

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 552 of 2021

(*Ihsanaullah Mahar v. Province of Sindh and others*)

*Present:*

**Mr. Muhammad Iqbal Kalhoro, J.**  
**Mr. Arbab Ali Hakro, J.**

Date of hearing : **02.11.2023**

Date of decision : **02.11.2023**

M/s Muhammad Ali Napar and Danish Ali Bhatti, Advocates for petitioner.

Mr. Ali Raza Baloch, Assistant Advocate General Sindh along with ASP Irfan Meo, Focal Person of respondents No.2 to 5.

## **ORDER**

**Muhammad Iqbal Kalhoro, J.** – Petitioner has filed this petition for appointment on deceased quota under scheme of Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 in Sindh Prisons & Corrections Service, Home Department. His case is that he is son of Mumtaz Ali, a Constable in Jail Police, who died in an accident on 01.02.2017 during service. He, born on 25.04.2001, was minor at the time of death of his father, and he became major on 25.04.2019, having attained age of 18 years. Then he applied for appointment on deceased quota in terms of above said provision of law. But his application was declined on a sole ground that his application was received after two (02) years, after death of his father, within which application was to be filed.

2. We have heard learned Counsel for the petitioner, learned AAG and a focal person of respondents No.2 to 5. The focal person has submitted that petitioner was required to file application on or before 25.04.2019, within two years of death of his father, whereas, he submitted application on 19.10.2019. Therefore, the application, having been found time barred, was dismissed.

3. We have read Rule 11-A with the assistance of learned AAG, and for ready reference, reproduce the same:

**“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, spouse (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 or incapacity of civil servant on any of the basic pay scales No. 1 to 15 in

the Department where such civil servant was working.”  
(Emphasis supplied)

The highlighted words above set out scheme of Rule 11-A, which appears to be mandatory casting a duty upon the relevant department to approach the widow/spouse of the deceased, when all the children of the deceased are minor, for her appointment on deceased quota.

4. In this case, admittedly, nothing has been brought on record to show that the department, after premature death of its employee, father of the petitioner in an accident, in line with the aforesaid provision, approached the widow or for the matter tried to find out age of the minors, for the purpose of her appointment as required. The inaction of the department to strictly follow the mandated scheme of Rule 11-A would create a right in favour of the minor children, who, on account of some minor inadvertence, are not able to file application for appointment, after becoming major, strictly within two (02) years, but within a reasonable period thereafter.

5. In this case, the cutoff date for petitioner to file application was 25.04.2019. But he submitted an application for appointment on 19.10.2019 i.e. within six (06) months of the cutoff date. This period cannot be considered as a shocking long delay in making application, abridging otherwise right of the petitioner to the appointment at the place of his father, sanctioned by Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. This is a beneficial provision, and its strict compliance in the peculiar facts and circumstances of this case, learned AAG has agreed, cannot be pressed into service. In fact he has cited unreported orders of this Court dated 22.02.2022, 07.03.2022, 06.04.2022 and 22.04.2022, passed in (i) **C. Ps. No. D-7321 of 2019 & D-5475 of 2021**, (ii) **C. P. No. D-576 of 2020**, (iii) **C. P. No. D-6750 of 2021**, and (iv) **C. P. No. D-1986 of 2020**, respectively to second the above view of the Court.

6. We, therefore, find petitioner entitled to the appointment at the place of his father under Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, in the same department as per his qualification in accordance with law. The petition is consequently **allowed** in above terms and disposed of accordingly, with no order as to costs.

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