

THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Muhammad Jaffer Raza

C.P. No. D-2848 of 2025 : Muhammad Saleem son of Late
(Old C.P. No. 207 of 2024) Abdul Ghaffar versus Province of
Sindh & others

For the Petitioner : Petitioner is present in person.

C.P. No. D-2851 of 2025 : Ahsanullah son of Late Shafi
(Old C.P. No. 1742 of 2024) Muhammad versus Province of
Sindh & others

For the Petitioner : Nemo.

For the Respondents : Mr. Shahriyar Qazi, Additional
Advocate General, Sindh along with
Ms. Manzooran Gopang, Law
Officer, Law Department, Govt. of
Sindh.

Date of hearing : 11-11-2025

Date of order : 20-11-2025

J U D G M E N T

Adnan Iqbal Chaudhry J. - Both Petitioners pray for a writ to the District & Sessions Judge Sukkur to appoint them as staff on the deceased quota to posts in BPS-2 to BPS-5.

2. The case of the Petitioners is that their respective fathers passed away whilst in service as judicial staff in the District & Sessions Court Sukkur; that when vacancies were advertised by the District & Session Judge on 08.11.2023, the Petitioners applied for appointment to posts in BPS-2 to BPS-5 on the deceased quota; however, their applications were rejected by the District & Sessions Judge, hence these petitions.

3. Heard the Petitioner who is present in person, the learned Additional Advocate General, Sindh and perused the record.

4. Recruitment of staff for the District and Sessions Courts is governed by the Sindh Judicial Staff Service Rules, 1992 [Rules], notified on 16.01.1994, and made by the Chief Justice of the High Court of Sindh in exercise of powers conferred by section 26 of the Sindh Civil Servant Act, 1973, read with Government of Sindh Notification No. SRO.1(S&GAD)2/9-92, dated 09.08.1993. Rule 4 reads:

“4. Appointing Authority.- Appointments to the service in a Sessions Division shall be made by the District Judges for the Sessions Division:

Provided that appointments to the service in the Small Causes Courts shall be made by the Judges, small Causes Court:

Provided further that appointment shall be made in accordance with:-

- (a) The provisions of the Sindh Civil Servants (Appointment, promotion and transfer) Rules, 1974, so far as they are applicable to the posts in the service and are not inconsistent with these rules, and such other general rules as Government may frame from time to time; and
- (b) any instructions which the High Court may issue.”

5. Though there is no express provision in the Rules for a deceased or son quota while recruiting staff, such quota was allocated by District Judges pursuant to instructions/circulars issued by the High Court under Rule 4(b) *supra*. Those instructions, in turn, were issued by the High Court in view of similar policies existing in Government departments, also in Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 to the extent of a deceased quota.

6. The policy of the Sindh High Court on the subject was issued by Circular No. Admin/XII-Z-14-11 dated 03.03.2010 for recruiting staff both in the High Court and the District Courts as under:

“The Hon’ble Chief Justice proposed that vacancies in BPS-2 to BPS-7 in the High Court be filled up as follows:

- a) First preference be given to children of those employees of the High Court who expired during service.*
- b) Second preference would be given to children of those employees who expired after retirement.*
- c) Third preference to be given to children of retired employees.*
- d) Last preference would be given to children of serving employees.*

The above proposal was approved with the condition that only one male or female child of an employee would be accommodated.”

The policy of 03.03.2010 was revised by the High Court by Circular No. HC/ADMI/00565 dated 23.07.2012, which restricted it to employment in BPS-1 to BPS-5 and fixed for them a quota of 20%. The policy was again revised by Circular No. HC/ADMI/00565 dated 04.03.2013 to state that as regards retired employees, only one child could be considered on merit and that too when a vacancy occurs.

7. The Petitioners seek appointment on the deceased quota under the aforesaid policy. However, no-where did that policy mandate an appointment even if the applicant was found ineligible or unsuitable for the post. Apparently, the Petitioners' applications were duly considered and rejected. There is nothing to show that the Petitioners were discriminated.

8. Nevertheless, while the petition was pending, following events have occurred:

- (a) By judgment dated 26-09-2024 in *General Post Office, Islamabad v. Muhammad Jalal* (PLD 2024 SC 1276) [hereinafter '*the GPO case*'], Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, and all other rules and policies providing a deceased or son quota in government service, were declared unconstitutional by the Supreme Court of Pakistan. The relevant authorities were directed to withdraw such rules/policies *albeit* with certain exceptions.
- (b) By decision dated 16.11.2024, the Administrative Committee of this High Court ordered that no further staff shall be appointed on deceased or son quota.
- (c) By decision dated 04.12.2024, the Sindh Cabinet also withdrew Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974.

9. Therefore, at present, there is no law or policy for appointing a person in government service on deceased or son quota. Confronted with that, it was submitted that the *GPO case* applies prospectively, *i.e.* it will not apply to applications or petitions pending on 26-09-2024 when that judgment was announced. To advance that proposition, reliance is placed on judgments of the Supreme Court post the *GPO case*. Before we discuss those judgments, we may recapitulate the case-law on the effect of an enunciation of law made by the Supreme Court of Pakistan.

