

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-64 of 2024

(Abdul Samad Thebo 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: 21-05-2024.

Nemo for the petitioner.

Mr. Asfandyar Kharal, Assistant Advocate General, Sindh along SIP Ali Murad Narejo on behalf of SSP Khairpur and Inspector Muhammad Akhter on behalf of SSP Sukkur.

ORDER.

Adnan-ul-Karim Memon J:- The petitioner Abdul Samad seeks direction to the respondents-Secretary Home 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 Atta Muhammad was serving as Assistant in respondent-Police Department, who during his service passed away on 29-01-2022. After the demise his father, the petitioner approached the respondents No.3 to 5 and moved applications through TCS to appoint him against the deceased quota; but the respondents repeatedly kept him on hollow hopes and ultimately refused to appoint him against the deceased quota on the premise that he has to apply through public notice in terms of decision of this Court in C.P No.D-271 of 2019, hence the petitioner has preferred this petition.

Learned AAG has opposed this petition on the analogy that petitioner has to apply through competitive process as this Court vide judgment dated 12-09-2019 directed the police department to make

appointment of police constable through competitive process in terms of recruitment Rules; therefore, the petitioner cannot be considered in police department as police constable. 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 2024 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 post ministerial nature 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. However, he submitted that petitioner's father passed away in the year 2022 and petitioner applied for the subject post in time.

We do not agree with the reasoning of the learned AAG to refuse the appointment to the petitioner on any ministerial post though we agree with him that the post of police constable can only be filled in accordance with recruitment Rules; however, same analogy cannot be applied on any ministerial post. Additionally Rule 11-A as discussed *Supra* is clear in its terms and needs no further deliberation on our part. Further, 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 2022 during service and the petitioner applied within the policy terms, which request was declined on erroneous premises that he ought to have applied through competitive process for the post of police constable though they could have considered the petitioners' candidature on any ministerial post, compelling the petitioner to file this petition on 16-01-2024.

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 and Secretary Home Department, Government of Sindh, Karachi, along with a copy of this order for its compliance in letter and spirit within 30 days.

Judge

Judge