

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before:

Justice Mrs. Kausar Sultana Hussain
Mr. Justice Khadim Hussain Soomro

CP No. D- 1218 of 2021

[Waqas Ahmed versus Province of Sindh & Ors.]

Petitioner : **Through Mr. Mumtaz Alam Leghari advocate**
Respondents : **Through Allah Bachayo Soomro Addl: A.G Sindh**
Dates of hearing : **14.03.2024**
Date of decision : **14.03.2024.**

J U D G M E N T

KAUSAR SULTANA HUSSAIN J. Through captioned petition, petitioner has sought following relief(s):

- a. *To direct the respondent No.2 for issuance of appointment letter in favour of the petitioner for the post of constable against the deceased quota.*
- b. *Costs of the petition may be saddled upon the respondents.*
- c. *Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioner.*

2. Learned counsel for the petitioner submits that father of the petitioner was serving in Police Department, who expired during service on 02.07.2018; that after the death of his father, being eligible, petitioner applied with the respondents for his appointment against deceased within seven days of the death of his father i.e on 09.7.2018; that at the time of submission of application petitioner's age was 27-years 11-months and 06-days, which was also acknowledged by the respondent No.5 vide his letter dated 24.04.2019, yet vide letter dated 19.02.2019 issued by respondent No.1/Home Department the right of petitioner has been denied on account of over, though petitioner applied within qualifying age. He prayed that directions may be issued to respondents for appointment against deceased quota.

3. On the other hand, learned Additional A.G Sindh argued that this petition is not maintainable as the petitioner is over age, hence cannot be appointed against deceased quota in Police Department. Learned AAG further argued that vide Order dated 03.09.2019 passed in C.P No.D-271 of 2019 this Court observed that Sindh Civil Servant Act is an act of general application whereas Police Act 1861 is of special application, therefore, Police Department cannot circumvent the law to make recruitment to the post of Police Constable on the basis of Son/Shahed quota by

invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 (**Rules 1974**). He prayed for dismissal of this petition.

4. We have heard the learned counsel for the petitioner as well as learned Additional A.G Sindh and have also perused the material available on record.

5. Perusal of record shows that father of petitioner was serving in Police Department as Constable, who expired during service on 02.07.2018 and such Obituary letter was also issued by the respondents on 03.07.2018. Record further shows that after the death of his father petitioner submitted his application with respondents within seven days of the death of his father for appointment against deceased quota. According to Rule 11-A of the Rules, 1974 in case a civil servant dies during service or is declared invalidated or incapacitated for further service, one of his/her children or, as the case may be, spouse when all the children of the deceased employee are minor, shall be provided job who applies within a period of two years of death or declaration of invalidity or incapacity of civil servant on any of the Basic Pay Scale 1 to 11, whereas in Police Department the qualifying age for fresh appointment in BS-01 to 15 is from 21 to 27.

6. Admittedly the petitioner had applied for appointment against deceased within seven days of the death of his father and at that time his age was 27-years 11-months and 06-days, which has also been acknowledged by the respondent No.5 in his letter dated 24.04.2019, as such the contention raised by learned Additional A.G that petitioner is over age has no force at all since the petitioner was within age limit at the time of applying against deceased quota, hence he cannot be left to suffer for any fault and/or delay in process of his application on part of the respondents.

7. As for as Order dated 03.09.2019 passed in afore-referred petition is concerned, perusal of comments dated 07.10.2021 submitted on behalf of I.G Sindh reflects that after passing of aforesaid Order the appointment against deceased quota in Police Department was stopped, however, a draft summary for formation/incorporation of the “*Sindh Police (Shaheed, Deceased, Permanently Invalidated or Incapacitated Quota) Recruitment Rules, 2021*” was moved, which was unanimously approved by the Provincial Cabinet in its meeting held on 17th July, 2021 and such letter dated 09.08.2021 (**available at page-121 of the file**) was issued by the respondent No.1/Home Department. The decision of Sindh Cabinet is reproduced below:

“The Cabinet unanimously approved the draft amendment in the Sindh Police (Shaheed, Deceased, Permanently Invalidated or Incapacitated Quota) Recruitment Rules, 2021 proposed by the Home Department, Government of Sindh.”

8. Based on the Cabinet decision, reproduced above, a Notification dated 23.08.2021 was issued by the Inspector General of Police Sindh (**available at page-**

113 of the file), framing rules with the name of Sindh Police (Shaheed, Deceased, Permanently Invalidated or Incapacitated Quota) Recruitment Rules, 2021 (**Rules 2021**), whereby quota for the legal heirs of deceased police personnel has been provided. According to said quota one legal heir of the deceased and/or permanently invalidated or incapacitated employee of Sindh Police is to be appointed on any one of the posts of (i) Junior Clerk, (ii) Assistant Sub-Inspector, (iii) Wireless Operator, (iv) Driver Constable, (v) Constable and (vi) Class-IV, subject to fulfillment of prescribed eligibility criteria.

9. The present petitioner besides having qualifying age has also applied for his appointment against deceased quota within time, so also his case squarely falls within the ambit of deceased quota as provided under the Rules, 2021. Accordingly instant petition is allowed with directions to respondents No.1 and 2 to process the case of petitioner for his appointment under deceased quota on any one post as provided under the Rules, 2021 according to his qualification and issue him appointment order within one month from the date of this judgment.

10. Instant petition stands disposed of in the above terms.

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