IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Saleem Jessar;
Mr. Justice Abdul Hamid Bhurgri.

C.P No.D-2389 of 2026
[Muhammad Murad v. Province of Sindh and others]

Petitioner	:	Through Mr. Abdul Rehman Bhutto, Advocate.
Respondents	:	Through Mr. Faizan Hussain Memon, Additional Advocate General Sindh along with Dr. Liaquat Ali Abro, Senior Law Officer and Mr. Nadeem Ahmed Qureshi, Law Officer, Law Department, Government of Sindh.
Date of Hearing	:	06.11.2026
Date of Order	:	06.11.2026

J U D G M E N T

Abdul Hamid Bhurgri, J.- Through this Constitution Petition, the Petitioner has claimed following relief(s):

> *a) That, this Hon'ble Court may be pleased to direct the respondents to issue appointment order to the petitioner against deceased quota as father of the petitioner was serving as Junior clerck, who expired during performing his duties and petitioner has applied within the stipulated period, as no any source of income.*
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> *b) To award the cost of this petition to the petitioner.*
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> *c) Any other relief available under the circumstances may also be granted to the petitioner.*

2. The petitioner has invoked constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as "the Constitution"), seeking appointment under the deceased employees' quota on account of death of his father, Malik Dino Brohi, who was serving as a Junior Clerk in the subordinate judiciary at Larkana and died while in service on 18.11.2020. The petitioner claims that he possesses a Bachelor of Science degree and fulfils the requisite educational qualifications for appointment against a suitable post. According to him, despite repeatedly approaching to concerned authorities, his request for appointment has remained unattended. He further asserts that respondent No.3 declined to entertain his claim on the ground that his domicile pertains to District Kamber-

Shahdadkot, whereas respondent No.4 declined to process the same on the premise that his deceased father had served in District Larkana, and accordingly advised him to approach respondent No.3. The petitioner maintains that, notwithstanding his repeated efforts, no effective decision has been taken on his claim, compelling him to approach this Court.

3. Learned Additional Advocate General Sindh, while referring to the statement filed on behalf of the respondents, together with the parawise comments submitted by learned District & Sessions Judge, Larkana, contended that the policy governing appointments under the deceased employees' quota has been withdrawn in consequence of the judgment of the Honourable Supreme Court of Pakistan in General Post Office, Islamabad and others v. Muhammad Jalal[1]. He submitted that the Honourable Supreme Court declared the provisions permitting appointment of spouses or children of deceased or incapacitated civil servants without open advertisement, competition and merit to be discriminatory and inconsistent with Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution, and directed the Federal and Provincial Governments to withdraw such provisions. He further submitted that, in compliance with the aforesaid judgment, the Administration Committee of this Court reviewed and withdrew the relevant policy, which decision was communicated through letter dated 05.12.2024. According to learned Additional Advocate General, no policy presently exists under which the petitioner could be appointed against the deceased employees' quota. He, therefore, prayed for dismissal of the petition.

4. We have heard learned counsel for the parties, examined the material made available before us on record and considered the applicable statutory provisions as well as the judicial pronouncements governing the controversy.

5. The material on record establishes that the petitioner's father, Malik Dino Brohi, was serving as a Junior Clerk in the subordinate judiciary at Larkana and died during service on 18.11.2020. His death was duly acknowledged through the office letter dated 30.11.2020 issued by learned District & Sessions Judge,

[1] *General Post Office, Islamabad and others v. Muhammad Jalal (PLD 2024 SC 1276).*

Larkana. Thus, neither the employment of the petitioner's father nor the fact of his death while in service is in dispute. The principal question requiring determination is whether the petitioner's claim, arising from death of his father at a time when the deceased employees' quota policy was operative, stands extinguished by the subsequent declaration of unconstitutionality and withdrawal of the relevant provisions.

