

IN THE HIGH COURT OF SINDH AT KARACHI.

Constitutional Petition No.D-3400 of 2012.

Present.

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Sarfraz Ali Petitioner

Versus

Province Sindh and others Respondents.

Date of hearing: **26.09.2018**

Mr. Abdul Samad Memon, Advocate for the Petitioner.

Mr. Shehryar Mehar, Assistant Advocate General Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J:-, The Petitioner, basically claims appointment on the basis of son /deceased quota under Rule 11-A Sindh Civil Servant (Appointment, Promotion and Transfer) Rules 1974. Petitioner has submitted that his father was employed as Non-Medical Evaluator in BPS-16 in the office of the Executive District Officer Health Larkana. Petitioner has submitted that his father passed away while in service on 05.05.1997 such Obituary was issued by the Executive District Officer. Petitioner has submitted that on 16.02.2006 he applied for employment on the basis of son/deceased quota and the application was duly received by the Respondent Department and the same was forwarded to the Secretary Health Department Government of Sindh for favorable consideration vide letter dated 23.08.2006 but

nothing was done by the Respondent department for the reasons best known to them. Petitioner being aggrieved by and dissatisfied with the aforesaid act of the Respondent department has filed the instant petition on 10.09.2012.

2. The facts of the case of Petitioner are that the father of the Petitioner was working in Health Department Government of Sindh as Non-Medical Evaluator, Malaria Control Program Larkana and during service he passed away on 04.05.1997. Petitioner added that in the year 2006 he applied for any suitable post in the Health Department on son/deceased quota and his case was referred to the Secretary Health Department, Government of Sindh Karachi for favorable consideration vide letter dated 23.08.2006 issued by Director Malaria Control Program Sindh Hyderabad. Petitioner claims that he has requisite qualification to be appointed on any suitable post under Rule 11-A of the Sindh Civil Servant (Appointment Promotion and Transfer) Rules 1974 as amended upto date but the Respondents are not willing to appoint the Petitioner on any suitable post in the Respondent department in spite of favorable recommendation.

3. Upon notice, the Respondents No. 4, & 5 have filed their para-wise comments.

4. Mr. Abdul Samad Memon, learned Counsel for the Petitioner has argued that the Petitioner is qualified to be appointed against any post on the basis of son/deceased quota in the Respondent department under rule 11-A Sindh Civil Servant (Appointment

Promotion and Transfer) Rules 1974; that the Petitioner has been persistently pursuing the departmental hierarchy for his appointment on any suitable post on Son quota; that the case of the Petitioner was forwarded to the competent authority for consideration but till today no response has been received; learned counsel raised point of discrimination and argued that the Respondent department appointed various persons on the basis of son quota but the case of the Petitioner being an eligible candidate for any suitable post has not been considered for his appointment; that Respondents are discriminating the Petitioner in violation of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974; that the Petitioner has been seriously prejudiced as he has not been treated equally, therefore, the Petitioner is entitled to be treated equally in accordance with law, as provided under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that grave injustice has been made with the Petitioner for no fault on his part by depriving him for the appointment to any suitable post, for which he meets all the prerequisite; that due to such acts and deeds of the Respondents, the Petitioner has suffered mental torture, agonies and by such situation, the Petitioner is facing other problems too; that the denial in this regard by the Respondents amount to invade upon and infringement of fundamental and legal rights of the Petitioner, as guaranteed under the Constitution of Islamic Republic of Pakistan 1973 that are enforceable by this Court in exercise of its Constitutional jurisdiction; that the Petitioner, thus, have legal right/ interest in ensuring that the Petitioner be dealt with in

accordance with law; that the Petitioner has been continuously approaching personally to the department to appoint him on any suitable post on the basis of Son quota but of no avail compelling the petitioner to approach this Court for redressal of his grievances. He lastly prayed for allowing the instant Petition.

5. Mr. Shehray Mehar, learned A.A.G Sindh, representing the Respondents, has contended that the application of the petitioner was processed to the Respondent No.3 i.e. Secretary Health Department Government of Sindh for recruitment against son / deceased quota. He lastly prayed for passing an appropriate order to meet the ends of justice. In support of his contention he relied upon the comments of Respondent Nos. 4 & 5, who have supported the stance of the Petitioner.

6. We have heard learned counsel for the parties and perused the material available on record.

7. Important question of law involved in the subject Petition is as follows:

Whether Petitioner can claim appointment on any post against Son/deceased quota under Rule 11-A Sindh Civil Servant (Appointment, Promotion and Transfer) Rules 1974?

8. We have perused the comments filed on behalf of the Respondent Nos. 4 & 5, which prima facie show that the Petitioner's application addressed to the Secretary Health Department, Government of Sindh for recruitment against son/deceased quota was processed for favorable consideration

and there is no opposition so far as case of the Petitioner for consideration against any post in the Health Department against son/deceased quota as provided under Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 is concerned.

9. In order to clarify the legal position that has emerged in the present case we first take up legal issue of appointment in Health Department, Government of Sindh under Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974.

10. Learned counsel for the Petitioner while laying emphasis on Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974) argued that Petitioner cannot be non-suited on any ground. However, after thorough examination we have noted that Rule 10-A and 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”

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 with.

12. In the light of above discussion, it is crystal clear that Respondent Department can take resort of the aforesaid law to make recruitment to the post on the basis of Son/deceased quota by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, subject to the conditions as enumerated in the Rule 11-A supra and principles enunciated by the Honourable Supreme Court of Pakistan in C. P. No. 482-503-K of 2016, vide order dated 10.08.2016

13. In view of what has been discussed above, the instant Constitutional Petition is disposed of with directions to the competent authority to make a decision on the appointment of the petitioner under Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and the dicta laid down by

the Honourable Supreme Court of Pakistan in C. P. No. 482-503-K of 2016 within a period of two months from the date of receipt of the order passed by this Court. All the pending application(s) are disposed of accordingly. Let a copy of order be sent to the Secretary Health for information & compliance.

Karachi
Dated: 26.09.2018

JUDGE

JUDGE

Shafi Muhammad /P.A