

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Constitution Petition No. D-96 of 2019**

*(Nadeem Abbas Mallah 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: 25-04-2024.**

Mr. Fakir Muhammad Arain, advocate for the petitioner.  
Mr. Ghulam Mustafa G.Abro, Assistant A.G, Sindh.

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**ORDER.**

**Adnan-ul-Karim Memon, J;-** Through this petition, petitioner Nadeem Abbas seeking direction to the respondent-School Education Department Government of Sindh to appoint him to the post of Junior School Teacher (JST) or any suitable post in the Education Department against the deceased quota basis as per his Qualification.

Learned counsel for the petitioner has submitted that the petitioner has completed all the codal formalities as required under the law; however, he has been deprived of his legal right for appointment against quota reserved for deceased Civil Servants in terms of Rule 11-A of Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974.

Learned AAG has opposed this petition without filing the comments. Prima facie this is apathy on the part of the respondent-department as this lis has been pending since 2019 and there is no progress in the matter; as such we are compelled to hear the learned counsel for the petitioner and learned AAG on the subject issue without further delay.

We have heard the learned counsel for the petitioner as well as learned AAG representing the respondents and perused the material available on record.

The facts, in brief, necessary for the disposal of the instant petition are that Mureed Hussain the father of the petitioner was serving as a High School Teacher (BPS-17) at Government High School Bakhir Kanasira Taluka Kotdiji, District Khairpur, during his service he passed away on 28-05-2003 and such Obituary was also issued by the Executive District Officer (Education) Khairpur vide EDOE(ADMN-II)/-841 dated 27-01-2009; it appears that the petitioner possessed Degree of M.A (Sociology) and he being surviving legal heir of the deceased, had approached to the respondents with the application for his appointment on deceased quota and the Section Officer (Schools-IV) forwarded the application to the Secretary Government of Sindh Schools Education Department who vide his office letter No.SO(S-V)/MISC/2017 dated 29-03-2017 addressed to the Director of School Education (Primary/ES&HS), Sukkur Region, called the detailed report regarding the vacant position from BPS-01 to BPS-11 along with recommendation, verification, compelling the petitioner to approach this Court by filing the instant petition.

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.

At this stage, we put the question to the learned AAG as to why the petitioner has not been considered for the subject post against the quota reserved for deceased Civil Servants he simply said that this is a policy matter and the Government has not

considered his case for such appointment as the post of Junior School Teacher could only be filled as per recruitment Rules and not otherwise. However, he submitted that petitioner's father was passed away in 2003 and petitioner applied for the subject post at the belated stage, as such, he is not entitled for the subject post.

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 on 28-05-2003 during service and the petitioner applied in the year 2008 within the policy terms, which application was processed vide Office Note dated 03-11-2008 of Section Officer (S-IV) Government of Sindh (available at page No. 37-49). However nothing has been done compelling the petitioner to file this petition on 16-01-2019 and notice was issued to the respondents vide order dated 22-01-2019; thereafter, learned AAG sought time to file comments but no concrete efforts were made to file comments to put forward the stance of the respondent department.

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**

Nasim/P.A