

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. D-1265 of 2024
[Mumtaz Ali vs. Government of Sindh and others]

Before:-

Mr. Justice Amjad Ali Bohio,
Mr. Justice Ali Haider 'Ada'.

Petitioner : Mumtaz Ali, *through* Mr. Kashif
Mushtaque, Advocate.

Respondents : Government of Sindh and others,
Through Mr. Zulfiqar Ali Naich,
Assistant Advocate General Sindh.
Nazeer Ahmed Keerio, Taluka
Education Officer (Elementary,
Secondary, and Higher Secondary),
Naushahro Feroze, on behalf of
District Education Officer (ES&HS).

Date of hearing : 08.04.2026

Date of decision : 08.04.2026

ORDER

Ali Haider 'Ada' J.- The petitioner has approached this Court to seek directions to the respondents for his appointment under the deceased quota. It is his case that his father, namely Rasool Bux, was serving in the Education Department as a Naib Qasid (BPS-02) and expired on 25.07.2024 during service. Upon his demise, the petitioner claims to have accrued a right for appointment under the deceased quota in accordance with the applicable policy. It is further contended that the petitioner approached the concerned authorities, i-e the Secretary, School Education and Literacy Department, by submitting an application along with all requisite documents and testimonials. However, despite the passage of considerable time, no meaningful response has been received from the respondents.

2. In response, the Taluka Education Officer, on behalf of the District Education Officer (Elementary, Secondary & Higher Secondary), has filed a statement submitting that the case of the

petitioner be processed in accordance with law whenever he approaches the department.

3. Learned counsel for the petitioner submits that the petitioner possesses a legitimate and enforceable right under the relevant policy governing appointments on deceased quota, but the same has not been considered by the respondents. He further argues that the stance taken by the department that the case will be processed upon approach is merely illusory and devoid of substance, as the petitioner had already approached the competent authority through a duly received application dated 13.08.2024 (Inward No. S-4284), yet no action has been taken to date. It is further urged that due to such inaction, the petitioner and his family are facing severe financial hardship and difficulty in sustaining their livelihood.

4. Conversely, the learned Assistant Advocate General has relied upon the statement filed by the departmental functionaries and submits that the petitioner's case will be considered strictly in accordance with law and policy.

5. Heard the learned counsel for the parties and perused the material available on record.

6. Prima facie, it appears that the petitioner has already approached the competent authority for redressal of his grievance; however, the respondents have failed to take any concrete steps or pass a speaking order on his application. The stance of the department that the case would be processed upon approach lacks substance, particularly when the record reflects that such an approach has already been made and duly acknowledged.

7. It is a settled principle of law that where a statute or policy confers a right or creates a legitimate expectation, the corresponding authority is under a legal obligation to decide the matter within a reasonable time. Mere inaction or indefinite delay on the part of the authorities amounts to denial of such right and frustrates the very

object of the policy governing appointments under the deceased quota, which is intended to provide immediate financial relief to the bereaved family of a deceased government servant.

8. Appointment on compassionate grounds is a policy devised to provide immediate relief and support to the families of deceased government servants, particularly those who have rendered long years of service to the department. In the present case, the father of the petitioner was serving on a lower post, i.e., Naib Qasid, and expired during service. Therefore, a vested right accrued to the petitioner for consideration of appointment under the deceased quota.

9. It is pertinent to note that the death of the petitioner's father occurred before the pronouncement of the judgment rendered by the Honourable Supreme Court of Pakistan in *Jalal's case* (PLD 2024 SC 1276). Subsequently, in the case of *Province of Sindh vs. Muhammad Rizwan Khan and others* (F.C.P.L.A No. 508 of 2025 and connected matters), the Honourable Federal Constitutional Court of Pakistan has categorically observed that the right to be considered for appointment on compassionate grounds accrues at the time of death of the civil servant. Once such a right has accrued in favour of the legal heirs, whether a child or spouse, the subsequent administrative processes, including submission of an application or issuance of a formal appointment letter, are merely administrative acts. As it was held:

4. As noted above, petitioner is aggrieved of acceptance of writ petitions of the respondents by learned Sindh High Court. The controversy pertains to the fact that respondents are spouse/children of the deceased Sindh civil servants and sought appointments on the basis of Rule 11-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 (the Rules). The Supreme Court of Pakistan vide judgment passed in case reported as General Post Office, Islamabad and others Vs. Muhammad Jalal (PLD 2024 SC 1276) struck down Rule 11-A ibid and petitioner now seeks benefit thereof on the basis that since the Rule is no longer in the field, no appointment can be made. The nub of the controversy is that at the time when the judgment of the Supreme Court of Pakistan supra

was handed down, had the right accrued in favour of the respondents? In this regard, the relevant event, which resulted in the accrual of the right, was the death of the civil servant. As and when the death of a civil servant takes place, one of the children and/or spouse acquires the right to be appointed in the civil service. The process of application and/or a formal appointment letter are administrative acts. Since right had accrued in favour of private respondents, hence judgment of the Supreme Court does not come in their way for appointment on deceased employee children/spouse quota. It is trite law that judgments of the Supreme Court operate prospectively and not retrospectively. Even otherwise, the Supreme Court in a subsequent decision, clarified that the judgment reported as PLD 2024 SC 1276 supra does not take away the accrued rights and/or set aside the past and closed transactions. In view of above position of law, we do not find any legal infirmity in the reasoning handed down by the learned Sindh High Court, in the impugned judgment, warranting interference.

10. Furthermore, the Division Bench of this Court at Karachi, in C.P. No. D-03 of 2026, while dealing with an identical issue on similar parameters, has held that a case for indulgence was made out and accordingly directed the respondents to issue an appointment letter to the petitioner against a suitable post within a period of one month. For ready reference, the relevant paragraphs No. 9 and 10 are reproduced herein below:

9. The stance of the department that petitioner could not be appointed as he claimed the post of Junior Clerk, which was not available within the sanctioned posts, needless to say that Rule 11 - A lays down for appointment against any post in grade 1 to 11, it does not mandate the deceased spouse/children to claim a particular post. It is for the department to decide for the appointment against any suitable post for which the vacancy is available.

10. For the foregoing reasons, case for indulgence by this Court is made out; consequently, this petition is hereby allowed. The competent authority of respondent's department is directed to issue appointment letter to the petitioner against any suitable post within a period of one month from the date of this order.

11. Additionally, Section 24-A of the General Clauses Act, 1897, mandates that statutory powers be exercised reasonably, fairly, and justly, in accordance with law, and obligates the executive authorities to provide reasons for their decisions. Any action taken in violation of these settled principles is liable to be struck down. In this regard, reliance is placed upon the cases of *Messrs Muhammad*

Amin Muhammad Bashir Limited v. Federation of Pakistan through Secretary, Ministry of Finance and others (2015 SCMR 630), *Muhammad Ashraf Tiwana and others v. Pakistan and others* (2013 SCMR 1159), and *Habibullah Bhutto v. Collector of Customs and another* (2011 SCMR 1504).

12. Keeping in view the aforesaid facts and circumstances, as well as the discussion made hereinabove, this constitutional petition is hereby allowed. The competent authority of the respondent department is directed to issue an appointment order to the petitioner, after completion of all codal formalities, against the deceased quota for a suitable post, within a period of one month from the date of receipt of this order. Let a copy of this order be communicated to the learned Additional Advocate General for compliance.

JUDGE

JUDGE