

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C.Ps No. D-51, 97, 98, 101, 114, 135, 161, 193 & 194 of 2024

**PRESENT: Mr. Justice Muhammad Saleem Jessar
Mr. Justice Jawad Akbar Sarwana**

Petitioners in CPs No. D-97/2024, D-98/2024, D-101-2024 & D-161/2024	:	through Mr. Abdul Rehman A. Bhutto, Advocate.
Petitioners in CPs No. D-193/2024 & D-194/2024	:	through Mr. Ali M. Pirzada, Advocate.
Petitioners in CPs No. D-51/2024 & D-114/2024	:	through Mr. Ahsan Ahmed Qureshi, Advocate.
Petitioner in CP No. D-135/2024	:	through Mr. Athar Ali Bhutto, Advocate
Respondents / State	:	through Mr. Abdul Hamid Bhurgri, Addl. A.G & Mr. Munawar Ali Abbasi, Asst: A.G, Sindh.
Dates of hearing	:	12.03.2024 & 19.03.2024
Date of Judgment	:	17.04.2024

J U D G M E N T

Muhammad Saleem Jessar, J.- By this single judgment, we propose to dispose of above-noted nine constitutional petitions as in all the petitions, grievances of the petitioners is similar, so also a common law-point relating to appointment on the basis of son-quota policy is involved.

2. C.P. No.D-194 of 2024 has been filed by the son of deceased Hamid Ali Janwri, who was working as bailiff in District Judiciary Larkana and **died during service on 20.08.2023**, whereas C.P. No.D-193 of 2024 has been filed by

the son of Allah Dino who stood retired on **01.3.2009** as Naib Qasid (Peon) and after retirement **he passed away**. The rest of the petitions have been filed by the retired employees of District Judiciary Larkana themselves. C.P. No.D-101 of 2024 has been filed by petitioner Mohammad Usman, who retired as Naib Qasid on **03.6.2010**, C.P. No.D-161 of 2024 has been filed by petitioner Pir Bux Khokhar, who retired as Office Superintendent on **05.01.2012**, C.P. No.D-135 of 2024 has been filed by petitioner Mohammad Sharif, who voluntarily retired as Naib Qasid on **30.07.2019**, C.P. No.D-98 of 2024 has been filed by petitioner Mst. Rehana wife of Pervaiz Jhon, who retired as Sweeper on **30.11.2020**, C.P. No.D-97 of 2024 has been filed by petitioner Khadim Hussain, who retired as Naib Qasid on **01.3.2022**, C.P. No.D-114 of 2024 has been filed by petitioner Mohammad Bux Abro, who retired as Naib Qasid on **09.12.2022**, C.P. No.D-51 of 2024 has been filed by petitioner Jogi Khoso, who retired as Naib Qasid on **08.12.2023**.

3. The common grievance of the petitioners in all the petitions is that as per the policy framed by the High Court of Sindh with regard to the appointment of sons of deceased, retired and serving employees of the District and subordinate Courts in Sindh, one of the sons of those employees is entitled to be appointed in District judiciary (subordinate Courts) Larkana; however, respondent No.1 has not acted upon such policy, with the result the petitioners have been deprived of their legitimate expectations and legal rights, hence the petitioners have prayed for appointment of one of their sons to any suitable post in District Judiciary Larkana.

4. Respondent No.1, District and Sessions Judge, Larkana, in his comments, has, inter alia, stated that sons of all employees cannot be adjusted at the time of appointment as 20% son quota is to be followed, which was considered at the time of appointment. He further stated that every son of retired employee cannot claim appointment as of right on the basis of son quota as the percentage for each category i.e., son and deceased quota of 20% is to be followed. Therefore, he prayed for the dismissal of the petitions.

5. Respondent No.3, Law Department, Government of Sindh, has filed comments/concise statements in three petitions bearing Nos. CPs Nos. D-97/2024, D-98/2024, and D-101/2024. In their comments, they have stated that respondent No.3 is a preforma party, and the matter mainly pertains to

respondents Nos. 1 and 2, who are in a better position to offer replies/ comments in the matter.

6. We have heard learned counsel appearing for the petitioners as well as learned Additional Advocate General appearing for the respondents / State and have perused the material available on the record.

7. Learned counsel for the petitioners submitted that there are standing orders as well as circulars issued by this Court through respondent No.2, Registrar, High Court of Sindh, whereby a policy was framed to consider and accommodate the children of deceased, retired as well as serving employees of this Court as well as District and Subordinate Courts / Judiciary in Sindh. They mainly relied upon the judgment passed by a Division Bench of this Court while sitting at Circuit Court, Larkana, in C.P. No.D-670 of 2023, which was allowed by a division bench of this Court and accordingly, directions were issued to respondent No.1 to appoint the son of the petitioner in that petition to the post of Naib Qasid or any other equivalent post.

