

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-90 of 2024

(Mudassir Ahmed Soomro Vs. Province of Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Date of hearing and order: 14-05-2024.

Mr. Ghulam Muhammad, advocate for the petitioner.
 Mr. Zulfiquar Ali Naich, Assistant A.G, Sindh along with Javed
 Ahmed Channa AEO (Primary) Sukkur.

ORDER.

Adnan-ul-Karim Memon J:- The petitioner Mudassir Ahmed Soomro seeks direction to the respondents-Secretary Education and Literacy Department Government of Sindh to appoint him against deceased quota in terms of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and dicta laid down by the Supreme Court in the case of *Province of Sindh Vs. Muhammad Taqi Shah (2018 SCMR 1607)*.

The grievance of the petitioner is that his father Abdul Qudoos was serving as Primary School Teacher and was posted at Government Boys Primary School General Muhammad Bashir Taluka Pano Akil, District Sukkur, who during his service passed away on 02-02-2010. At the time of demise of his father, the petitioner was aged about 07 years and when he became adult, he moved application to respondent No. 3 for his appointment against the son quota, who made correspondence with respondent No.2 through letter dated 09-03-2021 and respondent No. 3 also informed through letter dated 04-03-2021 that post of Chowkidar was/is lying vacant and same is still lying vacant, but the respondents are avoiding to appoint the petitioner.

Learned AAG has opposed this petition on the analogy that petitioner did not apply for deceased quota within two years of death of his father of as per Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. He prayed for dismissal of the petition.

We have heard the parties and perused the material available on record.

At this stage, we put the question to the learned AAG as to why the petitioner has not been considered for the subject post against the quota reserved for deceased Civil Servants, he simply said that this is a policy matter and the Government has not considered his case for such appointment on any ministerial post and the same could only be filled as per recruitment Rules and not otherwise. However, he submitted that petitioner's father passed away in the year 2010 and petitioner applied for the subject post at the belated stage, who ought to have applied within two years from the date when his father passed away as such, he was/is not entitled for the subject post.

We do not agree with the reasoning of the learned AAG on the aforesaid proposition for the reason that petitioner was minor at the time of the death of his father as per record and as and when he reached the age of majority, he applied for the post of ministerial nature; however, his request was erroneously declined for the reason that a minor legal heir of deceased Civil Servant, the period of two years to apply for appointment on deceased quota would start after he/she attains the majority. This proposition has not been disputed by the learned AAG Sindh. Additionally Rule 11-A as discussed *Supra* is clear in its terms and needs no further deliberation on our part. Additionally in the eventuality of the death of a Civil Servant during service, it empowers the appointing authority to appoint one of the children of such deceased Civil Servant in any of the basic pay scales and the only requirement provided by the law was that the child must possess minimum prescribed qualifications. There was not condition of any examination, test or interview, and such appointment should be made in any department of the Government of Sindh only in case of death of a Civil Servant during service. Additionally Rule 11-A as

discussed *Supra* is clear in its terms and needs no further deliberation on our part.

Prima facie the action of the respondent department does not align with the law laid down by the Supreme Court of Pakistan on the subject issue and the petitioner has been subjected to the irony of the department which is a hardship as his father passed away in the year 2011 during service and the petitioner applied within the policy terms, which application was processed vide office order dated 04-03-2021, but no decision has been made, compelling the petitioner to file this petition on 23-01-2024.

The respondents have failed and neglected to look into the matter in its true perspective and violated the command of the Constitution and law; therefore, this petition is liable to be allowed with direction to the Chief Secretary Government of Sindh and respondents to take into consideration the verdict of the Supreme Court on the subject issues as well as keeping in view the Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, where after if the petitioner is found eligible in all respect for appointment against the quota reserved for deceased Civil Servant, he shall be accommodated in any suitable ministerial post by allowing him to complete all legal and codal formalities as required under the law and the relevant rule, procedure, and policy.

Let notice be issued to the Chief Secretary Sindh, Government of Sindh, Secretary Education and Literacy Department, Government of Sindh, Karachi, along with a copy of this order for its compliance in letter and spirit within 30 days.

Judge

Judge

