

IN THE HIGH COURT OF SINDH,
Bench at Sukkur

C. P. No. D – 1493 of 2019

Abdul Qayoom Mallah

Versus

P.O Sindh and others.

Before:

Mr. Justice Muhammad Junaid Ghaffar

Mr. Justice Zulfiqar Ali Sangi

Date of Hearing: **18-01-2022**

Date of Decision: **18-01-2022**

Mr. Achar Khan Gabol, Advocate for the Petitioner.

Mr. Shahid Hussain Jogi, Advocate for Respondent No.5.

Mr. Mehboob Ali Wassan, Assistant A.G-Sindh.

ORDER

Muhammad Junaid Ghaffar, J. – Through this Petition, the Petitioner seeks appointment in the Respondents Department under Deceased Quota.

2. It appears that the Petitioner’s father working as Octroi Inspector in Town Committee, Mirwah-Khairpur expired on 09.02.2001. An objection has been raised by learned Counsel appearing on behalf of the Respondent No.5 as well as learned Assistant A.G that the Petitioner is not entitled for any appointment in service as at the time when his father expired, there was no such Policy in field of giving employment under Deceased Quota.

3. While confronted, Counsel for the Petitioner has not been able to satisfactorily respond. It appears that no right is created in favour of the Petitioner, as there was no policy or law of appointment under ‘Deceased Quota’ when the father of the Petitioner expired. Reliance in this regard may be placed on the recent pronouncement of Hon’ble Supreme Court in the case reported as **Government of Pakistan v Muhammad Ismail (2021 SCMR 1246)** wherein the relevant observations on identical facts are as under:-

“6. It is an admitted fact that respondent’s father died in the year 1995 while he was in regular service of Accountant General KPK being Senior Auditor. At that time, there was no scheme/policy in field for induction of family member of

deceased civil servant in service. It was on 13.06.2006 when the Government of Pakistan issued 'Assistance Package for Families of Government Employees who die in service', to be made effective from 01.07.2005, wherein employment for posts in BS-01 to BS-15 on two years contract without advertisement for the families of deceased servant was surfaced. Thereafter, this package was amended thrice i.e. on 20.10.2014, 04.12.2015 and lastly on 09.09.2016 whereby the two years contract period was enhanced to 5 years and the same was also made extendable till the age of superannuation or regularization. We have perused the Assistance Package and the subsequent amendments but could not find any provision therein which gives it retrospective effect especially when the grievance of respondent was agitated with a lapse of almost 17 years. It is an established principle of interpretation of statutes / notifications / executive / administrative orders that they would operate prospectively unless they expressly provide for retrospective operation. This Court in the case of Hashwani Hotels Ltd. Vs Federation of Pakistan (PLD 1997 SC 315) has acknowledged this fact by observing that "it is a well settled principle of interpretation of a notification and/or an executive order that the same can operate prospectively and not retrospectively. This principle is equally applicable to a statute in the absence of any express or implied intendment contrary to it." In this view of the matter, when it is clear that afore-referred Assistance Package for legal heirs of deceased government employee was not available at the time when deceased employee died and the same was issued later on with prospective effect, the respondent was not deprived of any right accrued to him at the relevant time by not appointing him. The learned High Court has erroneously presumed that a statute or rule, which gives right to the citizens, always operates retrospectively. If this is accepted, it would tantamount to opening a floodgate for all other similarly placed persons".

4. In view of the above and the Judgment of the Hon'ble Supreme Court, the Petitioner does not appear to be entitled to be appointed under Deceased Quota, as the Policy in the present case was introduced in the year 2002, whereas the Petitioner's father had expired in the year 2001, therefore, this Petition being misconceived is hereby dismissed.

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Ahmad