

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
C.P.No.D-263 of 2025
(Babar Ali Khokhar v/s. Province of Sindh & Ors)

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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Before:
Mr. Justice Muhammad Saleem Jessar.
Mr. Justice Nisar Ahmed Bhanbhro.

- 1. For orders on office objections at flag "A".
- 2. For hearing of main case.

Petitioner: Babar Ali son of Allah Dino Khokhar
Through Mr. Javed Ahmed Soomro, Advocate.

Respondents: Through Mr. Liaquat Ali Shar, Additional Advocate General,
Sindh a/w Abdul Jabbar Butt, Focal Person to DEP Primary,
Larkana and Raja Darya Khan Qureshi, Assistant
Commissioner, Larkana on behalf of Deputy Commissioner,
Larkana.

Date of hearing: 07.08.2025
Date of Decision: 07.08.2025

ORDER

MUHAMMAD SALEEM JESSAR, J;- Through instant Petition, the Petitioner has claimed the following relief(s):

“That this Honorable Court may be pleased to direct the respondents to issue appointment order of the petitioners for the post of Junior Clerk or any other post as admissible according to his qualification in Education Department, Government of Sindh without further loss of time on deceased quota.”

2. The facts of the case as demonstrated in the Petition are that father of Petitioner namely Allah Dino Khokhar was serving as Primary School Teacher, in the Education Department and died during service on 18.03.2022. The petitioner has approached respondents No.1 to 4 with written application that he may be appointed on deceased quota. After receiving the application, the respondents after fulfilling all the legal requirements sent the same to the Secretary, School Education and Literacy Department, Government of Sindh, Karachi. Thereafter the Secretary, approved the summary and sent the cases of the petitioner to the Deputy Commissioner, Larkana to convene DRC for scrutiny of the documents and for further necessary action. Since the case of the petitioner has not been decided, he has not been appointed on deceased quota by the high ups though

petitioner time and again approached the respondents but of no avail, thus he filed instant petition.

3. The Respondents in their reply have asserted that Rules 10-A & 11-A have been omitted pursuant to decision of Hon'ble Supreme Court, therefore, Petitioner cannot be appointed in service against the deceased quota particularly.

4. Learned Counsel for the Petitioner contended that the Petitioner is layman. He applied for the job within time under quota of children of deceased employees. He contended that the application of the Petitioner was decided and department had recommended his appointment. He prayed for allowing instant petition.

5. Conversely, Learned Additional Advocate General Sindh has strongly opposed the petition, on the ground that the policy regarding employment of children of civil servants who died while in service is not in force. The Government of Sindh has withdrawn Rules 10 – A and 11 – A from Sindh Civil Servants (Appointment, Promotion & Transfer), Rules 1974 (APT Rules), pursuant to the judgment of Honourable Supreme Court of Pakistan in the case of **General Post Office, Islamabad and others v. Muhammad Jalal (Civil Petition No.3390 of 2021) reported as PLD 2024 SC 1276**. In compliance to aforesaid decision, the matter was placed before Sindh Government and the cabinet reconsidered earlier policy of appointment on deceased/son quota in the light of above judgment of Hon'ble Apex Court and decided to omit Rules 10 – A and 11 – A of APT Rules. It was decided that no one shall be entitled to claim for appointment on deceased/son quota. He prayed for dismissal of the Petitions.

6. Heard Learned Counsel for the parties and perused material made available before us on record.

7. Perusal of record reveals that case of the Petitioner for appointment under deceased quota is pending decision with the department since many years for unknown reasons, and rules 10 – A and 11 – A were inserted in APT Rules through sub ordinate legislation by the Government of Sindh on 02.09.2002, admittedly a right in favor of the family of deceased employee occurred when policy to accommodate the children of deceased employees was introduced by the Government. Rules 10 – A and 11 – A of APT Rules were a beneficial legislature aimed at supporting the bereaved families of deceased civil servants who died during service. The right of the Petitioner had already occurred and he

was entitled to appointment which right was denied by the Department for unknown reasons.

8. The employment in a civil service is a source of earning livelihood for the families of deceased employees; denial of such a right in a casual manner is never warranted under the law. It is duty of the administrative department in which deceased employee worked to inform in time to his family the accrual of any of the benefits or rights in their favor on account of the bereavement of employee while in service. The father of the Petitioner was low paid employee and Petitioner too appears to be laymen, the laxity on the part of the department to provide relief to the bereaved family available under the law cannot in any manner be attributed to the Petitioner, which tilts to the Respondents as is apparent from their conduct to decide fate of application moved by Petitioner since last many years and Petitioner is before this Court. The Department has acted with gross negligence in Petitioner's case; he should have been given equal treatment as meted out to the children of other employees while became entitled to get benefit of Rule 11–A of APT Rules during intervening period. It is duty of the concerned department to provide all benefits in time to the bereaved family, the provisions of employment under deceased quota were a beneficial subordinate legislation and cleared an ambiguity in existing service rules regarding the appointment of children of employees who died during service or became incapacitated to perform the service further. Thus the interpretation of such legislation would be construed in a liberal prospective.

