

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

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

C.P. No.D- 2893 of 2017

Noor Muhammad V/S Province of Sindh and others

C.P. No.D-3020 of 2017

Manoj V/S Province of Sindh and others

C.P. No.D-3504 of 2017

Manzoor Ali V/S Province of Sindh and others

CP No. D- 3618 of 2017

Muhammad Yousaf V/S Province of Sindh and others

C.P. No.D-3629 of 2017

Mst. Mumtaz V/S Province of Sindh and others

C.P. No.D-492 of 2018

Dildar Ali Khoso V/S Province of Sindh and others

C.P. No.D-671 of 2018.

Aftab Ahmed V/S Province of Sindh and others

C.P. No.D-1080 of 2018.

Nabi Bux V/S Province of Sindh and others

C.P. No.D-1140 of 2018.

Muhammad Awais V/S Province of Sindh and others

C.P. No.D-2143 of 2018

Inamullah Halepoto V/S Province of Sindh and others

C.P. No.D-2467 of 2018

Boota Masih V/S Province of Sindh and others

C.P. No.D-2676 of 2018

Javed Akhtar V/S Province of Sindh and others

C.P. No.D-2680 of 2018.

Sachal Khan V/S Province of Sindh and others

C.P. No.D-2872 of 2018.

Zulfiqar Ali V/S Province of Sindh and others

C.P. No.D-3319 of 2018.

Suresh Kumar V/S Province of Sindh and others

C.P. No.D-78 of 2019.

Sharoon V/S Province of Sindh and others

C.P. No.D-1708 of 2019.

Bashir Ahmed V/S Province of Sindh and others

C.P. No.D-1709 of 2019.

Atta Hussain V/S Province of Sindh and others

C.P. No.D-1937 of 2019.

Arbab Ali V/S Province of Sindh and others

C.P. No.D-1885 of 2019.

Abdul Majeed V/S Province of Sindh and others

C.P. No.D-2510 of 2019.

Mst. Razia Bibi V/S Province of Sindh and others

Dates of hearing & decision: 11.12.2019 & 17.12.2019

M/S. Muntazir Mehdi Leghari, Ghulam Sarwar, Kanji Mal, Ayaz Khaskheli, Talal Fatima, Zahid Mustafa Memon, Mangal Meghwar and Qadir Bux Ghirano, Nazeer Ahmed Bhatti, Mian Taj Muhammad Keerio, Faqir Rehmatullah Hisbani, advocates for petitioners.

Mr. Imran Qureshi, Advocate for HMC.

Mr. Allah Bachayo Soomro, Addl. Advocate General.

ORDER

ADNAN-UL-KARIM MEMON, J: - Through this common order, we intend to decide the present lis as the controversy and questions raised, on behalf of the petitioners, is common.

2. Petitioners are seeking declaration to the effect that they are eligible and fit candidates for appointment on any ministerial posts in different departments of local government, Government of Sindh on the basis of deceased quota in terms of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974.

3. At the very outset, we asked the learned Counsel to satisfy this Court with regard to maintainability of the instant Petitions on the ground that the petitioners' deceased parents were not Civil Servants, thus the benefit of Rule 11-A cannot be extended to them in the light of decision rendered by the learned Division Bench of this Court in the case of Fazal Ahmed Samtio Vs. Province of Sindh through Secretary Local Government and 3 others (2010 PLC C.S 215).

4. Learned counsel replied that the Respondents are discriminating the Petitioners in violation of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 ; Learned counsel further added that Petitioners are entitled to be appointed to the ministerial posts on the basis of deceased quota as well as on merits ; that the Petitioners have been seriously prejudiced and not treated equally, therefore, the Petitioners are entitled to be treated equally in accordance with law, as provided under Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 ; that grave injustice has been done with the Petitioners with no fault on their part by depriving them for their appointment to the ministerial posts, for which they are fit and qualified ; that due to such acts and deeds of the Respondents, the Petitioners have suffered a lot of mental torture, agonies and by such situation, the Petitioners are facing problems too ; that the denial in this regard by the Respondents amounts to invade upon and infringement of fundamental and legal rights of the Petitioners as guaranteed by the Constitution of Islamic Republic of Pakistan 1973, which are enforceable by this Court in exercise of its Constitutional jurisdiction ; that the Petitioners have been continuously approaching personally to the Competent Authority of respective departments to appoint them for any suitable posts on the basis of deceased Quota / policy in vogue, but nothing has been done so far; that the Petitioners are aggrieved by the illegal action of the Respondents. In support of their contentions they heavily relied upon the Notification dated 05.05.2017 issued by Government of Sindh Local Government and Housing Town Planning Department, and argued that the Rule 11-A is made applicable in local Councils. They also relied upon in the case of Ayaz Ali and others versus Government of Sindh & 67 others (2014 PLC (C.S.) 1060) and argued that the case of petitioners is akin to the decision referred to hereinabove ; therefore, they may be treated accordingly. They lastly prayed for allowing the instant Petitions.

5. Mr. Allah Bachayo Soomro, learned Additional Advocate General representing Secretary Local Government has argued that Rule 10-A and Rule 11-A of the Sindh Civil Servant (Appointment, Promotion and Transfer) Rules 1974 provide that where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his unemployed children may be employed for which he / she possess the minimum qualifications prescribed to that post. He added that since petitioners' deceased parents were employed in different departments of Local Government Department, and were not civil servants, therefore, their matters do not fall within the ambit of rule 11-A. However he agrees that let all the petitioners approach the competent authority for decision in

their cases, who have applied for different posts in local councils / authorities / corporations and other departments of local government on the basis of deceased quota and no prejudice shall be caused to the respondents if the Competent Authority takes care of the issue involved in these proceedings in accordance with law.

6. During the course of arguments Mr. Imran Qureshi learned counsel for Hyderabad Municipal Corporation has raised objection to the maintainability of the instant petitions on the ground that there is no provision in law to accommodate the petitioners on the basis of deceased quota. We queried him whether the policy in vogue provides the mechanism for dealing the issue of appointment in different local councils working under the umbrella of Sindh Local Government, he states that these are policy decisions to be taken by the Competent Authority.

7. We have heard learned counsel for the parties and perused the material available on record and case law referred to herein above.

8. We have scanned the rule position and found that Rule 11-A explicitly provides 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, 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 provide cutoff date for making of an application for appointment under deceased employees quota within two (02) 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. The aforesaid rule position makes it very clear that the aforesaid deceased quota facilities is / was available for the children, whose parents, being civil servant died while in service, or were declared invalidated or incapacitated for further service, admittedly petitioners deceased parents were not civil servants and were employees of local Government, therefore, rule 11-A is hardly applicable in the cases of petitioners.

10. In view of the above, it is crystal clear that the Respondent-councils, corporations, authorities cannot circumvent the law to make recruitment on the basis of Son / deceased quota by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion, Transfer) Rules 1974, without referring the matter to competent authority for the recruitment on merit.

11. In the light of above discussion, the instant constitutional petitions are not maintainable. However, if the petitioners in all the captioned petitions move their fresh applications along with all the requisite attested documents to the competent authority / Chief Secretary, Government of Sindh, Karachi, who shall examine all the cases individually and decide the applications of the petitioners strictly in accordance with law and applicable rules as well as Government Policy in vogue.

12. These petitions stand dismissed in the above terms.

JUDGE

JUDGE

Fahad Memon