

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D – 285 of 2021
(*Abdul Hafeez Indher vs. P.O Sindh & others*)

Constitution Petition No. D – 331 of 2021
(*Hasnain Ali Mangi vs. P.O Sindh & others*)

Constitution Petition No. D – 618 of 2021
(*Rabail Ahmed vs. P.O Sindh & others*)

Constitution Petition No. D – 1784 of 2021
(*Asif Ali vs. P.O Sindh & others*)

Constitution Petition No. D – 44 of 2022
(*Mustaqeem Vs. P.O Sindh & others*)

Constitution Petition No. D – 701 of 2022
(*Rashid Ali vs. P.O Sindh & others*)

C. P No. D – 218 of 2022
(*Manzoor Ahmed vs. P.O Sindh & others*)

Constitution Petition No. D – 1107 of 2022
(*Aqeel Haider vs. P.O Sindh & others*)

Constitution Petition No. D – 1037 of 2022
(*Abdul Razak vs. P.O Sindh & others*)

Constitution Petition No. D – 1564 of 2022
(*Mst. Zainab vs. P.O Sindh & others*)

Constitution Petition No. D – 258 of 2023
(*Muhammad Sajid-ur-Rehman vs. P.O Sindh & others*)

Constitution Petition No. D – 375 of 2023
(*Abdul Qadir vs. P.O Sindh & others*)

Constitution Petition No. D – 518 of 2023
(*Saifullah vs. P.O Sindh & others*)

Constitution Petition No. D – 873 of 2023
(*Mehtab Ahmed vs. P.O Sindh & others*)

Constitution Petition No. D – 916 of 2023
(*Mst. Khadija vs. P.O Sindh & others*)

Constitution Petition No. D – 1045 of 2023
(*Faiz Muhammad vs. P.O Sindh & others*)

Constitution Petition No. D – 1197 of 2023
(*Muhammad Saleem vs. P.O Sindh & others*)

Constitution Petition No. D – 234 of 2024
(*Mansoor Ahmed vs. P.O Sindh & others*)

Constitution Petition No. D – 364 of 2024
(*Mujahid Ali vs. P.O Sindh & others*)

Constitution Petition No. D – 473 of 2024
(*Naeem Ahmed vs. P.O Sindh & others*)

Constitution Petition No. D – 495 of 2024
(*Zain Ali vs. P.O Sindh & others*)

Constitution Petition No. D – 754 of 2024
(*Shah Rukh vs. P.O Sindh & others*)

Constitution Petition No. D – 755 of 2024
(*Shakeel Ahmed vs. P.O Sindh & others*)

C. P No. D – 802 of 2024
(*Muhammad Ali vs. P.O Sindh & others*)

Constitution Petition No. D – 977 of 2024
(*Syed Abbas Ali Shah vs. P.O Sindh & others*)

Constitution Petition No. D – 1004 of 2024
(*Muhammad Ramzan vs. P.O Sindh & others*)

Constitution Petition No. D – 1024 of 2024
(*Mumtaz Ali & another vs. P.O Sindh & others*)

Constitution Petition No. D – 1034 of 2024
(*Muhammad Siddique vs. P.O Sindh & others*)

Before:

Adnan-ul-Karim Memon, J;
Amjad Ali Bohio, J;

Date of hearing and order: 31-07-2024.

M/s Achar Khan Gabol, Sohail Ahmed Khoso, Alam Sher Khan Bozdar, Shabbir Ali Bozdar, Syed Jaffer Ali Shah, Illahi Bux Jamali, Sanwan Khan Jagirani, Abdul Naeem Pirzada and Syed Mujahid Ali Shah, Advocates for the petitioners.

Mr. Ghulam Abbas Kubar, Assistant Advocate General Sindh along with Inspector Mir Hashmat Ali on behalf of SSP Naushahro Feroze, Nazir Ahmed Kalhoro XEN Sub-Division Pano Aqil, Rashid Ali Mangi Assistant Executive Tuvewell Division Ghotki, Ali Akbar Maitlo XEN Public Health Engineering Khairpur, Dilawar Soomro focal person /Limitation Officer of DEO (Primary) Ghotki @ Mirpur Mathelo, Muhammad Hafeez Darban DEO (El. S & HS) Khairpur, Syed Ghulam Murtaza Shah DEO (P) Sukkur and Javed Ahmed Channa AEO at DEO (P) Sukkur.

ORDER

ADNAN-UL-KARIM MEMON, J: Through this common order, we intend to decide the present petitions as the controversy and questions raised, on behalf of the petitioners, are common.

2. The petitioners/legal heirs of the deceased civil servants of the 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 the deceased civil/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.

3. At this stage, we put the question to the learned AAG and Officers present in Court representing the departments as to why the petitioners have not been considered for any ministerial post.

