

THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1374 of 2024

[Najaf Ali Pitafi v. Province of Sindh and others]

Before:
Justice Arbab Ali Hakro
Justice Muhammad Osman Ali Hadi

Petitioner by : M/s Abdul Naeem Pirzada and Amjad Ali Gabol, Advocates

Respondents by : Syed Israr Ahmed Shah, Assistant Advocate General Sindh along with Kashif Hussain Memon, AEO (ES&HS), Sukkur on behalf of District Education Officer (ES&HS), Ghotki at Mirpur Mathelo

Date of Hearing : **25.08.2026**

Date of Decision : **25.08.2026**

ORDER

ARBAB ALI HAKRO, J. – Through this constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks a declaration that the action of the respondents in not considering his case for appointment under deceased quota against the post of Malhi or any other suitable post in the School Education & Literacy Department is illegal and without lawful authority. The petitioner further seeks directions to the respondents to appoint him in accordance with Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974.

2. The facts, stated briefly, are that the petitioner is the son of the late Bilawal Pitafi, who was serving as Malhi in the Education Department and died in service on 02.10.2013. At the time of death of the deceased employee’s death, the petitioner was admittedly a minor, having been born on 05.03.2005. After attaining majority in March 2023, the petitioner approached the departmental authorities for appointment under the deceased quota. The record shows that his legal heirship documents, domicile, PRC and educational credentials were verified through the Deputy Commissioner, Ghotki; a vacancy position was prepared; the District Education Officer forwarded his case on 05.04.2023, and thereafter the

Director School Education forwarded the complete case to the Secretary, School Education & Literacy Department, on 12.04.2023 for further action. Despite completion of the departmental process, no final decision was taken, compelling the petitioner to invoke the constitutional jurisdiction of this Court.

3. Pursuant to directions of this Court, the matter was placed before a Scrutiny Committee constituted by the School Education & Literacy Department. The Committee examined the claim of the petitioner and vide minutes dated 14.07.2026 declined to recommend his appointment. The Committee concluded that the petitioner was a minor at the time of death of his father; that neither the widow nor any other legal heir applied within the prescribed period; that the petitioner attained majority beyond the alleged limitation period; that no application was submitted within the period contemplated under the applicable policy and public notices and that the policy did not permit reservation of a vacancy until attainment of majority. On such reasoning, the Committee held that the petitioner had acquired no vested or accrued right under deceased quota and declared his claim barred by limitation and not maintainable.

4. Learned counsel for the petitioner contended that the impugned decision is contrary to law and ignores the admitted departmental record. He argued that the petitioner's father died on 02.10.2013, well before the cut-off date. According to him, the petitioner could not be penalized for being a minor when the cause of action accrued. He submitted that, after attaining majority, the petitioner promptly approached the department, and his claim was duly verified and processed in March and April 2023. Learned counsel further maintained that the right under Rule 11-A accrued on the employee's death and was protected by subsequent pronouncements as well as the saving proviso inserted on 30.04.2026.

5. Conversely, learned Assistant Advocate General, Sindh, supported the decision of the Scrutiny Committee. He submitted that the petitioner remained a minor for a considerable period after the death of his father; neither the widow nor any other legal heir availed the opportunity available under the policy and the deceased quota scheme did not envisage keeping vacancies reserved indefinitely until a minor attained majority. He contended

that the Committee examined the matter in accordance with applicable rules and therefore no interference was warranted in constitutional jurisdiction.

6. We have heard learned counsel for the parties at considerable length, carefully examined the record and considered the relevant statutory provisions.

7. There is no dispute regarding the foundational facts. The deceased employee died in service on 02.10.2013. The petitioner is his son and legal heir. No other legal heir has been appointed under deceased quota. The departmental authorities themselves verified all requisite documents, confirmed the petitioner's status as legal heir, identified available vacancies, certified that no other heir had been appointed and forwarded the petitioner's case through the prescribed channel to the Administrative Department in April, 2023. These facts stand admitted from the official record produced by the respondents themselves.

8. The principal question requiring determination is whether the petitioner's minority at the time of death of his father extinguished his entitlement for consideration under Rule 11-A and whether the Scrutiny Committee was justified in holding that no accrued right came into existence.

9. Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 was conceived as a welfare measure intended to provide financial support to the bereaved family of a government servant who dies during service. Although the constitutional validity and future operation of deceased quota schemes came under consideration before the Supreme Court in **General Post Office, Islamabad**¹, subsequent judicial developments have clarified the legal position relating to rights which had already accrued prior to that judgment.

