

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-1784 of 2023

(Nadeem Solangi Vs. Province of Sindh & others)

| | |
|-----------------|-------------------------------|
| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE |
|-----------------|-------------------------------|

Before;

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

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

Mr. Sohail Ahmed Khoso, advocate for the petitioner.
Mr. Zulfiquar Ali Naich, Assistant A.G, Sindh.

ORDER.

Adnan-ul-Karim Memon J:- The petitioner Nadeem Solangi seeks direction to the respondents-Secretary Education and Literacy Department Government of Sindh to appoint him against quota reserved for invalidated or incapacitated Civil Servants 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 Haji Khan Solangi was serving as Chowkidar and posted at High School Moro; who was retired on 30-07-1996 on account of Health problem and on 14-04-2023 the petitioner was recommended by the District Education Officer Naushahro Feroze for part time Chowkidar and still he is working there on temporary basis though the post of Chowkidar is still vacant and respondent No.3 also called comments from Head Master High School Moro through letter No. 15-07-2008, which he has submitted on 26-07-2008, to the effect that the post of Chowkidar is still lying vacant and the petitioner is entitled for the said post.

Learned AAG has opposed this petition on the analogy that the case of the petitioner does not fall under 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.

Prima facie this is apathy on the part of the respondent-department as this lis has been pending since 2023 and there is no progress in the matter; as such we are compelled to hear the learned counsel for the petitioner and learned AAG on the subject issue without further delay.

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 Civil Servants who are declared invalidated and or incapacitated for further service, he simply said that this is a policy matter and the Government has not considered his case for such appointment on any post and the same could only be filled as per recruitment Rules and not otherwise. However, he submitted that petitioner's father retired in the year 1996 and petitioner cannot be considered under deceased quota for the subject post.

We do not agree with the reasoning of the learned AAG on the aforesaid proposition for the reason that under 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 invalidation or incapacitation of a Civil Servant for further service, it empowers the appointing authority to appoint one of the children of such retired incapacitated 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 retired in the year 1996 and the petitioner applied within the policy terms, which application was processed and later-on declined without assigning reason, compelling the petitioner to file this petition on 12-12-2023.

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

