

ORDER SHEET
**HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

Before:-

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

CP No. D- 411 of 2012

[Najaf Ali Shah v. Province of Sindh and others]

CP No. D- 1219 of 2012

[Shahid Hussain v. Province of Sindh and others]

CP No. D-359 of 2013

[Muhammad Siddique v. Province of Sindh and others]

CP No. D- 1610 of 2019

[Aamir Hussain Bhatti v. Province of Sindh]

CP No. D- 1614 of 2019

[Shakir Hussain Bhatti v. Province of Sindh and others]

CP No. D- 798 of 2020

[Nadir Abbas v. Province of Sindh and others]

M/s Abdul Ghafoor Hakro, Riazuddin Qureshi & Muhammad Rahim Gajju, advocates for petitioners

Mr. Rafique Ahmed Dahri, Assistant A.G Sindh

Date of hearing & Order:

18.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J: - Through the instant petitions, the petitioners are seeking direction to the respondents to appoint them on any suitable post as per their qualification, on the quota reserved for the employees who stood retired from the service under the policy.

2. We asked the learned counsel(s) to satisfy this Court as to how these petitions are maintainable under Article 199 of the Constitution about the appointment of sons of deceased / retired and serving employees of the respondent-departments, 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. Learned counsel for the petitioners, has replied that the respondents were / are reluctant to appoint the petitioners in the light of policy decision of the respondent departments on the subject issue. They have averred that they have a legitimate right to know the reasons for declining their request for the appointment by the competent authority. They further argued that after their fathers / mothers' retirement from the service of the respondent-departments they have the right to ask for the appointment under the aforesaid policy. They prayed for direction to the competent authority of the respondent departments to appoint them on any ministerial post based on son quota.

4. We have heard the learned counsel for the petitioners on the issue of son quota under the aforesaid policy decision and perused the material on record.

5. Prima facie, the issue is related to the appointment based on son quota in the respondent departments. The important question involved in the present petitions is that whether the Petitioners' son is entitled to be appointed on the son quota basis because of policy decisions.

6. 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 thorough examination, we have noticed 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 BPS16 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”

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 CP. 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 above discussion, it is crystal clear that the respondent departments 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 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 is blessed with the authority to relax rules under the relevant law, 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. 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 the petitioners failed to point out any violation of their fundamental right ; and, merely agitating the claim that either the parents and / or their sons / daughters were not accommodated for the job was / is no ground to direct the official respondents to make appoint based on son quota, which is alien to the service jurisprudence. However, the petitioners are at liberty to apply for the post on merit as and when the vacancy occurs in the office of respondent-departments.

14. Resultantly, these petitions merits no consideration and are accordingly dismissed along with the pending application(s), with the above observations.

JUDGE

JUDGE

Sajjad Ali Jessar