

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D- 3657 of 2017

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Ehsan Ali Siddiqui

Petitioners

VERSUS

Province of Sindh
& others

Respondents

Dates of hearing: 05.03.2019

Date of decision: 05.03.2019

Petitioner present in person

Mr. Allah Bachayo Soomro, Addl. A.G

ORDER

ADNAN-UL-KARIM MEMON, J.- Through instant petition, the petitioner is seeking the direction to Respondents No.1 to 4 to appoint his son under policy decision taken by the Government of Sindh vide notification No. SORI(S&GAD/2-3/02(P-III) dated 30.07.2011.

2. Brief facts of the case as per pleadings of the parties are that on 11.06.1996 petitioner retired in BPS-16 from the service of respondent-department on medical ground. Basic grievance of the petitioner is that his son is entitled for initial appointment as per policy decision of Government of Sindh notified on 16.09.2014 under Rule 10-A and Rule 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer) Rules,1974.

3. Petitioner present in person has submitted that where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his children shall be provided job on any of the pay scales 1 to 10 in the Department in which the civil servant was working without observance of prescribed formalities if such child is otherwise eligible for the post; that petitioner cannot be deprived of the benefit accrued to him under policy decision notified on 11.03.2008 and 17.07.2009 under the aforesaid statutory rules; that the son of petitioner applied to various departments for appointment upon any post but till today he is awaiting for the job; that son of the petitioner is only supporter of his family; that different

departments have advertised many posts through newspapers but the petitioner's son has not been accommodated as per policy discussed supra on the purported plea that there is ban on fresh appointments. In support of his contention he relied upon the decision made by this court on 19.09.2017, whereby various departments of Government of Sindh were directed to accommodate the deserving candidates/petitioners in terms of their prayers. He next submitted that the office of the respondents have also made several appointments since 2009 to 2017, whereas the petitioner's son have been kept on hollow hopes; that son of petitioner has been running from pillar to post for his appointment but his grievance has not been redressed; that the act of respondents by not appointing or accommodating the petitioner's son is against the principle of natural justice; that due to non-appointment of son of the petitioner on son quota, the entire family of the petitioner is suffering and if the situation remains as it is, the petitioner's family shall pass hard days. He prays for allowing the captioned petition on the same terms as earlier decided by this court vide common order dated 19.09.2017.

4. Upon service of notice, respondents No.3 & 4 filed their comments. In the comments it has been stated that petitioner was serving in their department on different posts and finally retired in the year 1998 on medical ground; that his case does not come under the purview of the aforesaid notification as discussed supra as he stood retired well before the issuance of notification regarding invalidated or incapacitated quota reserved for those employees; that Services, General Administration and Coordination Department, Government of Sindh vide Notification No.SORI (S&GAD/2-3/02(P-III) dated 30.07.2011 in supersession of the department's all notifications issued in this behalf, the Government of Sindh made the following amendments:-

“11-A where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his/her children or, as the case may be widow (when all the children of the deceased employees are minor) shall be provided job applies within a period of two years of death, or declaration of invalidity or incapacity of civil servant on any of the basic scales 1 to 15, in the Department where such civil servant was working provided that such appointment shall be made after fulfillment of formalities as required in the recruitment rules and holding interview, for the post applied for”.

5. Mr. Allah Bachayo Soomro, Addl. A.G has argued that the aforesaid rules of appointment on deceased quota were notified in the year 2002 whereas the petitioner stood retired in the year 1998; that son of the petitioner or any of his family member has never applied in the department of respondents' for any job under the aforesaid quota; that the notification of relaxation of age applied upon

fresh appointments; that the application of the petitioner was received in the office of respondents through District and Sessions Judge Hyderabad regarding redressal of grievance of the petitioner. The Honourable District Judge Hyderabad observed that due to ban on fresh appointments, the application for appointment be kept on record and be considered whenever jobs are advertised by the Department. He lastly prayed for dismissal of the petition.

6. Heard the parties on the issue of initial appointment on son quota under policy decision taken by the Government of Sindh vide notification No. SORI(S&GAD/2-3/02 (P-III) dated 30.07.2011 and perused the material on record.

7. In order to clarify the legal position that has emerged in the present case we first take up legal issue of appointment in various departments of Sindh Government through policy decision as provided under Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974).

8. After thorough examination, we have noted that Rule 10-A & Rule 11-A until 30th July, 2011, published on 01.09.2011 were as follows:

“10-A. Notwithstanding anything contained in these rules, where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his unemployed children or, as the case may be widow (when all the children of the deceased employee are minor) may be employed against a post meant for initial appointment in BPS-16 and 17 for which he/she possess the minimum qualifications prescribed to that post;

Provided that such child or widow may be given ten additional marks in the aggregate by the Sindh Public Service Commission or the appropriate Selection Board or Committee, if he or she otherwise qualifies the test, examination or interview;

Provided further that a person who may have applied under this rule and qualifies purely on merit shall not be awarded any additional marks and his selection shall be made on merit and not under this rule;

Provided further that the cut of date shall be within two years of the death of the officer or official.

