

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Constitution Petition No. D-1093 of 2020**

*(Imtiaz Ali Ghunio Vs. Province of Sindh & others)*

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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**Before;**

*Adnan-ul-Karim Memon, J;*  
*Muhammad Abdur Rahman, J;*

**Date of hearing and order: 23-04-2024.**

Mr. None present for the petitioner.  
 Mr. Ali Raza Baloch Assistant A.G along with Ayaz Hussain  
 Mahesar D.E.O (Primary) Khairpur.

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**ORDER.**

Petitioner Imtiaz Ali has prayed for direction to the respondent Education and Literacy Department Government of Sindh for his appointment against the deceased quota on the premise that his father Ghulam Serwar was serving as Chowkidar at Government Primary School Ghunia Taluka Kingri and died during service on 18-05-2013.

It is the case of the petitioner that he being the son of the deceased Ghulam Sarwar was/is eligible to be appointed against the deceased quota. As per the petitioner, his case was forwarded to the District Education Officer (Elementary) Khairpur Mir's in the year 2018, who processed the case and forwarded it to the Director of Schools Education (Primary) Sukkur Region Sukkur; however that correspondence continued to take place, but nothing could be done in the intervening period, compelling him to approach this Court on 17-10-2020.

Petitioner has pleaded that Rule 11-A of Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 supports his case and the respondents are bound under the law to consider his case against the deceased quota; however, due to malafide intention and ulterior motives, they have neglected to appoint him on any ministerial post. He prayed for allowing the petition.

Learned AAG has filed a statement along with certain documents with the narration that the case of the petitioner for his appointment on deceased quota was scrutinized and processed in terms of law and policy; however, his case does not fall within the ambit of policy decision as the petitioner has failed to apply within time.

We have heard the learned AAG on the subject issue as the petitioner is not turning up.

We have noticed that the case of the petitioner was processed and considered against the deceased quota by the Director School Education (Primary) Sukkur Region Sukkur vide letter dated 07-11-2018, but unfortunately the law department returned the case to the School Education and Literacy Department vide letter dated 10-07-2019 with remarks that petitioner failed to apply for the job within stipulated time, prima-facie this is hardly a ground to refuse the appointment for the reason that vide letter dated 22-04-2024 issued by Government of Sindh Services, General Administration and Co-ordination Department whereby a corrigendum was issued in the year 2016 whereby 60 days cutoff date was provided to apply for the job; however, the same was clarified in terms of judgment passed by the Supreme Court in C.Ps No. 482 to 503 K of 2016 by holding that the clog of two years for making application for employment under the deceased quota set through Notification dated 16-09-2014 would only apply to those children of the deceased whose right to

employment had accrued after the date of making of the restrictive Rule.

The Supreme Court has held that restrictions of two years imposed in the Rules 10-A and 11-A of the Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974 applied only prospectively and not retrospectively and this was the reason applications for certain posts under Ruled 11-A were invited without specifying the age limit as disclosed in the aforesaid corrigendum; however, to make convenience for those children (whose mother/father had died during the period of 2<sup>nd</sup> September 2002 to 15<sup>th</sup> September 2014) to apply timely to conclude the matter, once for all those aspirants /candidates fell within such category. However, in the present case, the candidates who otherwise fell in such category were not required to apply for appointment on the deceased quota within any timeline as per policy decision.

At this stage, we put the question to the learned AAG and Officers present in Court as to why the petitioner has not been considered for the subject post against the quota reserved for deceased Civil Servants on the aforesaid analogy so put forward by the respondent department, they simply said that this is a policy matter and the Government has refused the petitioner. We do not agree with the reasoning of the learned AAG on the aforesaid proposition as Rule 11-A as discussed *Supra* is clear in its terms and needs no further deliberation on our part. Prima facie the action of the respondent department does not align with the law laid down by the Supreme Court of Pakistan on the subject issue and the petitioner has been subjected to the irony of the department which is a hardship as his father passed away in 2013 and the respondent department failed to provide any ministerial post to the petitioner/legal heirs of the deceased as per his/their eligibility and allowed him/ them to litigate on the issue.

The respondents have failed and neglected to look into the matter in its true perspective and violated the command of the Constitution and law; therefore, this petition is liable to be allowed along with the pending applications with direction to the Chief Secretary Government of Sindh and respondents to take into consideration the verdict of the Supreme Court on the subject issues as well as keeping in view the Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, where after if the petitioner is found eligible in all respect for appointment against the quota reserved for deceased Civil Servant, he shall be accommodated in any suitable ministerial post by allowing him to complete all legal and codal formalities as required under the law and the relevant rule, procedure, and policy.

Let notice be issued to the Chief Secretary Sindh, Government of Sindh, Secretary School Education and Literacy Department Government of Sindh, along with a copy of this order for its compliance in letter and spirit within 30 days.

**Judge**

**Judge**