6. Before addressing aforesaid question, it is necessary to examine legal framework governing appointments under the deceased employees' quota. The Government of Sindh had introduced a policy providing employment opportunities to eligible family members of civil servants who died during service or became permanently incapacitated. Although the Sindh Judicial Staff Service Rules, 1992 did not contain an independent provision specifically governing such appointments, the relevant benefit was extended by reference to Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 (hereinafter referred to as "the APT Rules"). Rule 11-A, as it then stood, provided as follows:

> *"11-A.- Where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his/her children or, as the case may be, spouse (when all the children of the deceased employee are minor) shall be provided job who applies within a period of two years of death or declaration of invalidity or incapacity of civil servant on any of the basic pay scales No. 1 to 11 in the Department where such civil servant was working:*
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> *Provided that such appointment shall be made after fulfilment of formalities as required in the requirement rules and holding interview, for the post applied for:*
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> *Provided further that the cut of date shall be within two years of the death of the officer or official.*
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> *Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notifications dated 11.3.2008 and 17.7.2009 of these rules."*

7. A plain reading of aforesaid provision reveals that it was intended to confer a beneficial entitlement upon an eligible member of the family of a civil servant who died while in service or became incapacitated for further service. The provision contemplated appointment of one eligible child or, in the circumstances specified

therein, the spouse of the deceased employee against a suitable post in BPS-1 to BPS-15 in the department where the deceased employee had served. Such appointment; however, remained subject to the prescribed eligibility criteria, requisite qualifications, fulfilment of codal formalities and the recruitment procedure applicable to the post concerned. The provision, therefore, created a substantive entitlement under the policy then in force, while the actual appointment was to be effected upon completion of the prescribed administrative formalities.

8. The aforesaid legal position subsequently underwent a material change following the judgment of the Honourable Supreme Court in General Post Office, Islamabad and others v. Muhammad Jalal (supra), decided on 26.09.2024. In that case, the Honourable Supreme Court examined the constitutional validity of rules and policies providing appointments to spouses or children of deceased or incapacitated civil servants without open advertisement and competitive selection. Such provisions were held to be discriminatory and inconsistent with the constitutional principles governing equality of opportunity in public employment. Consequently, the Federal and Provincial Governments were directed to withdraw the relevant provisions. Pursuant thereto, the competent authorities, including the Administration Committee of this Court, reviewed and withdrew the policy relating to appointments under the deceased employees' quota.

9. The declaration of unconstitutionality of the relevant provisions; however, gives rise to a distinct question concerning its effect upon rights which had already accrued before the pronouncement of the judgment. The controversy is not whether appointments under the deceased employees' quota may continue to be made in respect of future occurrences after withdrawal of the policy, but whether a right which had arisen during the subsistence of the relevant provision can be defeated merely because the administrative process for giving effect to that right remained incomplete. The distinction between the creation of a substantive entitlement and its subsequent administrative implementation is fundamental to the determination of the present petition.

10. It is a well-recognised principle of constitutional adjudication that judicial pronouncements declaring the law ordinarily operate prospectively unless a contrary intention is expressly indicated or necessarily follows from the judgment itself. The doctrine of prospective operation protects accrued rights and past and closed transactions from being unsettled by a subsequent declaration of law. In the context of appointments under the deceased employees' quota, the effect of the judgment in Muhammad Jalal (supra) has subsequently received consideration by the Honourable Supreme Court and the Honourable Federal Constitutional Court. These pronouncements have clarified the legal position and provide direct guidance for resolution of the present controversy.

11. In Zahida Parveen v. Government of Khyber Pakhtunkhwa and others[2], decided on 17.03.2025, the Honourable Supreme Court considered the effect of the judgment in Muhammad Jalal (supra) and observed 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".*

The aforesaid pronouncement affirms that the declaration made in Muhammad Jalal (supra) does not operate retrospectively so as to invalidate appointments already made under the previously applicable provisions.

