

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 730/2019
Muhammad Ali Maitlo v. P.O Sindh.

Constitution Petition No. D- 1395 of 2019
(Asim Sami Khan vs. Province of Sindh & others)

Constitution Petition No.D- 429/2020
Mst. Shamshad Shaikh v. PO Sindh

Constitution Petition No.D- 513/2020
Amjad Ali Bhatti v. PO Sindh

Constitution Petition No. D- 70/2021
Kishwar Kumar v. P.O Sindh.

Constitution Petition No. D- 299/2021
Sabir Hussain v. P.O Sindh.

Constitution Petition No. D- 558/2021
Ravi Das v. P.O Sindh.

Constitution Petition No. D- 576/2021
Muhammad Liaquat v. P.O Sindh.

Constitution Petition No. D- 1640/2021
Mst. Naila Naz v. P.O Sindh.

Constitution Petition No. D- 965/2023
Naimatullah v. P.O Sindh.

Constitution Petition No. D- 1428/2021
Samiullah Kalhoro v. P.O Sindh.

Constitution Petition No. D- 1517/2023
Ali Muhammad v. P.O Sindh.

Before;

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

Date of hearing and Order: 14.05.2024.

M/s. Abdul Naeem Pirzada, Abdul Ahad Buriro, Niazuddin Memon, and Muhammad Raza Soomro, advocate for the petitioners.

Mr. Liaquat Ali Shar, Additional Advocate General Sindh.

Mr. Khuda Bux Chohan, Advocate for Sukkur Municipal Committee (SMC) Sukkur in all petitions.

Nemo for Secretary Union Council No. 17 New Pind Taluka and District Sukkur, Town Officer Town Committee Nara and Town Officer Town Committee Kumb.

ORDER

Adnan-ul-Karim Memon J:- The petitioners/family members/legal heirs of the deceased public servants of the Government of Sindh, have come forward and raised their voices of concern about the reluctance of the official respondents/Local Government Department to appoint them under the quota reserved for deceased public servants as per policy/guidelines of the Government of Sindh, issued from time to time, therefore, the captioned petitions are being taken up together for disposal as the common question of law and facts are involved therein and the same are pending since 2019 and onwards.

2. Through instant petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, the petitioners/family members/ legal heirs of the deceased public servants have prayed that the competent authority of official respondents in all petitions be directed to expedite the procedure for their appointment to different ministerial posts against quota reserved for deceased employees and/or who were declared invalidated or incapacitated for further service in the local government department, under policy/guidelines of Government of Sindh and/or under Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974.

3. Learned Counsel for the petitioners, in unequivocal terms have argued that the petitioners' fathers/mothers passed away during service; that upon her/their death, she/they applied to the different departments of the Local Government of Sindh and since then no decision has been taken by the concerned department for his/her/their appointment on the quota reserved for deceased employees and/or who were declared invalidated or incapacitated

for further service, on a suitable ministerial post (s) as per his/her/their qualification and eligibility. As per learned counsel, in some of the cases, they have been discriminated and their cases have been erroneously regretted by the competent authority/respondent departments despite court orders in their favor. In support of their contention, they heavily relied upon the policy/guidelines of the Government of Sindh and/or under Rule 10-A, 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, duly adopted by the Local Government Department; and argued that the petitioners/family members/legal heirs of the deceased public servants are entitled to be considered by the competent authority for the different posts and/or any suitable post under law. They lastly prayed for allowing petitions as prayed.

4. Learned A.A.G. the learned counsel representing the respondent-Sukkur Municipal Corporation (SMC) Sukkur initially resisted these petitions on the premise that the petitioners/family members/ legal heirs of the deceased public servants did not apply in time for the subject posts, besides the Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 is not applicable in their cases as it deals with deceased civil servants, whereas the employees of Local Government Department are not civil servants as such their case could not be considered for appointment, however, we confronted them with the legal position of the case that several cases, decided by this Court on the subject issue, besides that, the Local Government has adopted the same policy as envisaged under Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974; and this factum was observed by this Court vide order dated 21.2.203 in C.P No. D-588 of 2021, they in principle agreed to dispose of these petitions accordingly. However, they submitted that the case of petitioners for appointment on quota reserved for deceased employees if applicable in their cases may be referred to the competent authority of the Government of Sindh for consideration in the light of the

policy/guidelines of the Government of Sindh and/or under Rule 10-A, 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, subject to the exception made therein; and, more particularly, in the light of order dated 10.08.2016 passed by the Supreme Court in C. P. No. 482-K & 503-K of 2016.

5. The proposal, as put forward by the learned A.A.G./learned counsel representing (SMC) Sukkur, seems to be fair enough. The learned counsel representing the petitioners has no cavil to the aforesaid proposal and seeks disposal of the aforesaid petitions on the same analogy.

6. We have heard the learned counsel for the parties present in court, perused the record, and also examined the stance of the parties on the subject issue through their comments in some cases. However, in most of the cases, the respondents have failed and neglected to file comments to justify their action by not considering the cases of petitioners based on deceased quota reserved for those employees who died during service and /or invalidated/incapacitated for further service.

7. We have noticed that in some cases the learned AAG has waived notice and seeks disposal of the cases in terms of the ratio of the order dated 10.08.2016 passed by the Supreme Court in C. P. No. 482-K & 503-K of 2016. Be that as it may, we are only concerned whether the petitioners/family members/ legal heirs of the deceased public servants, who were working in Local Government Department, are entitled to be considered for the subject posts under the law.

8. To clarify the legal position that has emerged in the present cases, we first take up the legal issue of appointment in various departments of the Sindh Government through policy decisions as well as under Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion, and Transfer Rules, 1974), duly adopted by the Local

Government Department.

