

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 1721 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
12.01.2016	

For Katcha Peshi

Mr. Karim Bux Rind, Advocate for Petitioner

Mr. Allah Bachayo Soomro Addl.A.G.

MUHAMMAD IQBAL KALHORO, J.- Case of the petitioner is that he is son of late Muhammad Shoaib Malak who was working as Senior Clerk in the office of Defunct Barrage Mukhtiarkar Golarchi. He died during his service on 17.3.1995. The petitioner being duly qualified applied for the appointment as Clerk on the basis of deceased quota, but his Application was not duly considered. According to the petitioner, he is entitled to be appointed in service at the place of his father in terms of Notification No. SORI (SGA&CD)2-3/02 dated 17th July, 2009, but the official respondents in total disregard to the scheme of above Notification have still kept his Application pending for decision.

Learned counsel for the petitioner has relied upon the case reported as Shafqat Ali v. Government of Sindh and others 2011 PLC (C.S) 1613 to establish that although the father of the petitioner died in the year 1995 but the scheme of above Notification has the retrospective effect and would equally be applicable to the case of the petitioner.

Learned A.A.G. on the other hand has opposed this petition. His case is that the petitioner has no vested right to be appointed on the basis of deceased quota. He is of the view that despite the dicta laid down by this court in the above mentioned case, the discretion is with the government authorities to appoint the petitioner or not. He next states that there is no record to appreciate that the petitioner had moved the Application for appointment on the basis of deceased quota within the stipulated period as mentioned in the said Notification.

We have heard both the counsel and have perused the material available before us including the case law cited at the bar by the learned counsel for the petitioner.

A glance at the comments filed by the official respondents shows that on the Application of the petitioner a Summary was floated before the Chief Secretary Sindh for his appointment but that was regretted by him on the ground that petitioner's father had expired in the year 1995, whereas the policy in terms of which the appointment on the basis of deceased quota has been allowed came into effect from 1.1.2000, therefore, it was not applicable to the case of the petitioner. This interpretation of the Notification is clearly in conflict with the dicta laid down by this court in the case of Shafqat Ali mentioned supra, wherein this court has decided in unambiguous words that the Notification has a retroactive effect and would equally be applicable to the children of Civil Servants who died before issuance of such Notification. We see no reason to depart from this dictum and expect the authorities concerned to follow it in letter and spirit. The Chief Secretary while considering the Application of the petitioner has made incorrect and skewed interpretation of the scheme inherent therein. The ground on the basis of which he has dismissed the Application of the petitioner is not sustainable in law.

We have noted that in terms of Notification the son of the deceased civil servant is required to apply for the post within two years of his death. We have put a question to the learned counsel for the petitioner to show that within that stipulated period, the petitioner had applied for the appointment. He has stated that initially the brother of the petitioner namely Tariq Masood had applied for appointment within the stipulated time, but since no heed was paid by the Authorities concerned, limit of his age for appointment in the government service expired, therefore, at his place the petitioner applied for the said post as meanwhile he had become duly qualified. We are of the view that within the required time of two year the action was initiated by the son of the deceased civil servant for his appointment but due to inaction on the part of the Authority concerned, his request was not forwarded. Subsequently at his place the petitioner applied for the appointment on the basis of deceased quota. The fact that application of the petitioner was accepted and processed shows that even the Authorities concerned had accepted the same to be without any legal impediment. To us it constitutes a sufficient ground to consider the petition of the petitioner in the said context.

Under the circumstances we set-aside the order passed by the Chief Secretary regretting the application of the Petitioner for his appointment on deceased quota, and

direct him to reconsider the same strictly in accordance with the dicta laid down in the case of Shafqat Ali (supra). He shall transmit the compliance report to this court through Additional Registrar within a period of two months.

In these terms the petition is disposed of.

JUDGE

JUDGE

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