10. It was expounded by the Supreme Court in the seminal case of *Malik Asad Ali v. Federation of Pakistan* (PLD 1998 SC 161) that principles governing retrospective application of statute do not strictly apply to law declared by superior Courts through the process of interpretation; that when the Supreme Court interprets law, it declares the true meaning of that law as it existed since inception; however, since that interpretation may have changed the existing interpretation of that law, then, as a matter of justice, equity and good conscience, the Court may protect persons who acted *bonafide* on the erstwhile interpretation. It was therefore laid down that where the enunciation of law by the Supreme Court changes the existing interpretation of that law, the judgment can specify the date from which it is to be given effect. Indeed, the Supreme Court has on occasions, given effect to its judgment retrospectively, as in *Re Pensionary Benefits of the Judges of the Superior Courts* (PLD 2013 SC 829) and *Ali Azhar Khan Baloch v. Province of Sindh* (2015 SCMR 456). However, where the judgment does not so specify, it has been held that the same operates prospectively, as in *Pakistan Medical and Dental Council v. Muhammad Fahad Malik* (2018 SCMR 1956). Therefore, it is the judgment of the Court that is to be looked at to see if it applies retrospectively, and if so, to what extent.

11. After declaring that rules and policies for recruitment on deceased and son quota were unconstitutional, the *GPO case* confined the exemptions only to the following:

“However, it is clarified that the instant judgment shall not affect the appointments already made of the widow/widower, wife/husband or child of deceased or retired civil servants. It is further clarified that this judgment shall not affect the policies, rules or compensation packages of the Federal and Provincial Governments for the benefit of the legal heirs of martyred personnel of the law enforcement agencies and of civil servants who die on account of terrorist activities.”

Clearly, the Supreme Court was conscious that its judgment will hit applications and petitions pending before authorities and Courts, but did not exempt those from the purview of its declaration while exempting appointments already made and rules/policies made for legal heirs of martyred personnel and those for civil servants who become victims of terrorist activities. The further direction given in the *GPO case* that offending rules and policies should be withdrawn forthwith, leaves no doubt that the intent was to stop further orders of appointment on the deceased and son quota. It is, therefore, futile to argue that the *GPO case* does not apply to pending applications and petitions.

12. We now advert to judgments of the Supreme Court post the *GPO case*.

The first case is *The Registrar High Court of Sindh v. Rehana* and others (judgment dated 17-07-2025 in C.P. No. 804-K to 827-K of 2025). In that case, judgment of the High Court giving directions for appointment on the deceased/son quota had been passed on 17.04.2024, before the *GPO case*. The order dated 30.04.2025 passed by the High Court after the *GPO case*, which was assailed before the Supreme Court, was on a contempt application to enforce the previous judgment. In the second case of *Province of Sindh v. Huzaiifa Hanif* (judgment dated 02.09.2025 in C.A No. 113-K/2024 and connected appeals), there also, directions of the High Court for appointment on the deceased quota had been issued prior to the *GPO case*. It was in such circumstances that the Supreme Court did not interfere with orders of the High Court by observing that the *GPO case* operates prospectively and does not affect rights already adjudicated. Therefore, both these cases are distinguishable.

The third case is of *Zahida Parveen v. Government of Khyber Pakhtunkhwa* (judgment dated 17.03.2025 in CPLA No. 566-P/2024). The petitioner there had been appointed on the deceased quota before the *GPO case*, and it was the withdrawal of such appointment that was successfully challenged before the Supreme Court. As noted above, appointments already made were protected by the *GPO case* itself.

13. The fourth case post the *GPO case* is of *Ayaz Ali v. Federation of Pakistan* (judgment dated 17-07-2025 in C.P. No. 1242-K of 2024). There, the petitioners had made applications to the National Bank of Pakistan to appoint them on the deceased quota under a policy prevailing in the Bank since 2011. Those applications were not considered while others were appointed, hence the petition to the High Court. While that petition was pending, the *GPO case* declared similar policies as unconstitutional. On that ground, the High Court dismissed the petition, however, the Supreme Court directed the Bank to decide the petitioners' applications under the deceased quota policy in vogue at the relevant time. In doing so, it was observed by the Supreme Court that the *GPO case* "would have no retrospective effect to upset the 2011 policy and this important aspect was ignored by the High Court which simply non-suited the petitioners on the basis of the judgment of this Court in the case of General Post Office".

14. The observation by the Supreme Court in *Ayaz Ali (supra)* by a learned Bench of equal strength (three members) that the *GPO case* did not affect pending applications, apparently conflicts with the *GPO case*. As noted above, the *GPO case* did not save pending applications or petitions after declaring the underlying rules and policies as unconstitutional. The case of *Ayaz Ali*, therefore, puts the High Court in a predicament *vis-à-vis* Article 189 of the Constitution of Pakistan. In such circumstances, we take guidance from the case of *Malik Asad Ali v. Federation of Pakistan* (PLD 1998 SC 161), which suggests that if the judgment of the apex Court striking down a provision of law has itself specified which transactions are saved and which are not, that serves as binding precedent, and therefore, leaves

no room, at least for the High Court, to draw further exceptions. Since *Malik Asad Ali* was by a Full Court of the Supreme Court, it will prevail over the case of *Ayaz Ali*.

15. Resultantly, the subsequent judgments of the Supreme Court discussed above, which of course do not overrule the *GPO case*, cannot be relied upon to advance the proposition that the *GPO case* had saved pending applications/petitions.

16. The other aspect of the matter is that after the *GPO case*, the Administrative Committee of this High Court had withdrawn all instructions/policies for appointing judicial staff on deceased or son quota. The writ now sought by the Petitioner will also entail a writ to the Administrative Committee of the High Court to revive such policy. As settled by the Supreme Court in *Gul Taiz Khan Marwat v. Registrar Peshawar High Court* (PLD 2021 SC 391), administrative orders of High Court Judges are not amenable to writ jurisdiction.

17. For the foregoing reasons, no writ can issue for appointing the Petitioners on the deceased quota. The petitions are dismissed.

Office shall place a copy of this judgment in the connected petition.

JUDGE

JUDGE

Karachi:

Dated: 20-11-2025

**PS/SADAM*