9. After a thorough examination of rule position, we have noted that Rule 10-A & Rule 11-A until 30th July 2011, published on 01.09.2011 was as follows:

“10-A. Notwithstanding anything contained in these rules, where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his unemployed children or, as the case may be widow (when all the children of the deceased employee are minor) may be employed against a post meant for initial appointment in BPS16 and 17 for which he/she possesses the minimum qualifications prescribed to that post; Provided that such child or widow may be given ten additional marks in the aggregate by the Sindh Public Service Commission or the appropriate Selection Board or Committee if he or she otherwise qualifies the test, examination or interview; Provided further that a person who may have applied under this rule and qualifies purely on merit shall not be awarded any additional marks and his selection shall be made on merit and not under this rule; Provided further that the cut of date shall be within two years of the death of the officer or official.

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, widow (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 of incapacity of a civil servant on any of the basic pay scales No.1 to 15 in the Department where such civil servant was working; 4 Provided that such appointment shall be made after fulfillment of formalities as required in the requirement rules and holding interview, for the post applied for; provided further that the cut of date shall be within two years of the death of the officer or official”

10. The third proviso of Rule 10-A, as well as the second proviso of Rule 11-A, specifically provides a cutoff date for making the application for appointment under the deceased employees' quota within 2 years of the occurrence of the death of the Government Official. Through a further Notification dated 16.09.2014, two further provisos were added in Rule 10-A and 11-A and they are as follows:-

“1. Under Rule 10-A, after the third proviso, the following fourth proviso shall be added: - “Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notification dated 11.03.2008 and 17.07.2009 of these rules.”

2. Under Rule 11-A, after the second proviso, the following third proviso shall be added: - “Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notifications dated 11.03.2008 and 17.07.2009 of these rules”

11. We are also cognizant of the fact that the Supreme Court in C. P. No. 482-K & 503-K of 2016 vide order dated 10.08.2016 has held that the above two provisos added by Notification dated 16.09.2014 omit the application of Notifications dated 11.03.2008 and 17.07.2009 to those candidates under the above quota whose right of employment has already occurred.

12. In the Notification dated 17.07.2009, the cutoff date for making the application for employment under the above quota was provided as 17.07.2009. It is clear from the Notification dated 16.09.2014 that the clog of two years for making the application for employment under the deceased quota for the children who have already applied for employment before making this rule was done away, therefore the respondents cannot make this excuse to refuse the appointment as they are required to go through the order of the Supreme Court as discussed supra and make up their mind to consider the candidature of the petitioners strictly under law and decision made by the Supreme Court on the subject issue, we hope that this excuse will not be repeated and will be unacceptable.

13. In our view public employment is a source of livelihood; therefore, no citizen shall be discriminated against in the said matter on the grounds as provided under Article 27 of the Constitution. The government is bound to make certain quotas in appointments or posts in favor of any less privileged class of citizen which in the opinion of

the government is not adequately represented in the services under the state. That's why Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 as amended up-to-date is introduced to cater to that situation to accommodate the aforesaid categories of civil/public servants.

14. Primarily, the purpose of making beneficial policies like in the case in hand about appointment against deceased quota is to minimize the miseries of the family of the deceased on the death of a serving employee has to face in society. However, by introducing such a policy a citizen cannot be deprived of his/her protected rights. Under Article 35 of the Constitution of the Islamic Republic of Pakistan, 1973, the State is under obligation to protect the family of the deceased. Therefore, any policy that violates guaranteed rights cannot be sustained. If such a policy is approved, it will amount to defeat another constitutional guarantee provided under Article 34 of the Constitution. It is an inalienable right of every citizen to have the protection of the law and also to be treated and dealt with under the law with the particularity that no one can take action against him/her detrimental to his/her life and liberty and cannot be prevented from an act which is not prohibited by law.

15. In the light of the above discussion, it is crystal clear that the respondent-Government of Sindh has to make recruitment to every post applied by the candidates under the law as discussed supra as well as based on invalidated or incapacitated/minority/differently-abled and deceased quota reserved for those employees by issuing appointment order by invoking either Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 or policy/guidelines of Government of Sindh on the subject issue.

16. Prima facie, the plea of learned A.A.G./ learned counsel representing the SMC is tenable in the light of the verdict of the Supreme Court given on 10.08.2016 in C.P. No. 482-503- K of 2016. Accordingly, the aforesaid petitions are disposed of in the following terms:-

- i) *Petitioners/family/ one of the legal heirs of the deceased public servants shall submit their application along with supporting material/documents to the Chief Secretary, Government of Sindh, through any recognized courier service on or before 30.05.2024, for scrutiny and consideration and decision through a speaking order on or before 27.05.2024 strictly under the law and the prescribed rules, procedure and policy, and after providing the opportunity of hearing to the petitioners.*
- ii) *Offer letters shall be issued to the deserving candidates/petitioners if their case for appointment on deceased quota as well as based on invalidated or incapacitated for further service quota, is approved by the Chief Secretary/competent authority where after petitioners shall complete all legal and codal formalities required under the law and the relevant rule, procedure, and policy.*
- iii) *Petitioners' case if not approved by the competent authority, may seek their remedy, if any, before the competent forum under the law.*
- iv) *The cases of those petitioners/family members /legal heirs of deceased public servants already regretted on any account are required to be re-considered by the competent authority, in the light of the dicta laid down by the Supreme Court and observation recorded in the preceding paragraphs.*
- v) *The compliance report in the above terms shall be filed by the Chief Secretary, Government of Sindh, through learned A.A.G. with the Additional Registrar of this Court.*

17. Let notice be issued to the Chief Secretary Sindh, Government of Sindh, and concerned head of the departments along with a copy of this order for its compliance in letter and spirit.

18. By consent, the above petitions are disposed of in the above terms with no order as to costs.

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