

**IN THE HIGH COURT OF SINDH  
CIRCUIT COURT MIRPURKHAS**

Constitutional Petition No. D-605 of 2024  
(*Aamir Niaz Vs PO.Sindh and others*)

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**DATE      ORDER WITH SIGNATURE OF JUDGE (S)**

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

Date of hearing and Order: 19.08.2024.

Nemo for the petitioner  
Mr. Ayaz Ali Rajpar Additional A.G., Sindh.

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**ORDER**

Adnan-ul-Karim Memon, J. Through the captioned Constitution petition, the petitioner Amir Niaz is seeking the appointment to the suitable post on deceased quota in terms of the policy decision of the Government of Sindh including the Rule 11-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 (Rules-1974) inter-alia on the ground that his father was Primary School Teacher in Education Department Government of Sindh and passed away during service on 5.7.2018 and at that time, petitioner was 16 years old and after attaining the age of 18 years, he immediately applied for the suitable post in the year 2020, but was refused by the respondents, though the office of Taluka Education officer vide letter dated 26.10.2020, submitted that positions are laying vacant in his office.

2. The case of the petitioner has been objected to by the A.A.G without filling comments, on the premise that his case does not cover under Rule 11-A of Rules-1974 as the father of the petitioner passed away and he applied for appointment under the deceased quota on after the lapse of the stipulated two years as envisaged under the Rules.

3. In absence of the petitioner, we have given our anxious consideration to the pleadings of the petitioner, perusing the same material and the relevant provisions of law. 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.

4. To go ahead further, initially, the Supreme Court has interpreted the law on the subject issue and interpreted 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.

5. Rule 10-A of the Appointment Rules, 1974 was originally introduced vide notification No. SOR-1(S&GAD)/2-3/2002 dated 2.9.2002 and started with a non-obstante clause thereby overriding all other provisions in the appointment rules. A perusal of the above-reproduced rule 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. In 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.

6. The Supreme Court further 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 of 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. Second time Rule 10-A was substituted vide notification dated 30.07.2011.

7. It appears 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 on 16th September 2014 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. However, the petitioner in his petition claims treatment in terms of rule 11-A for appointment on a pay scale of 1 to 10. However, 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.

8. In view of the above legal position of the case, we put the question to the learned AAG as to why the candidature of the petitioner has not been considered against the quota reserved for deceased civil servants. He replied that the petitioner's father had passed away in the year 2018 and he did not apply within two years of the death of his father. He submitted that the petitioner ought to have applied within two years after passing away of his father.

9. We do not agree with the contention of learned AAG on the aforesaid analogy for the reason that when the father of the petitioner passed away, the petitioner was underage and when he reached the age of majority i.e. 18 years, he subsequently applied for appointment on

deceased quota, thus his case is covered under the policy decision of the Government of Sindh discussed supra, as the candidature of the petitioner has already been forwarded by the respondent-department to the competent authority by finding him eligible for any suitable post if this is the position of the case, respondents ought to have considered his case for appointment on any post of ministerial nature as per his qualification.

10. This being the legal position of the case. This petition is, therefore, disposed of along with the pending application(s) with direction to the competent authority /Chief Secretary, Government of Sindh, to appoint the petitioner against the post of ministerial nature reserved for deceased civil servants, if he qualifies as per the policy decision of the Government of Sindh.

11. The aforesaid exercise shall be undertaken by them within 15 days from the date of receipt of this order. Let a copy of this order be transmitted to the Chief Secretary Sindh and the Secretary Education and Literacy Department, Government of Sindh, for compliance.

**JUDGE**

**JUDGE**

*\*Ali Sher\**