

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No. D- 1246 of 2025

[Muhammad Rizwan Khan versus Province of Sindh & others]

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro.

Mr. Naveed Anjum Jarwar, advocate holds brief for Mr. Mohsin Raza Gopang, advocate for the petitioner.

Mr. Muhammad Ismail Bhutto, Additional Advocate General along with Shoukat Ali, Mukhtiarkar Sakrand on behalf of ADC-I Shaheed Benazirabad.

Date of hearing

& Decision: **31.10.2025.**

## **ORDER**

**MUHAMMAD SALEEM JESSAR, J** – Through instant Petition, the Petitioner

has claimed the following relief(s):

*“1. That, this Honorable Court may kindly be pleased to direct the respondent No. 01 and 02 to appoint the petitioner against Invalidation / Incapacitated Quota.*

*2. Any other relief deemed fit, just and proper by this Honorable may be granted to the Petitioner.”*

2. The facts of the case as demonstrated in the Petition are that the father of the petitioner was serving in education department on the post of Superintendent (BPS-17) at Government Girls Higher Secondary School (GGHSS) Fatima Jinah Nawabshah, District Shaheed Benazirabad. On 06-05-2024 father of the petitioner was retired from above said Government service on medical ground. After retirement of his father petitioner applied for the post of Junior Clerk (BPS-11) against Invalidation / Incapacitated Quota. Since then case of the petitioner has not been decided, he has not been appointed on Invalidation / Incapacitated Quota 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 Rule 11-A has been omitted pursuant to decision of Hon'ble Supreme Court, therefore, Petitioner cannot be appointed in service against the Invalidation / Incapacitated Quota particularly.

4. Learned Counsel for the Petitioner contended that the Petitioner applied for the job within time under quota of children of invalidated/incapacitated 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 or become invalidated while in service is not in force. The Government of Sindh has withdrawn Rule 11 – A from Sindh Civil Servants (Appointment, Promotion & Transfer), Rules 1974 (APT Rules), pursuant to the judgment of Honourable Supreme Court of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 Rule 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 Invalidation / Incapacitated Quota is pending decision with the department since 2024 for unknown reasons, and rule 11 – A was 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 invalidated employee occurred when policy to accommodate the children of invalidated employees was introduced by the Government. Rule 11 – A of APT Rules were a beneficial legislature aimed at supporting the families of deceased/invalidated civil servants who died during service or retired on invalidation to perform job further. 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/invalidated 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/invalidated 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 or invalidation of employee while in service. The laxity on the part of the department to provide relief to the family available under the law cannot in any manner be attributed to the Petitioner. It is apparent from record that the department has failed to decide fate of applications moved by Petitioner. 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 family of invalidated employee, the provisions of employment under such 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; the law regarding appointment under deceased/ Invalidation / Incapacitated 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 Rule 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 become invalidated while in service and retired on 06.05.2024 and such right occurred to them on said date 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 or families of invalidated employees 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. 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 Invalidation / Incapacitated Quota would be an act of discrimination, as it appeared from record that the petitioner was not dealt in accordance with law, he suffered due to red-tapism and lethargy of the department, which violated his 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 2024 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 Invalidation / Incapacitated 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 03 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.

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