12. The question concerning the protection of accrued rights and the finality of earlier judicial determinations was further examined by the Honourable Supreme Court in Registrar, High Court of Sindh, Karachi and another v. Rehana and others[3]. While upholding the consolidated order dated 30.04.2025 passed by a Division Bench of this Court, authored by one of us (Muhammad

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[2] *Zahida Parveen v. Government of Khyber Pakhtunkhwa and others, C.P.L.A. No.556-P/2024, decided on 17.03.2025.*

[3] *Registrar, High Court of Sindh, Karachi and another v. Rehana and others, Civil Petitions Nos.804-K to 807-K of 2025.*

Saleem Jessar, J.), the Honourable Supreme Court observed as under:

> *"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 authorities were obliged by virtue of the Constitution to apply the rule laid down by the Supreme Court in cases coming up before them for decision. The decision of the Supreme Court did not have and it could not be contended that it had, the effect of altering the law as from the commencement of relevant law so as to render void of its own force all relevant orders of the Authority or of the High Court made in the light of the earlier interpretation. Whereas in the case of Pakistan Medical and Dental Council & others vs. Muhammad Fahad Malik & others (2018 SCMR 1956), this Court held that the judgment of the Supreme Court, unless declared otherwise, operates prospectively. Whilst in the case of Pir Bakhsh and others vs. Chairman, Allotment Committee and others, (PLD 1987 S.C. 145), it was held that the fact that Supreme Court in an appeal, titled Abdul Hafiz v. Rehabilitation Commissioner and others, against the judgment of the High Court set aside the same judgment in another writ petition would not reopen the concluded rights of the parties under the decision of the High Courts against to which no appeal was filed, nor could the appellants who were respondents in that writ petition avail the benefit of the law laid down by the Supreme Court under Article 189 of the Constitution. The fact that the law laid down by this Court (supreme court) is prospective, it cannot be doubted.*
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> *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."*

The principle emerging from aforesaid judgment is that a subsequent declaration of law cannot ordinarily be invoked to unsettle matters which had already attained finality or to defeat rights protected by earlier binding judicial determinations.

13. The Honourable Supreme Court further examined the scope and beneficial character of Rule 11-A of the APT Rules in Province of Sindh through Chief Secretary and others v. Azhar Ali and others[4], decided on 01.09.2025. While considering the entitlement of family members of deceased employees under the said provision, the Honourable Supreme Court observed as under:-

> *"7. If we look into the pith and substance and genre of aforesaid Rule, it unambiguously divulges that it was a beneficial acclimatization of the children of deceased, invalidated, or incapacitated civil servants which was deep seated, and in vogue for last many years under the APT Rules. The terminology "beneficial legislation" allude to the laws, rules or regulations premeditated to vouch for the well-being of individuals and the populace. The Courts are obligated to interpret such laws, rules and regulations moderately and judiciously to make sure that the objectives of such legislation are enforced and implemented pragmatically. In order to achieve this task and safeguard the underlying principle, a dynamic, purpose oriented and liberal approach is inevitable to argument its end result. Even if a word or provision of any beneficial legislation may be interpreted in two ways that one protects and conserves the benefit but one does not or it allows diverse interpretations, then the dominant option is to pick and choose the interpretation which prospers and withstands the benefit rather than deprive it. One more important principle that cannot be lost sight of is that the philosophy of beneficial interpretation indoctrinates farther than extended connotation to the words of such beneficial provisions if such an interpretation brings into line with the legislative intent and primary objectives. It is also well-known precept of beneficial construction that it should be interpreted with proactive and dynamic approach to sync and live up to primary intended raison d'etre. In order to achieve its inner self, the beneficial provision should be interpreted to shield the rudimentary aspiration which is in fact an apathy of beneficial construction with generous approach and reading it with widest conceivable denotation to protect the interests of beneficiaries of beneficial statute/provision. At times, statutes do not assimilate every situation coherently and in such scenario, the tool of beneficial construction allows the judges to alleviate the incongruences but without varying its quintessence. So far all intent and purposes, the High Court in its strength of mind rightfully extended the benefit of beneficial provision according to the spirit of law prevailing at the time of deciding the constitution petitions."*

The aforesaid observations reinforce the principle that beneficial provisions must receive a purposive interpretation

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[4] *Province of Sindh through Chief Secretary and others v. Azhar Ali and others, Civil Appeals Nos.106-K to 111-K and 650-K of 2024, decided on 01.09.2025.*

consistent with their underlying object, without dispensing with the express statutory conditions governing the entitlement.

