

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

C.P. No.D-2323 of 2014

Present

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Muhammad Sultan ----- Petitioner

Vs.

Province of Sindh through
Secretary Home Department
& others ----- Respondents

Date of hearing 05.03.2019

Petitioner present in person.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh along with
PDSP Shoukat Siddique & SIP Noor Muhammad on behalf of DIGP,
Hyderabad.

ORDER

ADNAN-UL-KARIM MEMON-J: - The instant petition alongwith other
connected petitions were disposed of vide common order dated 05.10.2016 with the
following observations:-

“6. In view of the notification referred supra, by consent of the parties, all the above cited Constitution Petitions and Contempt Applications stand disposed of. It is made clear that the petitioners in all the captioned petitions will move their fresh applications along with all the requisite attested documents to the Chairman/ Chief Secretary, Government of Sindh, Karachi, within four weeks and the Committee shall examine all the cases individually and decide the applications of the petitioners within four months by affording proper opportunity to the petitioners and after completing all the codal formalities strictly in accordance with rule 11 (A) of Sindh Civil Servants (appointment, promotion and transfer) Rules, 1974 as well as Government policy in vogue. In case, the Committee fails to decide the applications submitted by the petitioners within the stipulated period, petitioners would be at liberty to file contempt applications against Chairman of subject committee/ Chief Secretary before this Court for redressal of their grievances. Above disposal of the petitions and contempt applications are subject to the decisions/ judgment of the Honorable Supreme Court of Pakistan or High Court of Sindh on the subject controversy, wherein, the effect or implementations of the above Notifications would have been examined and decided otherwise. Copy of this order may be transmitted to the Chief Secretary, Government of Sindh, Karachi as well as Additional Advocate General, Sindh, for information and strict

compliance. Compliance report shall be submitted through Additional Registrar of this Court.”

2. On 27.09.2017, petitioners filed an application (MA No.12377 of 2017) under Section 3 & 4 of the Contempt of Court Act read with Article 204 of the Constitution of Islamic Republic of Pakistan for initiating contempt proceedings against the alleged contemnor.

3. Petitioner /applicant who is present in person submits that even after clear directions of this Court, so also being qualified and deserving candidate, he is not appointed; that several appointments have been made thereafter but the applicant in spite of fulfilling all the criteria and formalities is still awaiting for compliance of the decision passed by this court; that the contemnors are not responding to the case of the applicant on the ground that no vacancy is available in district Hyderabad for his appointment. He prays for compliance of the aforesaid order passed by this court.

4. Learned Additional Advocate General submits that the father of petitioner was invalidated on 24.07.1997 and as per policy of Government of Sindh case of petitioner does not cover the criteria for recruitment against deceased quota. He next added that no case for contempt of court is made out. He prays for dismissal of the listed application.

5. Heard the parties on the listed application on issue of initial appointment on son quota under policy decision taken by the Government of Sindh as provided under Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974) and perused the material on record.

6. We have noted that the captioned petition was disposed with the observation that the petitioners in all the captioned petitions will move their fresh applications along with all the requisite attested documents to the Chairman / Chief Secretary, Government of Sindh, Karachi, within four weeks and the Committee shall examine all the cases individually and decide the applications of the petitioners within four months by affording proper opportunity to the petitioners and after completing all the codal formalities strictly in accordance with rule 11(A) of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 as well as Government Policy in vogue.

7. The question involved in the present petition is, whether the petitioner can be appointed on a quota for the pensioner who was declared invalidated during police service.

8. 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).

9. 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 of 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”

10. To appreciate further the aforesaid factum, we have noted that office of Inspector General of Police Sind Karachi vide order dated 09.06.2014 issued Standing Order No.279/2014 notifying the recruitment in Sindh Police against Shaheed Quota, Son Quota (children of deceased, invalidated on medical grounds, retired and in-service police officers/men), issued by Inspector General of Police without approval of Provincial Government, the same has no legal status in view of the decision rendered by Honorable Supreme Court in the case of Gul Hassan Jatui, whereby the Honorable Supreme Court has held that Standing Orders issued by Inspector General of Police has to be approved by the Provincial Government. Admittedly, the subject Standing Order has not been approved by the Provincial Government, therefore no sanctity can be attached with Standing Order No.279/2014 to claim benefit out of it. This is the prerogative of the Provincial Government to make appointment/ recruitment in police department through publication in the newspaper and in transparent manner. Even otherwise, the same powers are subject to approval of the Government. Moreover Rule-11-A of Sindh Civil Servant (Appointment, Promotion, Transfer Rules-1974) provides a complete mechanism for appointment against son quota as discussed supra.

11. We are cognizant of the fact that the Honorable Supreme Court in C.P. No. 482-503-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.

12. From the above discussion, it is crystal clear that the respondent police Department can make recruitment to the post applied by the petitioners 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 as discussed supra. 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 of Sindh 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 the 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 giving direction to implement the decision rendered by this court on 05.10.2016. The respondents cannot circumvent the order passed by this court and take summersault to avoid making appointment of the petitioner against the aforesaid quota.

13. The applicant has emphatically asserted that the respondent police department has already accommodated the sons of various retired police officials on the ministerial posts; he pleaded his case on the basis of Hameed Akhtar Niazi vs. Government of Pakistan and others (1996 SCMR 1185). If this is the position of the case, the Chief Secretary Government of Sindh is directed to re-consider the case of the Applicant on the foresaid analogy without discrimination within two weeks' time from the date of receipt of this order.

14. In the light of above discussion, before taking cognizance of non-compliance of the orders passed by this court, let Chief Secretary, Government of Sindh complete the aforesaid exercise within stipulated time. The hearing of the listed application (M.A. No.12377 of 2017) is adjourned to be taken up after two weeks.

15. Let a copy of this order be communicated to Chief Secretary Government of Sindh, for information and compliance. However it is made clear that if the order passed by this court is not complied with in its letter and spirit, the Chief Secretary will be called in person for his explanation.

JUDGE

JUDGE