9. The contention of Learned Additional Advocate General Sindh to the effect; that the law regarding appointment under deceased quota is no more in existence after the judgment of Honourable Supreme Court in the case of General Post Office, Islamabad and others v. Muhammad Jalal (supra) is concerned, it is pertinent to mention here that Honourable Supreme Court has passed judgment in Muhammad Jalal case on 26.09.2024, wherein appointments without open advertisement, competition and merit of the widow/widower, wife/husband or child of civil servants in different grades, who died during service or became permanently disabled/invalidated/ incapacitated for further service and retired from service, were declared to be discriminatory and ultra vires to the Articles 3,4,5(2),18,25(I) and 27 of the Constitution, Islamic Republic of Pakistan, 1973 (Constitution). The Federal and Provincial Governments were directed to withdraw such rules. The judgment of Honorable Supreme Court shall not affect the rights of appointment of those children of deceased or retired employee falling

under the ambit of Rules 10-A and 11 – A of APT Rules, in whose favor such right accrued prior in time to the judgment of Honorable Supreme Court, as no judgment or order of any Court of Law operates retrospectively unless so directed. In present case, the father of the Petitioner died while in service in years, 2021 and such right occurred to them in year 2021 and subsisted until 26.09.2024. The Honorable Supreme Court in its judgment has protected the appointments made during the intervening period of 2002 to 2024, meaning thereby the rights of a bereaved family for appointment under said provision of law during above period shall remain unaffected.

10. The Honourable Supreme Court while dealing with a similar issue of appointment under deceased quota in the case of **Zahida Parveen v. The Government of Khyber Pakhtunkhwa and others in C.P.L.A No.556-P/2024**, decided on 17.03.2025 observed that the judgment passed by the Learned Apex Court shall not operate retrospectively, in Para No.11 of the judgment, it has been held as under:

“11. For completeness of record, it is clarified that the judgment of this Court reported as General Post Office, Islamabad and others v. Muhammad Jalal (PLD 2024 SC 1276) has struck down Rule 10(4) of the Rules as being ultra vires the Constitution but has no application on appointments that have been already made. It is well settled that the judgments of this Court operate prospectively, unless declared otherwise. Therefore, the present case remains unaffected by the said judgment”.

11. The learned Apex Court in the unreported cases bearing Civil Petitions No.804-K to 807-K of 2025 (*Re-The Registrar, High Court of Sindh, Karachi and another v/s. Rehana and others*) upheld the consolidated Order dated 30.04.2025, passed by this Court regarding perspective effect of the judgment of the Hon'ble Supreme Court in the case of General Post Office, Islamabad (**supra**) with the following observations:

“8. Nevertheless, an important facet cannot be lost sight of that the judgments of this Court has prospective effect unless declared otherwise. The prospective declaration of law cannot reopen the past and closed matters to avoid or prevent the multiplicity of proceedings and undermining the doctrine of finality of judgments. The doctrine of prospective overruling originated from American Judicial System, which allows to overrule or overturn/set aside a precedent that should no longer be considered a good law. The doctrine of prospective overruling demonstrates a substantial evolution and expansion in legal jurisprudence which allows this Court to render verdicts without prejudice to the past decisions. In the case of Sakhi Muhammad and another vs. Capital Development Authority, Islamabad (PLD 1991 S.C 777), it was held by this Court

that the consequence of the Supreme Court judgment was that as from the date of decision all courts subordinate to the Supreme Court and all executive and quasi-judicial was in force for dealing the appointments on deceased/retired employees' quota but in all fairness, the said decision neither can affect the past judgments of this Court on the same subject nor its decision can be enforced with retrospective effect to subside/overrule, nullify or quieten down the effect or existence of original decision passed on 17.04.2024, which attained finality much earlier. The law declared by this Court will apply to the cases arising in future but the cases which have attained finality are protected and all actions taken contrary to the declaration of law prior to its date of declaration shall be deemed to be valid and binding. Therefore, in our view, the learned High Court rightly passed the order for implementation of its judgment and the Registrar, Sindh High Court and District Judge, Larkana had no lawful justification to challenge the order.

10. *As a result of the above discussion, we do not find any illegality, perversity, or impropriety in the impugned order passed by the learned High Court. The Civil Petitions are dismissed and leave is refused."*

12. We have carefully examined the case of Petitioner; in our view denial of job to the Petitioner under deceased quota would be an act of discrimination, as it appeared from record that the petitioner was not dealt in accordance with law, they suffered due to red-tapism and lethargy of the department, which violated their fundamental rights enshrined under articles 4, 5, 9, 25 and 27 of the Constitution. Case of the petitioner was pending adjudication before competent authority for consideration since 2021 and by that time policy regarding employment of children of ex-employees, who died while in services or retired being incapacitated to further perform services was in force/vogue, therefore, the same shall not be affected in any manner by the Judgment of Honorable Supreme Court in the case of Muhammad Jalal Supra.

13. This Court being custodian of the fundamental rights of citizens cannot shut its eyes when reaches to a conclusion that action on the part of a statutory body or organization resulted in infringement of fundamental rights of a person. Though the appointment process is an internal mechanism of the department wherein this court sparingly interferes but would not hesitate to step in when a right to job otherwise available under the law was declined in a slipshod manner.

14. The discussion made herein above leads us to conclusion that the petitioner has made out a case for indulgence by this Court under its writ jurisdiction vested under article 199 of the Constitution for issuance of writ against Respondents for inaction and attitude of indifference on their part. We are of the

view that case of Petitioner for appointment under deceased quota require consideration in the light of the policy and rules applicable at the time when the petitioner applied for appointment. We, therefore, allow this petition and direct the Respondents to consider the case of Petitioner for appointment in accordance with law and applicable rules and decide it within a period of 3 months' time from date of this order.

Office is directed to send copy of this Order to the Respondents for compliance. The Petitions stand disposed of in the above terms.

Judge

Judge

Manzoor