead suggests that the relevant information was available in the departmental records before the appointment order was issued. Therefore, while the petitioner was clearly ineligible under the policy, there is insufficient material on record to make a definitive finding that he practiced fraud or intentionally concealed material facts from the department.

12. The question of violation of natural justice has also been examined. Ordinarily, an adverse order affecting civil rights should be preceded by notice and an opportunity to be heard. However, it is equally well settled that where admitted and undisputed facts lead to only one legal conclusion and the issuance of notice would serve no meaningful purpose, non-observance of that requirement may not invalidate the action. In the present case, no amount of hearing could alter the admitted fact that the petitioner's father had been terminated from service years before his death. Consequently, even if an opportunity had been afforded, the petitioner could not have established eligibility under Category "C". Therefore, while the respondents ought to have observed fair procedure, the omission, in the peculiar facts of the present case, does not justify the restoration of an appointment that was contrary to the governing policy.

13. This brings us to the final issue concerning the recovery of salary and benefits already received by the petitioner. The impugned order directs the recovery of all salaries and benefits drawn during the period the petitioner remained in service. The record shows that the petitioner actually discharged duties pursuant to an appointment order issued by the competent authority. The error in granting the appointment arose substantially within the departmental process itself. As observed above, a categorical finding of fraud or deliberate concealment cannot safely be recorded on the available material. In such circumstances, the law consistently leans against the recovery of salary paid for services actually rendered. In **Engineer-in-Chief Branch and Muhammad Younas** (supra), the Supreme Court protected salary and benefits received for services actually performed, notwithstanding the invalidity of the underlying appointment. Equity, fairness and the doctrine of quantum meruit equally support such a conclusion.

14. For the foregoing reasons, this petition is **partly allowed**. The challenge to the cancellation of the petitioner's appointment fails, and the

impugned order dated 06.01.2016, to the extent of the cancellation of the appointment, is maintained, as the petitioner was not eligible for appointment under the Employees Children Quota in view of paragraph 6 of the WAPDA Office Order dated 08.04.2004. However, the portion of the impugned order directing the recovery of salary, allowances and other monetary benefits already paid to the petitioner for the period during which he actually served the department is declared to be without lawful authority and is hereby set aside.

The petition stands **disposed of** in the above terms.

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Abdul Basit