

THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 648 of 2026

[Muhammad Bilal Abbasi v. Government of Sindh and others]

Before:
Justice Arbab Ali Hakro
Justice Muhammad Osman Ali Hadi

Petitioner by : Mr. Shafique Ahmed Khan, Advocate

Respondents by : Mr. Saeed Ahmed Wassan, Assistant Advocate General Sindh

Date of Hearing : **09.09.2026**

Date of Decision : **09.09.2026**

ORDER

ARBAB ALI HAKRO J. – Through this constitutional petition, the petitioner seeks appointment under the deceased employee/son quota following the death of his father, namely the late Abid Hussain (hereinafter referred to as “**the deceased**”), who was serving as a Clerk in the District Judiciary, Sukkur, and died in service on 01.05.2024. The petitioner has relied upon the policy/instructions issued by the High Court of Sindh from time to time concerning the appointment of children of deceased, retired and serving employees of the District and Subordinate Courts in Sindh, as well as subsequent legal developments concerning Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 (hereinafter referred to as “**the Rules of 1974**”).

2. The petitioner asserts that his date of birth is 31.01.2001 and, consequently, that he was a major on the date of his father’s death. It is further his case that he submitted his application for appointment against the deceased quota within the prescribed period and that his claim remained pending without being decided. Copies of the relevant documents, including the Death Registration Certificate, Family Registration Certificate, Heirship Certificate, service record, and applications submitted before the concerned authorities, have been placed on record.

3. It is also an admitted feature of the record that the petitioner had earlier approached this Court through C. P. No. D-1558 of 2024 (hereinafter referred to as “**the earlier petition**”), which was dismissed in *limine* vide order dated 20.03.2025. The said order proceeded principally on the basis of the judgment of the Hon’ble Supreme Court in *General Post Office, Islamabad v. Muhammad Jalal*¹ (hereinafter referred to as “**Muhammad Jalal**”), whereby Rule 11-A of the Rules of 1974 had been declared ultra vires. At the time of dismissal of the earlier petition, the subsequent legal developments which now require consideration had not yet taken place.

4. Learned counsel for the petitioner has drawn our attention to the fact that the deceased died on 01.05.2024, i.e. prior to 26.09.2024, the date on which *Muhammad Jalal* was pronounced. It is submitted that the petitioner was already a major and had applied within time, and therefore his claim did not arise after the declaration of invalidity of Rule 11-A. Learned counsel has further relied upon the judgment of the Federal Constitutional Court of Pakistan dated 27.02.2026 in *Province of Sindh v. Muhammad Rizwan Khan*² and upon the Notification dated 30.04.2026 issued by the Services, General Administration & Coordination Department (Regulations Wing), Government of Sindh (hereinafter referred to as “**the Notification**”).

5. Learned Additional Advocate General, Sindh, has opposed the petition, inter alia, on the ground that Rule 11-A has already been omitted/struck down pursuant to *Muhammad Jalal*; that the petitioner has not been issued any appointment order; that the earlier petition filed by him has already been dismissed by this Court; and that the policy on the basis of which the petitioner seeks appointment has subsequently been reconsidered by the Administration Committee of this Court. It has further been submitted that, after the decision of the Administration Committee dated 16.11.2024 and its circulation through the Registrar, no appointment can presently be claimed merely on the basis of the earlier policy.

6. We have heard learned counsel for the petitioner and learned Additional Advocate General, and have examined the available record as

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

² *Province of Sindh v. Muhammad Rizwan Khan* Federal Constitutional Court of Pakistan, F.C.P.L.A. Nos. 508, 591, 346, 347, 348, 589, 267, 593, 130 and 353 of 2025, decided on 27.02.2026.

well as the legal developments which have taken place subsequent to the dismissal of the earlier petition.

7. Since the petitioner has earlier invoked the constitutional jurisdiction of this Court for the same relief, the question of maintainability must be addressed at the outset. The principle of *res judicata* applies to proceedings under Article 199 of the Constitution and a party against whom a matter stands determined is precluded from re-agitating the same matter on the same plea.³ That bar, however, operates upon the cause which stood determined; it does not shut out a cause which comes into existence thereafter. The petitioner does not ask us to re-examine the order dated 20.03.2025 upon the material then available. His case rests on two later developments, i.e., the judgment of the Federal Constitutional Court dated 27.02.2026 and the Notification, neither of which existed when the earlier petition was dismissed. To that limited extent and no further, the present petition is maintainable. We make it clear that we are neither sitting in appeal over nor reviewing the order dated 20.03.2025, which holds the field upon the material on which it was made.