8. According to learned counsel, if a point of law is decided in an order or judgment passed by the competent court of law relating to the terms and conditions of a civil servant / employee, then the benefit of such decision is also to be extended to other civil servants / employees, despite fact that they were not parties to that litigation, hence, they submitted that benefit of the judgment passed in above said constitution petition may also be extended to the petitioners in instant petitions. In support of their contention, reliance has been placed on the case reported as *GOVERNMENT OF PUNJAB, through Secretary Education, Civil Secretariat, Lahore and others Vs. SAMEENA PARVEEN and others* (2009 SCMR 01).

9. Conversely, learned AAG, submitted that notifications and circulars issued by respondent No.2 in connection with the appointment of sons of the deceased, retired and serving employees have been followed by respondent No.1 while making such appointments; however, according to him sons of all employees cannot be adjusted at the same time of appointment as the policy of 20% son quota is to be followed. He further stated that every son of retired employee cannot claim the appointment as of right on the basis of son quota as the percentage for each category, i.e. son and deceased quota, is to be

followed. He, therefore, prayed for the disposal of the petitions in the light of comments submitted by the respondents No.1 and 2.

10. It seems that learned counsel appearing for the petitioners have raised a common legal point that if a point of law is decided in an order or judgment passed by the competent court of law relating to the terms and conditions of civil servants / employees, then benefit of said decision is also to be extended to other civil servants / employees, despite fact that they were not parties to that litigation.

11. In fact, in C.P. No.D-670 of 2023 decided by a Division Bench of this Court, vide judgment dated 10.01.2024, while sitting at Larkana, which has been relied upon by the petitioners in support of their respective cases, the facts, as disclosed by the petitioner in that petition, were that the petitioner in that case was appointed as Naib Qasid and ultimately stood retired from service on 30.06.2023. After his retirement, the petitioner submitted application for the appointment of his son Adeel Hussain on **son-quota** basis. Thereafter, when vacancies were published in newspapers the petitioner's son applied for the post of Naib Qasid. He was called for an interview where the petitioner and his son approached before Respondent No.1 and the Selection Committee. The petitioner was assured that the case of his son would be considered on the basis of a son quota. However, respondent No.1 in that petition appointed other persons, while the petitioner's son was deprived of his rights vested under the Policy framed by this Court. The petitioner again approached respondent No.1 and submitted that his son has a legal right to be appointed based on Son-Quota as per the policy of Honourable High Court of Sindh, but no action was taken by Respondent No.1 / District & Sessions Judge, Larkana, therefore, he filed above Constitutional Petition. Upon service of notices, respondents No.1 and 2 filed their respective Comments. After hearing arguments of learned counsel for the petitioner in that case as well as learned Additional Advocate General, petition was allowed. It would be advantageous to reproduce hereunder relevant portions from said judgment:

“In view of above legal position and dictum laid down by the Superior Courts, it was incumbent upon Respondent No.1 to have followed the policy framed by this Court in relation to son-quota as depicted in the aforesaid letters/circulars dated 03.3.2010, 23.07.2012 and 04.03.2013. Simultaneously, he was also duty-bound to have kept

in mind the directions as given in the Order dated 11.10.2018 passed by Division Bench of this Court while sitting at Sukkur Bench... ..

25. *Needless to emphasize that a Government servant gives his blood and sweat to the concerned department by spending long and precious portion of his life in the shape of rendering his services, as such he deserves to be bestowed and provided promptly all his legal and legitimate rights including accommodating his family by providing an opportunity of appointment to any of his sons against any suitable post on the basis of son-quota, particularly after his retirement and more particularly after his death, as there have been cases that after retirement / death of a particular government servant, his family has to face very painful, grave and critical situation due to retirement / death of the head of family, because undoubtedly the monthly pension received by a retired employee or his widow, as the case may be, particularly by one who pertains to lower staff (Class-IV), is on very lower side vis-à-vis the monthly emoluments being earned by him during his service tenure. In such a situation, it would be utmost necessary and mandatory for the concerned competent authority to appoint anyone amongst the sons of such employee immediately after his retirement / death against any suitable post.*

26. *The upshot of above discussion is that instant petition is hereby allowed. Respondent No.1 is directed to reconsider case of the petitioner and appoint his son Adeel Hussain as Naib Qasid, or on any suitable post equivalent to the status of Naib Qasid, on the basis of son-quota policy. The needful be done within a period of fifteen days positively under intimation to this Court.*

27. *Copy of this judgment be sent to the Registrar, High Court of Sindh at Karachi, who is directed to circulate the same amongst all the District and Sessions Judges in the province of Sindh, with the direction not to cause unnecessary hurdle or delay in implementing the policy framed and directions given through all such Letters and Circulars issued from time to time in respect of son-quota."*

