

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 815 of 2023
(Sarfraz Ali vs. P.O Sindh & others)

Constitution Petition No. D- 1148 of 2023
(Aamir Ali Vs. Registrar High Court of Sindh & others)

Before;

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

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

M/s. Illahi Bux Jamali and Shabbir Ali Bozdar, Advocate for
Petitioners.

Mr. Ghulam Abbas Kubar, Assitant Advocate General Sindh.

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; as the petitioners are seeking direction to respondent-District & Sessions Judge Naushahro Feroze to appoint them to any suitable post as per their qualification, on quota reserved for the deceased employees of the subordinate judiciary under the policy decision /directives of the Hon'ble Chief Justice of this Court vide letters dated 03.03.2010, 23.7.2012 & 4.3.2013.

2. Learned counsel for petitioners has submitted that the learned District & Sessions Judge Naushahro Feroze was/is reluctant to appoint petitioners in the light of the policy decision of the Hon'ble Chief Justice of this Court on the subject issue as well as in terms of Civil Judicial Staff Service Rules, 1992 and Rule 11-A of Sindh Civil Servant (Appointment, Promotion & Transfer) Rules, 1974. He averred that the appointment in the District Judiciary Sindh based on son/deceased quota is based on the policy/directive issued from time to time by the Hon'ble Chief Justice of this Court based on the decision of the Administration Committee, whereas, such policy/directives have been communicated to all the District & Sessions Judges in the Province of Sindh by the Registrar of this Court to be implemented while considering the appointment in the District Judiciary in Sindh based on son/deceased quota. He further argued that Sindh Judicial Staff Services Rules, 1992, provides that appointments to the service in a Sessions Division are to be made by the

concerned District Judges under the provisions of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 so far as they apply to the posts in the service and are not inconsistent with these rules, and such other general rules as Government may frame from time to time and also under “any instructions which the High Court may issue. It is urged that instructions have been issued by the High Court from time to time through the Registrar in the shape of policy decision of the Administration Committee of the High Court relating to the appointment on deceased quota through letters dated 03.03.2010, 23.07.2012, 04.03.2013 and 03.08.2023, which, besides being also the decision of the Administration Committee of the High Court, are also instructions issued. Per learned counsel, petitioners have a legitimate right to know the reasons for declining their request for the appointment by the competent authority in terms of the recent judgment passed by the Full Bench of this Court vide order dated 20-06-2024 in C.P No.D-2781 and 2782 of 2024. He further argued that after the death of their fathers, the petitioners approached District & Sessions Judge Naushahro Feroze and have the right to ask for their appointment under the aforesaid policy as well as law laid down by the Supreme Court as well as by the Full Bench of this Court in the aforesaid cases, on the subject issue. Learned counsel referred to the documents attached with the memo of the petitions and submitted that the matter of the petitioners was referred to the District & Sessions Judge Naushahro Feroze by the Registrar's Office; however, nothing has been done compelling them to approach the District & Sessions Judge Naushahro Feroze for their appointment against any post on deceased quota in Judicial District Naushahro Feroze. He prayed for the direction to the District & Sessions Judge Naushahro Feroze to appoint petitioners on any ministerial post based on deceased quota.

3. Learned AAG, Sindh has referred to the comments filed by the office of District & Sessions Judge Naushah Feroze in C.P No. D-815 of 2023 vide letter dated 11-06-2024 and submitted that the application of the petitioner Sarfraz Ali will be considered as per Rules and Policy. He prayed for the dismissal of these petitions. The proposal seems to be fair.

4. We have heard the learned counsel for the parties on the subject issue and perused the record with their assistance.

5. It appears from the record that the Honourable Chief Justice has been pleased to allow the Office of this Court to entertain the petitions at the Sukkur Bench for placing the matters before the Bench for appropriate Orders.

6. Prima-facie the Rule 11-A of Sindh Civil Servant (Appointment, Promotion, and Transfer) Rules, 1974 spells out that 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 a widow (when all the children of the deceased employees are minor) shall be provided job on any of the basic scales 1 to 15, in the Department where such civil servant was working provided that such appointment shall be made after fulfillment of formalities as required in the recruitment rules and holding interview, for the post applied for. If this is the position of the case, we cannot direct the learned District & Sessions Judge Naushah Feroze to appoint the petitioners to any post, subject to the condition that as and when the advertisement is made, they can apply for the post and their case can be considered on merits rather than quota reserved for deceased Civil Servant in District Judiciary.

