

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
MIRPURKHAS

Constitution Petition No.D-701 of 2024
(*Haresh Kumar versus Province of Sindh and others*)

DATE	ORDER WITH SIGNATURE OF JUDGE
-------------	--------------------------------------

Before:
Adnan-ul-Karim Memon, J.
Amjad Ali Bohio, J.

Date of hearing & Order 19.08.2024

Mr. Kanji Mal Meghwar, Advocate for the petitioner.

Mr. Ayaz Ali Rajpar, Additional A.G Sindh

=

ORDER

Adnan-ul-Karim Memon, J. Petitioner Haresh Kumar has filed this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, seeking a declaration to the fact that he is eligible and fit person for appointment against deceased/son quota on any vacant posts of BPS-01 to 05 in the light of Administrative Notification issued by the Hon'ble Chief Justice of this Court in grade 01 to 05. He also seeks directions to the respondent District & Sessions Judge, Umerkot, for appointment under the quota reserved for deceased civil servants.

2. We asked the learned counsel for the petitioner to satisfy this Court as to how this petition is maintainable under Article 199 of the Constitution about the appointment of petitioner on deceased/son quota in District Judiciary in Sindh in the light of Rule 11-A of Sindh Civil Servant (Appointment, Promotion, and Transfer) rules 1974, which speaks of only deceased quota and not son quota. Learned counsel for the petitioner has replied to the query with the narration that learned District & Sessions Judge, Umerkot, was/is reluctant to appoint the petitioner on deceased quota as his father namely Lal Chand Oadh (late) was serving as Reader in BPS-10 and retired on 01.03.2017 before attaining the age of 60 years and passed away on 17.08.2017 due to ailment i.e. after four months of his retirement and petitioner being his son was/is eligible for the appointment of any post based on deceased/son quota. He further submitted that he moved applications dated 12.11.2018, 22.08.2019 and a review application dated 26.07.2019 to respondent No.3 as well as an

application dated 16.05.2019 to the Registrar High Court but the petitioner was ignored. He further submitted that due to ill advice earlier petitioner filed Constitutional Petition No.D-2401 of 2019 before the High Court of Sindh, Karachi, and was withdrawn as not pressed on 05.11.2019 by him due to some technical defect with permission to file afresh. In support of his contention, he relied upon the Order dated 11-10-2018 passed by this Court in C.P No.D-1019 of 2017, 162 of 2018, and 351 of 2018 and submitted that under the policy decision/directives of the Hon'ble Chief Justice of this Court vide letters dated 26.04.1993 and 23-07-2012 the petitioner is entitled to be considered for the subject post. He placed reliance upon the Judgment dated 05.08.2024 passed by this Court in the Constitutional Petition No.D-682 of 2024 Re: Manmohan v. Province of Sindh and others and prayed for disposal of instant petition accordingly.

3. Learned A.A.G without filing the comments, has referred to the administrative Order of the Hon'ble Chief Justice, whereby direction has been issued to the office to entertain the petition and be placed before this Court for appropriate Order.

4. We have heard the learned counsel for the parties on the issue of deceased quota in the District Judiciary under the aforesaid policy decision taken by the Administrative Committee of this Court and perused the material available on record.

5. The important question involved in the present petition is whether the petitioner is entitled to be appointed on the deceased/son quota in view of the policy decision/directives of the Hon'ble Chief Justice of this Court, as well as directives issued by the Full Bench of this Court.

6. We have noticed that the District & Sessions Judge Umerkot needs to invite applications for the posts in terms of directives of the Hon'ble Chief Justice for appointment in terms of Rule 11-A supra as well as policy decision and the appointment needs to be made on merits, for the reason that the District Judiciary has to make recruitment to every post applied by the candidate on open merit as well as based on invalidated or incapacitated/minority/differently-abled and deceased quota reserved for those employees by issuing appointment orders by invoking Rule 11-A supra.

7. 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 and that's why Rule 11-A as amended up to date is introduced to cater the situation to accommodate the aforesaid categories of civil servants. Primarily, the appointments in the District Judiciary are to be made in terms of Rule 11-A as well as policy decisions of this Court as the employees of the District Judiciary are civil servants in terms of Sindh Civil Servant Act, 1973.

8. So far as the role of Registrar of this Court is concerned, the petitioner has not sought any relief against him; therefore, no direction is required to be given to him; even otherwise, no administrative decision can be challenged under Article 199 of the Constitution in terms of law laid down by the Supreme Court in the case of *Gul Taiz Khan Marwat*.

9. In the light of above-ruled position, no further action is required on our part in the exercise of power under article 199 of the Constitution on the premise that the petitioner has to approach the learned District & Sessions Judge, Umerkot, as and when the vacancy occurs in the said office, which is required to be advertised and petitioner shall be at liberty to move an application, which shall be considered in accordance with the law and policy, so introduced by this Court.

10. Resultantly, this petition is disposed of with direction that as and when the vacancy occurs in the office of District & Sessions Judge, Umerkot, the petitioner's candidature can be considered, purely on merits, including the observation recorded by the Full Bench of this Court.

JUDGE

JUDGE