14. More importantly, the controversy concerning the effect of the judgment in Muhammad Jalal (supra) upon rights accruing before its pronouncement has now been directly addressed by the Honourable Federal Constitutional Court in Province of Sindh v. Muhammad Rizwan Khan and others[5], decided on 27.02.2026. While declining to interfere with the judgments of this Court granting relief to eligible family members of deceased civil servants, the Honourable Federal Constitutional Court held as under:-

> *"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."*

The ratio of aforesaid pronouncement is clear and directly applicable to the controversy before us. The event giving rise to the entitlement under the deceased employees' quota is the death of the

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[5] *Province of Sindh v. Muhammad Rizwan Khan and others, F.C.P.L.A. Nos.508, 591, 346, 347, 348, 589, 267, 593, 130 and 353 of 2025, decided on 27.02.2026.*

civil servant during the subsistence of the relevant rule or policy. The subsequent submission or processing of an application and issuance of an appointment order constitute steps towards implementation of the entitlement so accrued. Consequently, the subsequent declaration of unconstitutionality of Rule 11-A cannot, by itself, extinguish a right which had already accrued before such declaration.

15. The cumulative effect of the foregoing judicial pronouncements leaves little room for doubt that the judgment in Muhammad Jalal (supra), while governing appointments arising after the declaration of unconstitutionality of the relevant provisions, cannot be applied retrospectively to defeat an entitlement which had already accrued during subsistence of the applicable rule or policy. The distinction between the accrual of a right and its administrative implementation has been expressly recognised by the Honourable Federal Constitutional Court in Muhammad Rizwan Khan (supra). Accordingly, mere fact that an appointment order was not issued before 26.09.2024 does not, by itself, constitute a lawful ground for rejecting an otherwise eligible claim arising from the death of an employee before that date.

16. Adverting to the facts of the present case, it is undisputed that the petitioner's father died on 18.11.2020, when the policy governing appointments under the deceased employees' quota was operative. His death was officially acknowledged by learned District & Sessions Judge, Larkana, through letter dated 30.11.2020. Thus, the event giving rise to entitlement occurred well before the pronouncement of the judgment in Muhammad Jalal (supra). In view of the law declared by the Honourable Federal Constitutional Court in Muhammad Rizwan Khan (supra), subsequent withdrawal of the policy cannot, by itself, deprive the petitioner of the benefit of the entitlement which arose on account of his father's death during service.

17. It is; however, pertinent to observe that the respondents have disputed the petitioner's assertion regarding submission of a written application to the learned District & Sessions Judge, Larkana. This factual controversy cannot be resolved merely on the basis of rival assertions of the parties. Nevertheless, in view of the

authoritative pronouncement of the Honourable Federal Constitutional Court, the absence of a formal appointment order, or the non-completion of administrative formalities before the withdrawal of the policy, cannot independently constitute a ground for extinguishing an accrued entitlement. The question whether the petitioner satisfies the eligibility requirements, including the conditions applicable under the relevant rules and policy, is to be examined by the competent authority on the basis of the available record and such supporting documents as may lawfully be required.

18. The objection concerning the petitioner's domicile also requires consideration in its proper legal perspective. The petitioner claims that respondent No.3 declined to entertain his request because his domicile pertains to District Kamber-Shahdadkot, whereas respondent No.4 declined to process the same because his deceased father had served in District Larkana. Such conflicting positions cannot justify leaving the petitioner's claim undecided indefinitely. The deceased employee admittedly served in the subordinate judiciary at Larkana, and the relevant policy contemplated consideration of an eligible family member for appointment in the department where the deceased employee had been serving. Therefore, the competent authority must determine the petitioner's claim with reference to the applicable service rules, the relevant policy and the service particulars of the deceased employee. Any objection based upon domicile or territorial jurisdiction must be supported by an applicable legal provision and cannot rest merely upon administrative convenience or an unsupported interpretation of the rules.

