

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -763 of 2021

Ayub Khan

Versus

The District & Sessions Judge & 02 others

Date of hearing
& order : 04.02.2021

Mr. Abdul Ghaffar, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. - Through the instant petition, the petitioner is seeking direction to respondents to appoint his son on any suitable post as per his qualification, on quota reserved for the employees who stood retired from the service of the subordinate judiciary under the policy decision /directives of the Hon'ble Chief Justice of this Court vide letters dated 03.03.2010, 23.7.2012 & 4.3.2013.

2. We asked the learned counsel to satisfy this Court as to how this petition is maintainable under Article 199 of the Constitution about the appointment of sons of deceased/retired and serving employees of the District and subordinate Courts in Sindh, in the light of Rule 11-A of Sindh Civil Servant (Appointment, Promotion, and Transfer Rules, 1974), which speaks of only deceased quota and not son quota.

3. Mr. Abdul Ghaffar, learned counsel for the petitioner, has replied to the aforesaid query with the assertion that the learned District & Sessions Judge Karachi West was/is reluctant to appoint his son in the light of policy decision of the Hon'ble Chief Justice of this Court on the subject issue. He averred that he has a legitimate right to know the reasons for declining his request for the appointment of his son by the competent authority. He further argued that after his retirement from the service of the subordinate Court on 06.12.2020 has the right to ask for the appointment for his son under the aforesaid policy. He prayed for the direction to the District & Sessions Judge Karachi West to appoint his son on any ministerial post based on son quota.

4. We have heard the learned counsel for the petitioner on the issue of son quota in subordinate judiciary under the aforesaid policy decision taken by the Administrative Committee of this Court and perused the material on record.

5. Prima facie, the issue is related to the appointment based on son quota in District judiciary. The important question involved in the present petition is that whether the Petitioner's son is entitled to be appointed on the son quota basis in view of policy decision /directives of the Hon'ble Chief Justice of this Court vide letters dated 03.03.2010, 23.7.2012 & 4.3.2013.

6. We have noticed that the District judge Karachi, West invited applications for various posts in his District in the year 2020; which explicitly show that appointments on the subject posts were/are required to be made on merit rather than the policy as discussed supra. Primarily the District Judge and employees working under his administrative control fall within the term of the member of subordinate judiciary as defined under section 2(1) (bb) of The Sindh Services Tribunals Act,1973; and, are Civil Servants as defined under section 2 (1) (b) of the Sindh Civil Servants Act 1973, an excerpt of the section 2(1)(bb) is reproduced as under:

“2.....

(1).....

(bb) “member of the subordinate judiciary” means a District and Sessions Judge, Additional District and Sessions Judge, Senior Civil Judge and Assistant Sessions Judge, Civil Judge and Judicial Magistrate and includes an officer and servant of the High Court or any employee working under the administrative control of the District and Sessions Judge wherever he may be.”

Thus Rule 11-A of Sindh Civil Servant (Appointment, Promotion, and Transfer) Rules, 1974 fully attracts in their case, which spells out that 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 a widow (when all the children of the deceased employees are minor) shall be provided job 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.

7. To clarify the legal position that has emerged in the present case we first take up the 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). After the thorough examination, we have noted that Rule 10-A & Rule 11-A until 30th July 2011, published on 01.09.2011 was 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; 4 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”

8. Third proviso of Rule 10-A as well as the second proviso of Rule 11- A, specifically provides a cutoff date for making the application for appointment under 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 are also cognizant of the fact that 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 the 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 the application for employment under deceased quota for the children who have already applied for employment before making of this rule, was done away.

10. In the light of the above discussion, it is crystal clear that the subordinate judiciary has to make recruitment to every post applied by the candidates on open merit as well as based on invalidated or incapacitated/minority/differently-abled and deceased quota reserved for those employees by issuing appointment order by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974.

11. In our view public employment is a 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 quotas in appointments or posts in favour of any less privileged class of citizen which in the opinion of the government is not adequately represented in the services under the state. That's 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 aforesaid categories of civil servants.

12. Before parting with this order, we may observe that the appointment in the public office can only be made through the competitive process on merit as provided under the recruitment rules and not otherwise as discussed supra. It is well-settled law that appointments in public office are to be made strictly under applicable rules and regulations without any discrimination and in a transparent manner. Thus, all appointments in the public institution must be based on a process that is palpably and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws. However, if the candidate has applied based on Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, he can be accommodated subject to his qualification for the post under the dicta laid down by the Honorable Supreme Court of Pakistan in the case referred to hereinabove. On the aforesaid proposition, if any case law is needed to fortify our view a reference can be made to the following cases decided by the Hon'ble Supreme Court of Pakistan (1) Muhammad Yaseen v. Federation of Pakistan, PLD 2012 SC 132, Muhammad Ashraf Tiwana v. Pakistan, 2013 SCMR 1159, Tariq Azizuddin: in re, 2010 SCMR 1301, Mahmood Akhtar Naqvi v. Federation of Pakistan, PLD 2013 SC 195, Contempt Proceedings against Chief Secretary Sindh and others, 2013 SCMR 1752 and Syed

Mubashir Raza Jafri and others v. Employees Old-age Benefits Institution (EOBI), 2014 SCMR 949. However, it is made clear that though the competent authority under the hierarchy of subordinate judiciary is blessed with the authority to relax rules under Sindh Judicial Staff Service Rules, 1992, only in cases of hardship and for special reasons justifying the same. On the aforesaid proposition, the law laid down by the Hon'ble Supreme Court in the case of Chief Secretary Punjab v. Abdul Rauf Dasti, 2006 SCMR 1876 is clear in its terms, need no further deliberation on our part.

13. So far as the role of Registrar of this Court is concerned, petitioner has not sought any relief against him, therefore, no direction is required to be given to him; even otherwise it is well-settled law that writ under Article 199 of the Constitution does not lie against such administrative decision of the Administrative Committee of the High Court of Sindh, if any, in the light of latest verdict pronounced by the Hon'ble Supreme Court of Pakistan on 16.3.2020 in the case of Gul Taiz Khan Marwat v. The Registrar, Peshawar High Court, Peshawar & others.

14. In the light of the above rule position, no further action is required on our part in exercising the power under Article 199 of the Constitution on the premise that petitioner failed to point out any administrative decision of the member of the subordinate judiciary; and, merely agitating the claim that his son was not accommodated in the Judicial District was/is no ground to direct the respondent No.1 to appoint his son. However, the petitioner is at liberty to apply for the post on merit as and when the vacancy occurs in the office of District & Sessions, Judge Karachi West.

15. Resultantly, this petition merits no consideration and is accordingly dismissed in limine along with the pending application(s), with the above observations. Let a copy of this order be transmitted to the Registrar of this Court for compliance.

16. These are the reasons for our short order dated 04.02.2021 whereby we have dismissed the instant petition.

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