11-A. Where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his/her children or, as the case may be, widow (when all the children of the deceased employee are minor) shall be provided job who applies within a period of two years of death or declaration of invalidity of incapacity of civil servant on any of the basic pay scales No.1 to 15 in the Department where such civil servant was working;

Provided that such appointment shall be made after fulfillment of formalities as required in the requirement rules and holding interview, for the post applied for;

provided further that the cut of date shall be within two years of the death of the officer or official”

Third proviso of Rule 10-A as well as second proviso of Rule 11-A, specifically provides cutoff date for making application for appointment under the deceased employees quota within 2 years of the occurrence of death of the Government Official. Through a further Notification dated 16.09.2014, two further provisos were added in Rule 10-A and 11-A and they are as follows:-

“1. Under Rule 10-A after third proviso, the following fourth proviso shall be added:-

“Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notification dated 11.03.2008 and 17.07.2009 of these rules.”

2. Under Rule 11-A, after second proviso, the following third proviso shall be added:-

“ Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notifications dated 11.03.2008 and 17.07.2009 of these rules”

9. We have noted that Services, General Administration and Coordination Department, Government of Sindh issued various Notifications by allowing relaxation up to 15 years maximum in the upper age limit to all the applicants applying for vacancies in all departments of Government of Sindh; that Notification dated 26.02.2014 issued by the Chief Secretary, Government of Sindh clearly spells out that this relaxation is applicable in all departments of Government of Sindh except in police service, which reads as follows:-

NOTIFICATION

“No. SO11 (S& GAD) 5-64/2011: In continuation of this Department’s Notification No. SOII (S&GAD 6-12/2004, dated 02.10.2012 and with the approval of Chief Minister, Sindh notwithstanding the contents of table given under Rule 12 (2) of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and the orders contained in this Department’s Standing Order No. SORI (SGA & CD) 6/4/85, dated 19.04.2004, Standing Order No. SORI (SGA & CD) 6/4/85 dated 15.06.2004 and Corrigendum dated 02.07.2004 issued in this behalf, Government of Sindh are

pleased to allow relaxation upto maximum of 15 (fifteen) years in the upper age limit to all the applicants applying for the vacancies in all the years in the upper age limit to all the applicants applying for the vacancies in all the departments of Government of Sindh, except Police Service & the posts to be filled through combined competitive examination by the Sindh Public Service Commission to be filled during the period with effect from 1st July 2013 to 30th June 2014 in relaxation of Rules.

Sd/-
SALIM SAJJAD HOTIANA
CHIEF SECRETARY
GOVERNMENT OF SINDH

10. We are cognizant of the fact that the Honorable Supreme Court in C. P. No. 482-K & 503-K of 2016 vide order dated 10.08.2016 has held that the above two provisos added by Notification dated 16.09.2014 omit the application of Notifications dated 11.03.2008 and 17.07.2009 to those candidates under the above quota whose right of employment has already occurred. In Notification dated 17.07.2009, the cutoff date for making application for employment under the above quota was provided as 17.07.2009. It is clear from Notification dated 16.09.2014 that the clog of two years for making application for employment under the deceased quota for the children who have already applied for employment prior to making of this rule, was done away.

11. In the light of above discussion, it is crystal clear that the respondent Department can make recruitment to the post applied by the petitioner's son on the basis of invalidated or incapacitated quota reserved for those employees by issuing appointment order by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. In our view public employment is source of livelihood; therefore no citizen shall be discriminated in the said matter on the grounds as provided under Article 27 of the constitution. The government is bound to make certain quota of appointments or posts in favour of any backward class of citizen which in the opinion of the government is not adequately represented in the services under the state. That is why Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 as amended up-to-date is introduced to cater that situation to accommodate the invalidated or incapacitated civil servants. Resultantly, we do not find any impediment in allowing the instant petition.

13. In the light of above facts and circumstances of the case, the instant Petition is hereby disposed of in the terms, whereby the Chief Secretary to Government of Sindh is directed to consider the case of Petitioner's son for appointment on any post in BPS-1 to 3 on the basis of Rule 11-A of Sindh Civil Servants (Appointment,

Promotion and Transfer) Rules, 1974, in accordance with law and dicta laid down by the Honourable Supreme Court of Pakistan in the case referred to herein above within a period of two months from the date of receipt of this order.

14. In view of what has been discussed above, the instant Constitutional Petition is disposed of in the above terms along with pending application(s).

JUDGE

JUDGE

Karar_hussain/PS*