19. It is equally important to emphasise that an entitlement arising under a beneficial service provision cannot be defeated by administrative inaction, unnecessary delay or the failure of the concerned authorities to process a claim in accordance with law. Public authorities are under a legal obligation to exercise their powers fairly, reasonably and consistently with the governing statutory framework. Where a beneficial entitlement has accrued under a rule or policy then in force, the subsequent omission of that provision cannot be employed as a justification for withholding consideration of the claim, particularly when the superior Courts

have expressly protected such accrued rights. The principle of equality before the law also requires that persons similarly situated be treated alike, unless a lawful distinction exists. Any arbitrary or discriminatory refusal to consider the petitioner's claim would, therefore, offend the guarantees of lawful treatment and equality enshrined under Articles 4 and 25 of the Constitution.

20. We are mindful that appointment to public service ordinarily falls within domain of the competent appointing authority and that this Court, while exercising constitutional jurisdiction under Article 199 of the Constitution, does not assume the functions of a recruitment or selection authority. Nevertheless, where a statutory or legally recognised entitlement is denied on an erroneous interpretation of law, or where the competent authority fails to exercise jurisdiction vested in it, this Court is empowered to intervene to ensure that the matter is dealt with in accordance with law. Such intervention does not amount to substituting the Court's discretion for that of the appointing authority; rather, it ensures the lawful exercise of the authority's powers and prevents frustration of an accrued legal entitlement.

21. In the present case, the petitioner's claim cannot lawfully be rejected merely on the ground that the deceased employees' quota policy was subsequently withdrawn in consequence of the judgment in Muhammad Jalal (supra). The death of the petitioner's father occurred during subsistence of the relevant policy, and the legal effect of such an occurrence has been settled by the Honourable Federal Constitutional Court in case of Muhammad Rizwan Khan (supra). The respondents are, therefore, under an obligation to examine the petitioner's claim in the light of the rules and policy applicable at the relevant time, subject to verification of his eligibility, qualifications and fulfilment of the prescribed formalities. Any contrary approach would amount to giving retrospective effect to the subsequent withdrawal of the policy and would be inconsistent with the law declared by the superior Courts.

22. For foregoing reasons, we are satisfied that the petitioner has made out a case for interference in exercise of constitutional jurisdiction vested under Article 199 of the Constitution. Consequently, this petition is allowed to the extent that respondent

No.3, being concerned competent authority, is directed to examine and process the petitioner's claim for appointment under the deceased employees' quota in accordance with the rules and policy applicable on the date of death of his father, namely 18.11.2020, keeping in view the law laid down by the Honourable Supreme Court and the Honourable Federal Constitutional Court in the judgments discussed hereinabove. The petitioner's claim shall not be declined merely on the ground of the subsequent withdrawal or omission of the relevant policy or on account of the non-issuance of an appointment order before 26.09.2024. Upon verification of the petitioner's eligibility, requisite qualifications and fulfilment of the applicable codal formalities, the competent authority shall take all consequential steps for giving effect to his accrued entitlement in accordance with law. The entire exercise shall be completed within three months from the date of receipt of a certified copy of this judgment, and the decision shall be communicated to the petitioner.

23. Before parting with the judgment, we deem it appropriate to observe that the directions issued herein are confined to the petitioner's claim arising from the death of his father during subsistence of the relevant policy and shall not be construed as authorising any fresh appointment under the deceased employees' quota in respect of cases where no entitlement had accrued before the pronouncement of the judgment in the case of Muhammad Jalal (supra).

24. The petition stands disposed of in the above terms, with no order as to costs.

Office is directed to transmit a copy of this judgment to the concerned respondents for information and compliance.

JUDGE

JUDGE
HEAD OF CONST. BENCHES

Approved for reporting

Ayaz Gul