

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D-93 of 2023
(Sadaqat Khan Mahar Vs. Province of Sindh & others)

Constitution Petition No. D-554 of 2022
(Halar Ateeq-ur-Rehman Bullo Vs. Province of Sindh & others)

Constitution Petition No. D-658 of 2022
(Zaheer Abbas Shah 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: 22-05-2024.

Mr. Asif Ali Jatoi, advocate for the petitioner in CPD No. 93 of 2022.

Mr. Khan Muhammad Sangi advocate for the petitioner in CPD No. 554 of 2022.

Mr. Sohail Ahmed Khoso, advocate for petitioner in CPD No. 658 of 2022.

Mr. Shehryar Imdad Awan, Assistant A.G, Sindh.

ORDER.

Adnan-ul-Karim Memon J:- The petitioners/legal heirs of the deceased civil servants of Government of Sindh have come forward and raised their voices of concern about the reluctance of the official respondents, in their respective petitions, to appoint them under the quota reserved for deceased civil/public servants as per policy/guidelines of the Government of Sindh, issued from time to time, and dicta laid down by the Supreme Court in the case of *Province of Sindh Vs. Muhammad Taqi Shah (2018 SCMR 1607)*, therefore, the captioned petitions are being taken up together for disposal as the common question of law and facts are involved therein.

2. Learned A.A.G., representing the respondent departments initially resisted these petitions on the premise that the petitioners

legal heirs of the deceased civil/public servants did not apply in time for the subject posts, as such their case could not be considered for appointment, however, we confronted the legal position of the case; and, several cases, decided by this Court on the subject issue, he in principle agreed for disposal of these petitions accordingly. However, he 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. (**Re-Province of Sindh and others against Waheed Ali Amur and others**).

3. The Supreme Court has observed in the above matter that (a) applicant whose father/mother (civil servant) had expired during service between 02.09.2002 to 15.09.2014 would be entitled to apply against deceased quota appointment; (b) applicant whose father/mother (civil servant) has expired during service on or after 16.09.2014 would be required to apply against the deceased quota appointment within two years from the date of death of his father/mother (civil servant).

4. In the wake of these clear cut directions by the Supreme Court, a notification was issued in December, 2016 by the Government of Sindh incorporating the aforesaid directions. It is not disputed that father of the petitioners had died before restraining clause envisaging a cap of two years on legal heirs of deceased or incapacitated employee to apply for a job was introduced in section 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. Therefore limitation of two years to apply for a job after death of his father is not applicable to the case of petitioners.

5. 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 servants.

6. 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.

7. In the light of the above discussion, it is crystal clear that the respondents/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.

8. Prima facie, the plea of learned A.A.G. present in court 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 civil/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 civil 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.

9. 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.

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

JUDGE
JUDGE