12. We have also examined the son quota policy, including the gender criterion and its' applicability to 20% of the total staff. To remove doubt, before proceeding forward, we may clarify that the son quota, although described as "son quota", cannot be limited to males alone. Suffice it to say, the son quota policy extends rights to an employee's child irrespective of gender. Any other interpretation would contradict the rules of justness, fairness, equality and openness as enshrined in Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 (The Constitution). The Supreme Court of Pakistan has dilated upon Article 25 of the Constitution as a cornerstone of fundamental rights enshrined therein, which guarantees every person the right to equality before the law and equal protection of the law. The Supreme Court has held that the expression "equal before the law" is

a declaration of equality of all persons irrespective of gender, race, religion, colour, caste, creed, status, language, etc., implying thereby the absence of any privilege in favour of any individual. Therefore, we read “son” to refer to either “son” or “daughter” in the policy of the son quota subject to all restrictions that apply to the son quota. Further, we find, as discussed in an earlier judgment of differently comprised Division Bench, that the 20% threshold of son quota applicable to each category/cadre/post of employees between BPS-2 and BPS-7 is consistent with the concept of reasonableness, which is a fundamental concept of equality or non-arbitrariness. The criterion is a reasonable classification founded on an intelligible differentia, which is based on a rational nexus to the object sought to be achieved by such classification as discussed therein.

13. Before parting with the above aspect of the matter, we would like to identify yet another aspect of the son quota, i.e., widow’s rights. Counsels and the learned AAG did not address this matter; hence, we have not taken up the matter and will leave it for another day.

14. Now advertent to the present case, it may be observed that a judgment may be either a *‘judgment-in-personam’* or a *‘judgment-in-rem’*. In simple words, a *‘judgment-in-personam’* determines the rights of the parties *inter se* to or in the subject matter in dispute, whereas a *‘judgment-in-rem’* is a legal determination binding not only upon the parties to the litigation but upon all persons.

15. This legal proposition has been elaborately discussed in the case of *TARA CHAND and others Vs. KARACHI WATER AND SEWERAGE BOARD, KARACHI and others* (2005 S C M R 499) wherein a Full Bench of the Honourable Supreme Court, while distinguishing abovesaid two legal phrases, observed as under:

“9. As to whether impugned judgment is ‘judgment in personam’ or ‘judgment in rem’, it would be appropriate to reproduce their definitions as defined in various dictionaries:

(I) The Oxford Companion to Law by David M. Walker

Judgment in personam.--- A judgment determining the rights of B persons *inter se* in or to any money or property in dispute, but not affecting the status of persons or things or determining any interest in property except between the parties. They include all judgments for money.

Rem, Judgment in.--- A legal determination binding not only the parties but all persons. It applies particularly to judgments in Admiralty, declaring the status of a ship, matrimonial causes, grants of probate and administration and condemnation of goods by a competent Court.

(II) K.J. Aiyar's Judicial Dictionary (10th Edition 1988)

Normally a judgment binds only those who are parties to it. Such judgments are known as Judgments in personam.

Rem, Judgment in.--- A judgment which gives to the successful party possession or declaration of some definite right which right is available against the whole world.

(III) Words and Phrases legally defined (Vol. 3 I-N)

Judgment, In personam.--- A judgment in personam or inter parties are those which determine the rights of parties inter se to or in the subject-matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but do not affect the status of either persons or things, or make any disposition of property or declare or determine any interest in it except as between the parties litigant. They include all judgments which are not judgments in rem.

A judgment in personam determines the rights of the parties inter se to or in the subject matter in dispute, whether it be corporeal property of any kind whatever or a liquidated or unliquidated demand, but does not affect the status of either persons or things, or make any disposition of property, or declare or determine any interest in it except as between the parties litigant. Judgments in personam include all judgments which are not judgments in rem, but as many judgments in the latter class deal with the status of persons and not of things, the description "Judgment inter parties" is preferable to 'Judgment in personam'.

Judgment, In Rem.--- A judgment in rem may be defined as the judgment of a Court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing (as distinct from the particular interest in it of a party to the litigation). Apart from the application of the term to persons, it must affect the res in the way of condemnation, forfeiture, declaration of status or title, or order for sale or transfer.

(IV) Black's Law Dictionary with pronunciations (6th Edition).

Judgment in personam or inter parties. A judgment against a particular person, as distinguished from a judgment against a thing or a right or status.

