

**ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI**

Constitutional Petition No. D –7322 of 2019

Date	order with signature of Judge(s)
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For hearing of CMA No.25524/2021 (Contempt)

Date of hearing and order. 26.1.2022.

Mr. Muzafar Ali Dehraj, advocate for the petitioner
Mr. Ali Safdar Depar, AAG

ORDER

This petition was disposed of vide order dated 19.02.2020 on the undertaking of DSP Raza Mian on behalf of IG Sindh that the case of the petitioner for appointment on deceased quota in place of his late father will be scrutinized, considered, and processed by the relevant committee of the Police Department and if he is found to be eligible and fit, the suitable post shall be offered to him strictly under the law and subject to fulfillment of all legal and codal formalities by him.

This matter was taken up on 28.9.2020 when learned counsel for the petitioner did not press the contempt application on the premise that compliance of the order of this Court had already been made, however, he filed another application 25524/2020 for initiating contempt proceedings against the alleged contemnor.

MIT-II also suggest that a compliance report has been forwarded by the IGP Sindh which explicitly shows that the case of the petitioner does not cover the criteria for recruitment against the deceased quota under the Policy of Government of Sindh dated 14.02.2018 which provides as under:

“Those who father/mother have expired during 2nd September 2002 to 15th September 2014. Please note that this policy/rule of appointment/recruitment under deceased quota and prior to this date no such policy ever existed for the civil servant of Government of Sindh.

Those who father/mother have expired on or after 16th September 2014 are supposed to apply within two years of this death of their deceased civil servant.”

We have gone through the aforesaid policy and the order passed by this Court. Primarily, the father of the petitioner was serving in the Police Department as Constable and passed away during service on 01.03.2001, and the petitioner applied for the subject post in the year 2018 against deceased quota as provided in the rule 11-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974.

The question is whether there was a policy in the year 2001, concerning deceased quota when the father of the petitioner passed away in the year 2001, or otherwise.

Primarily, the Policy on the subject point was introduced in the year 2002, whereas the Petitioner's father had passed away in the year 2001, thus no vested right accrued in favor of the petitioner to claim appointment on deceased quota. Reliance is placed in the case of 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”.

In the light of the above discussion, it is crystal clear that Police Department cannot circumvent the law to make recruitment to the post of the police constable, which is reserved for the police force, based on deceased/son quota by issuing Standing Orders or by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974. The appointment of a police constable can only be made through a competitive process on merit as provided under the recruitment rules and not otherwise.

In view of the above, no case for contempt is made out, the listed application is dismissed accordingly. Let a copy of the order be transmitted to the Inspector General of Police Sindh for his information and strict compliance, deviation whereof shall be treated as defiance of the order of this court under Article 204 of the Constitution.

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