8. The question, accordingly, is whether the petitioner's claim is liable to be examined afresh in light of the Federal Constitutional Court's judgment and the Notification, and, if so, by which authority and within what limits.

9. In *Muhammad Jalal* the Supreme Court declared the policies, office memoranda and rules under which appointment is provided, without open advertisement, competition and merit, to the widow/widower, spouse or child of a civil servant who dies in service or is invalidated or incapacitated for further service, including Rule 11-A of the Rules of 1974, to be discriminatory and *ultra vires* Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution and directed the prescribed Federal and Provincial authorities to withdraw the same. It was also clarified that the judgment shall not affect appointments already made of the widow/widower, spouse or child of deceased or retired civil servants.⁴ The petitioner holds no appointment order and cannot, therefore, claim the benefit of that saving of its own force. On this footing, the earlier petition was dismissed.

³ *Ch. Riaz Ahmad v. Punjab Textbook Board, Lahore* 2006 SCMR 867.

⁴ *Muhammad Jalal* (n.1 above).

10. The matter, however, does not rest there. The Federal Constitutional Court of Pakistan, in *Province of Sindh v. Muhammad Rizwan Khan*⁵, considered whether the declaration concerning Rule 11-A could extinguish rights that had accrued before that judgment. The Province of Sindh contended that Rule 11-A had been struck down and that no right could be claimed without formal appointment orders. That contention was not accepted. It was held that the event giving rise to the right is the death of the civil servant, that the subsequent process of application and issuance of the appointment letter consists of administrative acts and that *Muhammad Jalal* would not be applied retrospectively so as to defeat rights already accrued. The petitions filed by the Province were accordingly dismissed.

11. That pronouncement bears directly on the present matter, because the deceased died on 01.05.2024, whereas Muhammad Jalal was pronounced on 26.09.2024. Thus, on the factual premise pleaded by the petitioner, the event on which his claim is founded occurred some months before the date of that judgment.

12. The subsequent decision therefore materially alters the legal context in which the earlier petition was dismissed. The order dated 20.03.2025 proceeded on the premise that the declaration concerning Rule 11-A precluded any further consideration of deceased-quota claims. It is now clarified that the absence of an appointment order issued before 26.09.2024 does not, by itself, answer the earlier question of whether the claim had already accrued under the legal regime in force on the date of death.

13. So far as the Province of Sindh is concerned, the position is reinforced by the Notification. As placed before us, it recognizes that where a right to employment had accrued before 26.09.2024, the legal heir is not to be deprived of the benefit so accrued, and that such a claim is to be considered and decided at the level of the Administrative Department, on merit and in accordance with the terms set out therein. The vires of the Notification is not in issue before us, and we say nothing thereupon; it is, however, an instrument presently in force, which the competent authority is bound to take into consideration.

⁵ *Muhammad Rizwan Khan* (n.2 above).

14. Thus, the present case cannot be disposed of merely by repeating the proposition that Rule 11-A stands omitted or declared *ultra vires*. The question is whether the petitioner's claim had accrued before 26.09.2024 and, if so, which authority is competent under the applicable service framework to process and decide it.

15. However, there is an aspect that distinguishes the present case from matters concerning civil servants of the provincial departments. The deceased was an employee of the District Judiciary, Sukkur. The appointments of employees of the District and Subordinate Judiciary are governed by the Sindh Judicial Staff Service Rules, 1992 (hereinafter referred to as "**the Rules of 1992**") and by the instructions issued by this Court, the District and Subordinate Courts being subject to the superintendence and control of the High Court under Article 203 of the Constitution.

16. Rule 4 of the Rules of 1992 provides, inter alia, that appointments to the service in a Sessions Division are to be made by the District Judge for the Sessions Division, subject to the applicable provisions of the Rules of 1974 and other general rules and in accordance with such instructions as the High Court may issue.

17. The record before us shows that this Court has, from time to time, issued instructions regarding the appointment of children of deceased, retired and serving employees of the District and Subordinate Courts. In particular, the policy circulated by letter dated 03.03.2010 recorded the decision of the Administration Committee dated 14.11.2009 and directed the District and Sessions Judges in the Province to follow it. Subsequent instructions dated 23.07.2012, 04.03.2013 and 03.08.2023 also formed part of the administrative framework governing appointments in the District Judiciary.

18. Learned District & Sessions Judge, Sukkur has, however, in his report⁶ drawn attention to a subsequent decision of the Administration Committee dated 16.11.2024, whereby the earlier policy dated 14.11.2009 was revised and it was decided that no person would be entitled to claim appointment on deceased/son quota on the basis of that earlier decision. The

⁶ Report of the learned District & Sessions Judge, Sukkur dated 02.09.2026.

revised position was circulated by the Registrar through letter dated 05.12.2024. It is stated that, to date, no further communication has been received modifying, withdrawing or otherwise altering that revised policy.