Judgment in rem. An adjudication pronounced upon the status of some particular thing or subject-matter, by a Tribunal, having competent authority. *Booth v. Copley*, 238 Ky.23, 140 S.W 2d, 62, 666. It is founded on a proceeding instituted against or on something or subject-matter whose status or condition is to be determined. *Eureka Building and Iran Assn v. Shultz*, 139E Kan, 435, 32 P.2d 477, 480; or

one brought to enforce a right in the thing itself. Federal Land Bank of Omaha v. Jafferson, 229 Iowa 1054, 295 N.W. 855, 857. It operates upon the property, Guild v. Walis, 150 Or. 69, 40 P. 2nd 747, 742. It is a solemn declaration for the status of some person or thing. Jones v. Teat, Tex Civ. Appellant. 57 S.W. 2d. 617, 620. It is binding upon all persons in so far as their interests in the property are concerned.”

16. To sum up, it may be held that when a judgment is pronounced with regard to a legal principle / law point, then it is a '*judgment-in-rem*'. Likewise, the judgment passed in relation to a notification of general nature, a circular imposing a levy, a circular or notification issued in respect of a particular policy, then the effect of such decision would also be extended even to those persons who may not be parties in the original / particular litigation / proceedings but are affected or likely to be benefited by such notification or circular. Needless to emphasize that whenever a policy is framed, particularly relating to the terms and conditions of civil servants / government employees, such policy is not meant for certain individuals but is framed for the benefit of all the persons / employees similarly placed. It may be pointed out at this juncture that the judgment passed by Division Bench of this Court in aforesaid CP No.D-670/2023 was relating to the appointment on the basis of **policy of son quota** framed by this Court.

17. In the same judgment of *TARA CHAND* (supra), it was further held as under:

“10. To further elaborate the above aspect, it would be relevant to refer the case of Hameed Akhtar Niazi (supra) wherein this Court has held that when Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the Civil servants who litigated, but also of other civil servants, who may have not taken any legal proceedings, the dictates of Justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum. This Court in the case of Khawaja Abdul Hameed Nasir and others v. National Bank of Pakistan and others 2003 SCMR 1030 also extended the benefit to all the persons falling within the same category in order to do complete justice. To further fortify, reference is made to the case of Hakim Muhammad Nabi Khan and 2 others v, Warasatullah through Legal Representatives 1987 SCMR 1698, wherein this Court had allowed benefit of relief to non-appearing party of doing complete justice. Irrespective of above, this Court in the case of Province of Punjab through Collector Bahawalpur, District, Bahawalpur and others v. Col. Abdul Majeed and others 1997 SCMR 1692, while discussing the

provisions of Order XLI, rule 33, C.P.C. and Order XXXIII; rule 5 of the Supreme Court Rules, 1980, has held at page 1709 as under:---

"Not only this it is now well-settled that under Order XLI, rule 33, C.P.C., that the High Court and under Order XXXIII, rule 5 of the Supreme Court Rules this Court, can exercise the appellate powers in favour of all or any of the respondents or parties although such respondents or parties may not have filed any appeal or objection .

11. Irrespective of above case laws, our Constitutional provisions are also explicit. According to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, all citizens are equal before law and are entitled to equal protection of law."

18. Yet another Full Bench of Honourable Supreme Court, while following the dictum laid down in the case of *HAMEED AKHTAR NIAZI Vs. THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF PAKISTAN and others*, reported in 1996 SCMR 1185, so also the case of *TARA CHAND* (supra), held as under:

"It was held by this Court in the case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the Tribunal or any other legal forum. This view was reiterated by this Court in the case of Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499 and it was held that according to Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 all citizens are equal before law and entitled to equal protection of law."

19. In view of the above dictum laid down by the Honourable Supreme Court, we have no option but to bow down before the aforesaid principle enunciated by learned Apex Court.

20. Resultantly, instant petitions are allowed. Consequently, Respondent No.1/District & Sessions Judge, Larkana is directed to consider cases of the petitioners in these petitions in chronological order in the light of judgment dated 10.01.2024 passed by this Court vide C.P. No.D-670 of 2023 (re-Muhammad Aslam Kalhoro Versus District & Sessions Judge, Larkana and others) and do the needful within one month's time, under intimation to this Court through learned Addl. Registrar of this Court. It may be clarified that while undertaking such exercise respondent No.1 shall strictly follow the

policy framed and letters / circulars issued by respondent No.2 from time to time.

21. Copy of this judgment be sent to learned Registrar, High Court of Sindh at Karachi, who is directed to circulate the same amongst all the District & Sessions Judges in the province of Sindh, with the directions not to cause unnecessary hurdle or delay in implementing the policy framed and directions given through all such Letters and Circulars issued from time to time in respect of *son-quota*.

Office is directed to place a signed copy of this judgment in the connected petitions.

JUDGE

JUDGE

Larkana
Dated. 17-04-2024