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IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D-2861 of 2010

Farooq Ahmed son of Dur Muhammad,
Jatoi by-caste, resident of Village,
Jatoi P.O Kandhra Taluka Rohri,
District Sukkur..... Petitioner.

Versus

1. Government of Sindh,
Through Secretary, Irrigation department,
Sindh Secretariat Karachi.
2. Chief Engineer, Irrigation department
Hyderabad.
3. Director S.I.D.A,
Ghotki.
4. Executive Engineer,
Barrage Division, Sukkur

CONSTITUTION PETITION UNDER ARTICLE 199
CONSTITUTION ISLAMIC REPUBLIC OF PAKISTAN
1973.

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ORDER SHEET.
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

C.P. No. D-2161 of 2010.

For Katcha Peshi.

25th September, 2012

Mr. Mohammad Iqbal Memon Advocate for the Petitioner.
Mr. Noor Hassan Malik, State Counsel along with Aftab Ahmed Khoso
(Respondent No.4).

Grievance of the petitioner is that his father was serving in Irrigation Department as Tyandel who while in service expired on 10.6.2005. Thereafter, he approached the respondents for his appointment on the same post of deceased on the basis of "son quota". However, till date his grievance has not been redressed.

Notices were served upon the respondents. Pursuant to that comments have been filed on behalf of respondents No.1, 2 & 4. Upon perusal of comments, it transpires that they have not disputed the facts of the petition. However, in para-5 of the comments, it is stated that the cut off date for the appointment against son quota was 17.7.2009. On the other hand, learned counsel for the petitioner invited our attention to the Annexure-A. Perusal of the same would reflect that the petitioner had applied on 5.11.2006 before the cut off date. Even in Constitution Petition No. D-611 of 2009 re: Irrigation & Power Employees Union SCARP Project, Khairpur v. Province of Sindh and others, the Division Bench of this Court held as under:-

"It is by now well settled that notifications operate only prospectively. A vested right can be taken away retrospectively only through an

enactment passed by an assembly or parliament but not through sub-ordinate legislation i.e through issuance of notifications by executive. In the present case, as the change in rule 11-A of Sindh Civil Services (Appointment, Promotion & transfer) Rules, 1974 has been brought about through a notification, it can only have prospective effect. Therefore, the notification issued on 17.7.2009 shall become applicable from 17.7.2009 onwards only. Prior to this date, if a right of employment has already accrued to any of the children of a deceased or invalid or incapacitated Civil servant then the former cannot be deprived of the benefit accrued to him under notification dated 11.3.2008 through a subsequent notification issued on 17.7.2009. These petitions are therefore, allowed to the extent stated above. Office to issue copy of this Order to the learned AAG".

In view of the above judgment of this Court, learned State Counsel very candidly conceded and did not oppose for the grant of relief sought by the petitioner. Aftab Ahmed Khoso, respondent No.4 present in Court also did not dispute the genuineness of the grievance of the petitioner.

Consequently, instant petition is allowed. Respondents are directed to issue appointment order to the petitioner within a period of two months after receipt of this order and submit such compliance report through Additional Registrar of this Court.


JUDGE,


JUDGE,

Ahmed