7. In the light of the above discussion, it is crystal clear that the District judiciary has to make recruitment to every post applied by the candidates on open merit as well as based on invalidated or incapacitated/minority/differently-abled and deceased quota reserved for those employees by issuing appointment order by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974.

8. In our view public employment is a source of livelihood; therefore, no citizen shall be discriminated 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 favour 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.

9. Before parting with this order, we may observe that the appointment in the public office can only be made through the competitive process on merit as provided under the recruitment rules and not otherwise as discussed supra. It is a well-settled law that appointments in public office are to be made

strictly under applicable rules and regulations without any discrimination and in a transparent manner. Thus, all appointments in the public institution must be based on a process that is palpably and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws. However, if the candidate has applied based on Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, he/she can be accommodated subject to his/her qualification for the post under the dicta laid down by the Supreme Court of Pakistan in the case referred to hereinabove. On the aforesaid proposition, if any case law is needed to fortify our view a reference can be made to the following cases decided by the Supreme Court of Pakistan (1) Muhammad Yaseen v. Federation of Pakistan, **PLD 2012 SC 132**, Muhammad Ashraf Tiwana v. Pakistan, **2013 SCMR 1159**, Tariq Azizuddin: in re, **2010 SCMR 1301**, Mahmood Akhtar Naqvi v. Federation of Pakistan, **PLD 2013 SC 195**, Contempt Proceedings against Chief Secretary Sindh and others, **2013 SCMR 1752** and Syed Mubashir Raza Jafri and others v. Employees Old-age Benefits Institution (EOBI), **2014 SCMR 949**.

10. So far as the role of Registrar of this Court is concerned, the petitioners have not sought any relief against him, therefore, no direction is required to be given to him; even otherwise it is well-settled law that writ under Article 199 of the Constitution does not lie against such administrative decision of the Administrative Committee of the High Court of Sindh, if any, in the light of latest verdict pronounced by the Supreme Court of Pakistan in the case of Gul Taiz Khan Marwat v. The Registrar, Peshawar High Court, Peshawar & others. [**PLD 2021 SUPREME COURT 391**].

11. In the light of the above rule position, the petitioners are at liberty to apply for the post on merit as and when the vacancy occurs in the office of Judicial District Naushahro Feroze and on submission of their application the same be considered under law and policy as discussed supra more particularly in the light of order dated 20.6.2024 passed by Full Bench of this court in C.P No.D-2781 and 2782 of 2024. An excerpt of the order dated 20.6.2024 is reproduced as under:-

11. It appears that there is no statutory backing regarding hearing of the Constitution Petitions by different Division Benches of this Court either at Principal Seat at Karachi, Bench at Sukkur, Circuit Courts at Hyderabad, Larkana and Mirpurkhas, nor any Notification to this effect has been issued by the High Court. However, as per Rule 6 of the Roster set by the Hon'ble Chief Justice of this Court the cases in which the Registrar / MIT is party, are required to be fixed before the Bench of the Hon'ble Chief Justice of this Court, or before the bench with the permission of the

Hon'ble Chief Justice of this Court. Whereas, it appears that on account of some confusion, recently in the month of May 2024, some references have been received from the different Circuit Benches of this Court seeking clarification to the effect, as to whether Rule 6 of the Roster set by the Hon'ble Chief Justice regarding fixation of such cases, is applicable to the cases pertaining to the Principal Seat Karachi only or also to the cases filed before Circuit Courts at Hyderabad, Larkana and Mirpurkhas and Bench at Sukkur. Whereas, on such references, it has been clarified by the Chief Justice of this Court that Rule 6 of the Roster is applicable to all the Benches and Circuit Courts, whereas, in order to avoid inconvenience to the litigant parties and counsel, permission has been accorded on such references to decide petitions relating to appointment of sons of deceased, retired and serving employees in the District & Subordinate Courts in Sindh keeping in view the policy decision of the Administration Committee of the High Court and instructions issued by the High Court from time to time in this regard.

12. Accordingly, having clarified the factual and legal position in the above terms, we deem it appropriate to send these petitions to the Circuit Court Larkana to be decided by the respective division bench, who may decide the fate of both these petitions, however, keeping in view the facts, circumstances and merits of the case in accordance with law, whereas, the order passed by this larger bench shall have no bearing as to the merits of the case.”

12. These petitions stand disposed of in the above terms.

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Nasim/P.A