19. This administrative development cannot be ignored. Equally, it cannot be treated as conclusive against the petitioner without examining the effect of the subsequent pronouncement of the Federal Constitutional Court and of the Notification. Whether a revision of policy made after the death of the deceased can operate upon a claim said to have accrued on the date of death is a question that must be addressed and answered with reasons, by the competent authority in the first instance.

20. We are also conscious that the claim arises in the District Judiciary, where the appointing authority is not the Secretary of a Provincial Administrative Department but the competent authority under the Rules of 1992 and the applicable instructions of this Court. The reference in the Notification to an “Administrative Department” cannot, therefore, be read mechanically as requiring the case of the petitioner to be transferred to the Law Department or to any other Provincial Department; in relation to the District Judiciary that expression must be read as the authority competent to appoint under the Rules of 1992.

21. Whether the petitioner is otherwise eligible, whether the post for which he seeks appointment falls within the applicable category, whether the prescribed conditions were fulfilled, whether his application was made within the prescribed period and how the decision of the Administration Committee dated 16.11.2024 is to be reconciled with the subsequent pronouncement of the Federal Constitutional Court and the Notification, are matters for examination by the competent appointing authority in the first instance.

22. A word of caution is necessary. Upon the death of an employee, if the prescribed conditions are satisfied, what accrues is a right to have the claim considered in accordance with the instrument under which it is made; it is not a right to appointment, let alone to a particular post. Eligibility, prescribed qualifications, the application being made within the prescribed period, the availability of a sanctioned post in the permissible category, and compliance with the applicable rules and instructions must all be satisfied before such a

claim can be allowed. Nothing in this order is to be read as a finding that the petitioner fulfils any of these requirements.

23. The report of the learned District & Sessions Judge itself demonstrates that the claim has not been examined in light of the legal developments that occurred after the dismissal of the earlier petition. The learned District & Sessions Judge has understandably relied upon the decision of the Administration Committee dated 16.11.2024; however, the record does not show that the individual claim of the petitioner has been considered in light of the subsequent binding declaration and the Notification.

24. In these circumstances, it would neither be appropriate to direct the appointment of the petitioner straightaway, nor would it be just and proper to dismiss the petition merely on the ground that Rule 11-A stands omitted or that the earlier policy was subsequently revised.

25. In our considered view, the proper course is to require the learned District & Sessions Judge, Sukkur, who is the authority competent to appoint under the applicable judicial service framework, to decide the pending claim of the petitioner in accordance with the law as it now stands. Accordingly, this petition is **disposed of** in the following terms: -

- i) The petitioner's application for appointment against the deceased quota shall be treated as pending before the learned District & Sessions Judge, Sukkur, who shall decide it by a reasoned and speaking order after examining the original service record, the application and supporting documents, the petitioner's eligibility, the policy and instructions applicable to the District Judiciary, the Administration Committee's decision dated 16.11.2024, the Notification, and the binding pronouncements of the superior Courts.
- ii) The petitioner shall be afforded an opportunity of hearing before the decision is made, and the order so made shall be communicated to him.
- iii) The aforementioned exercise shall be completed within ninety (90) days of receipt of this order.

- iv) If considered necessary, the learned District & Sessions Judge, Sukkur, may, before deciding, obtain clarification from the Registrar, High Court of Sindh, Karachi, as to the presently operative policy and instructions applicable to the appointment of children of deceased employees of the District and Subordinate Judiciary, having regard in particular to Muhammad Jalal, the judgment of the Federal Constitutional Court in Muhammad Rizwan Khan, the Notification, and the decision of the Administration Committee dated 16.11.2024 read with the Registrar's letter dated 05.12.2024. Such clarification, if required, shall be sought forthwith and shall not be a ground for exceeding the period fixed above.
- v) The purpose of seeking such clarification shall not be to reopen or question the binding judgments of the superior Courts, but only to ascertain the currently operative administrative instructions of this Court in relation to the District Judiciary.
- vi) The decision shall be made strictly in accordance with the law and shall be uninfluenced by any observations made in this order, which have been made only to identify the questions requiring consideration and not as an expression of opinion upon the merits of the claim.
- vii) It is clarified that this Court is not directing the issuance of an appointment order in favour of the petitioner, nor is the matter being transferred to the Law Department or any other Provincial Department.

Office is directed to communicate a copy of this order to the learned District & Sessions Judge, Sukkur, for compliance and to the Registrar, High Court of Sindh, Karachi, for information.

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