10. It is now well settled that where the death of a government servant occurred before the cut-off date and rights had accrued under the then prevailing legal regime, such accrued rights cannot be defeated merely because the process of consideration or appointment remained pending. The Federal Constitutional Court², while examining the effect of PLD 2024 SC

¹ General Post Office, Islamabad v. Muhammad Jalal (PLD 2024 SC 1276)

² Vide Order dated 27.02.2026, passed in F.C.P.L.A Nos.508, 591, 346, 347, 348, 589, 267, 593, 130 and 353 of 2026

1276, categorically held that the occurrence giving rise to accrual of rights is the death of the employee in service, whereas application, scrutiny and issuance of appointment orders are administrative acts consequential to such accrual. The said pronouncement, being declaratory of law, is binding under Article 189 of the Constitution.

11. Equally important is the subsequent amendment whereby a saving proviso was inserted on 30.04.2026, protecting rights that had accrued before 26.09.2024 and requiring such cases to be decided on merit in accordance with the omitted Rule 11-A. Therefore, the approach adopted by the Scrutiny Committee that no right accrued in favour of the petitioner merely because he was a minor is directly inconsistent with the prevailing legal framework.

12. The Committee appears to have proceeded on the assumption that failure of the widow to seek appointment within the stipulated period necessarily extinguished the claim of a minor child. Such reasoning is contrary to the principles recognized by the superior Courts. In *Province of Sindh v. Azhar Ali*³, the Supreme Court expressly considered cases where legal heirs were minors at the material time and held that a child cannot be deprived of a beneficial statutory right solely on account of minority. The Court observed that a minor cannot be blamed for legal incapacity and that such incapacity cannot be employed as a ground to defeat a claim otherwise protected by law.

13. The respondents' reliance upon limitation is equally misconceived. The deceased employee died on 02.10.2013. His case falls within the category of deaths that occurred prior to 16.09.2014. In **Nadir Ali Khoso**⁴, a case founded on substantially similar facts, the Divisional Bench of this Court, held that the rigid application of the two-year requirement could not be invoked against legal heirs belonging to the pre-16.09.2014 category. The said view subsequently survived challenge before the superior forum and attained finality. The case of the present petitioner stands on a stronger footing because, unlike certain other claimants, he pursued his claim

³ [c.a. 106 k 2024.pdf](#)

⁴ Order dated 15.11.2023, passed in Const. Petition No. D-110 of 2022 (Nadir Ali Khoso v. P.O. Sindh & others)

immediately after attaining majority and succeeded in securing complete departmental verification long before 26.09.2024.

14. Another aspect of the matter which cannot be ignored is the departmental conduct itself. The District Education Officer prepared a vacancy proforma reflecting available vacancies including posts of Malhi, specifically recorded that a post had been reserved in connection with the petitioner's claim and forwarded the matter after verification of all relevant documents. The Director School Education thereafter transmitted the complete proposal to the Administrative Department. Having itself processed the claim and verified the requisite particulars, the department could not subsequently ignore its own contemporaneous record and dismiss the claim solely on abstract grounds of limitation and minority.

15. That said, it must also be observed that entitlement to consideration under the saved regime does not automatically translate into an unconditional judicial appointment. Matters relating to educational qualification, availability of a suitable post, fulfillment of recruitment formalities, verification of credentials, observance of codal requirements and determination of the appropriate scale and post continue to fall within the domain of the competent Administrative Department. The Court cannot itself assume the role of an appointing authority. The lawful course is to ensure that the petitioner receives consideration in accordance with the correct legal principles and free from the errors that have vitiated the impugned decision.

16. For the foregoing reasons, we are of the considered view that the findings recorded by the Scrutiny Committee in its meeting held on 14.07.2026 are based upon a misreading of the applicable law, disregard of binding precedents and failure to appreciate the legal effect of accrued rights protected under the prevailing statutory framework. The impugned decision, therefore, cannot be sustained.

17. Consequently, the decision/recommendation of the Departmental Scrutiny Committee dated 14.07.2026, insofar as it rejects the claim of the petitioner on the grounds of minority, limitation, non-accrual of rights, non-availing of the alleged 2016 window, or inapplicability of the saved Rule 11-A, is declared to be without lawful authority and of no legal

effect. The matter is remanded to the Secretary, School Education & Literacy Department/competent Administrative Department, who shall reconsider the claim of the petitioner strictly in accordance with law, keeping in view the principles laid down in General Post Office, Islamabad v. Muhammad Jalal (PLD 2024 SC 1276), Province of Sindh v. Azhar Ali, Nadir Ali Khoso, the saving proviso inserted on 30.04.2026 and other relevant precedents governing the field. A fresh, speaking and reasoned order shall be passed preferably within ninety (90) days from the date of receipt of this order.

18. It is clarified that while the petitioner possesses a legally protected right of consideration, the competent authority shall remain at liberty to examine the residual questions relating to qualifications, suitability, availability of vacancy, verification of credentials and fulfillment of all statutory and codal requirements. Subject to fulfillment of such requirements, the petitioner's case shall be processed and decided strictly in accordance with law.

The petition along with all pending applications stands **disposed of** in the above terms. No order as to costs.

J U D G E

J U D G E

Abdul Basit