4. Learned A.A.G., initially resisted these petitions on the premise that the petitioners being legal heirs of the deceased civil/public servants did not apply in time for the subject posts, and 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. (*Province of Sindh and others against Waheed Ali Amur and others*). He further submitted that the issue of underage of some of the petitioners at the time of death of their fathers shall also be taken care of by the competent authority in terms of law laid down by the Supreme Court.

5. We have given our anxious consideration to the contentions raised by learned counsel for the respective parties, perusing the material placed on record and the relevant provisions of law.

6. It appears that the Government of Sindh while exercising power conferred under section 26 of the Sindh Civil Servants Act, 1973, amended Rules 10 and 11 of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 (hereinafter referred to as 'the appointment rules,

1974') which provided for initial appointments to the posts in Grade 16 to 22 through Public Service Commission and Grade 3 to 15 on the recommendations of Departmental Selection Committee by introducing Rules 10-A and 11-A respectively. To go ahead further, initially, the Supreme Court has interpreted the law on the subject issue and held that Rule 10-A was inserted in the appointment Rules, 1974 on 2.9.2002, and thereafter it was substituted and amended thrice; firstly on 15.10.2008, second on 30.7.2011, and finally on 16th of September, 2014.

7. A perusal of the rule, which reflects that in the eventuality of the death of a civil servant during service, it empowered the appointing authority to appoint one of the children of such deceased civil servant in any of the basic pay scales from 11 to 20 and the only requirement provided by the proviso was that the child must possess minimum prescribed qualifications. There was no condition of any examination, test, or interview, and such appointment could be made in any department of the government of Sindh only in case of the death of a civil servant during service. The effect of Rule 10-A was widened when it was substituted by notification No. SOR-1(S&GAD)/2-3/02, dated 15.10.2008.

8. Perusal of the substituted Rule 10-A reflects that with widening its scope, certain conditions were also imposed. Earlier the benefit of such rule was provided only to the children of the deceased civil servant who died during service whereas the substituted rule included the children of the civil servant who were declared invalidated or incapacitated for further service and the post against which such category of persons could be appointed, was curtailed to BS-16-17 only instead of BS 11-20.

9. At this stage, the learned counsel for the petitioners asserted that the treatment in terms of rule 11-A for appointment in pay scale 1 to 10 be meted out with them, if this is the stance of the petitioners, we have noticed that the Government of Sindh, while exercising powers conferred under section 26 of the Sindh Civil Servants Act, 1973, made amendments to the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, and vide notification No.SORI(SGA&CD)2-3/2002 (P-IV), dated the 10th October 2016 published in Sindh Government Gazette on 27.10.2016 deleted Rule 10-A. However, the Supreme Court has dilated upon the subject proposition so put forward by the petitioner and held that under substituted rule

10-A, the powers of direct appointment were taken from the appointing authority, and the appointment was made subject to the qualifying test, examination, or interview from the Sindh Public Service Commission or the appropriate Selection Board and the only concession which was extended through the substituted Rule 10-A was to give 10 additional marks in aggregate to such candidate by the PSC or appropriate selection board or committee and that too only when the candidate of such category qualifies the test, examination or interview just to enhance his/her chances of employment with a further addition that in case he/she qualifies on merits, he/she would not be given the benefit of additional 10 marks.

10. Further it appears from the rule position that no substantial amendment was made except the entitlement of the widow of the deceased civil servant to such appointment in cases where all the children of the deceased employee are minors. Additionally, a cutoff date of two years was introduced restricting the rights of the children and the widow of such deceased civil servant for such employment within two years after the death of the civil servant. It appears that lastly fourth proviso to Rule 10-A was introduced to ensure that the cutoff date of two years provided vide 3rd proviso does not take away the right of employment from those to whom such right had accrued. Further the Supreme Court has observed in the above matter that (a) applicant whose father/mother (civil /public 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).

11. 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 the father of the petitioners except in the case of Abdul Hafeez Indhar whose father passed away in the year 1995 during service; however, in other cases the father of the petitioners had died before the restraining clause envisaging a cap of two years on legal heirs of the 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 the death of the deceased father does not apply to the case of petitioners.

12. We are cognizant of the fact that 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. 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.

13. 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.

14. 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 06-08-2024, for scrutiny and consideration on any ministerial post based on deceased quota and decision through a speaking order on or before 19-08-2024 strictly under the law and the prescribed rules, procedure and policy, and after providing the opportunity of hearing to the petitioners. The competent authority shall also consider the case of those candidates who could not apply within the time being underage (minor); thereafter, by efflux of time, they attained the majority and applied in time.

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.

15. 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. They are directed to coordinate with Chief Secretary Sindh for early compliance of the order.

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

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