

THE HIGH COURT OF SINDH, KARACHI

Mr. Justice Muhammad Saleem Jessar
Mr. Justice Adnan-ul-Karim Memon
Referee: Mr. Justice Adnan Iqbal Chaudhry.

C.P. No. D - 99 of 2025

[Sanaullah versus the Deputy Commissioner, Larkana]

Petitioner : Sanaullah son of Late Akthiar Ali.

Respondents : The Deputy Commissioner, Larkana & 03 others.

Date of decision : 24-11-2025

JUDGMENT

Adnan Iqbal Chaudhry J.- The Division Bench of Justice Muhammad Saleem Jessar and Justice Adnan-ul-Karim Memon have differed over the fate of a review application, hence this opinion as Referee Judge.

Facts:

2. By letter dated 15.03.2024, a scrutiny committee headed by the Chief Secretary found the Petitioner eligible for appointment on the deceased quota to the post of Junior Clerk (BPS-11) in the School Education and Literacy Department under Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 [APT Rules], and forwarded his case for further process by the District Recruitment Committee [DRC]. The summary so approved further read: *“However, the DRC must verify the qualification / other documents and also ascertain credentials of the candidates as per notified Recruitment Rules during the DRC meeting. In case the candidate does not qualify or is incompetent for the post, he may be considered and appointed against a post of (BPS-01/02) that is vacant in the said office/district after completing all codal formalities.”*

3. As per the comments of the Respondent No.1, around 36 cases were referred to the DRC for appointment on the deceased quota,

including the Petitioner's, which were processed for verification of documents and a meeting of the DRC was scheduled for 25.10.2024. However, in the meanwhile, on 26.09.2024, the Honorable Supreme Court of Pakistan delivered judgment in the case of *General Post Office, Islamabad v. Muhammad Jalal* (PLD 2024 SC 1276), declaring Rule 11-A of the APT Rules and all other rules and policies providing a deceased or son quota in government service, as unconstitutional. The relevant authorities were further directed to withdraw such rules/policies *albeit* with certain exceptions. Given this development, meeting of the DRC was cancelled. Thereafter, by decision dated 04.12.2024, the Sindh Cabinet omitted Rule 11-A from the APT Rules and a notification to that effect was also issued on 19.12.2024.

4. This petition was brought on 01.02.2025, praying for a writ to the Deputy Commissioner Larkana to convene a meeting of the DRC for the Petitioner's appointment on the deceased quota as recommended by the scrutiny committee. By judgment dated 13.03.2025, the learned Division Bench of Justice Muhammad Saleem Jessar and Justice Adnan-ul-Karim Memon dismissed the petition given the pronouncement in *Muhammad Jalal*, and in view of the fact that Rule 11-A of the APT had since been omitted.

5. Against the dismissal of the petition, the Petitioner preferred a review application. He submitted that *Muhammad Jalal* did not operate retrospectively to apply to his case; that the scrutiny committee had already processed his application for appointment on the deceased quota prior to *Muhammad Jalal*; that his appointment was pending only for convening a meeting of the DRC; and that this aspect was overlooked by the learned Bench in dismissing the petition.

6. Justice Jessar was inclined to allow the review application, recalled the dismissal order and allowed the petition by directing the Respondents to consider the Petitioner's case for appointment on the

deceased quota under Rule 11-A of the APT Rules. On the other hand, Justice Memon dismissed the review application.

The difference of opinion

7. For allowing the review application, Justice Jessar is of the view that while dismissing the petition the Bench did not notice that *Muhammad Jalal* did not operate retrospectively, and this aspect constituted an error of law apparent on the face of the record, thus meriting a review. Thereafter, for allowing the petition, Justice Jessar is of the view that *Muhammad Jalal* operates prospectively from 26.09.2024, which means that it “*would not attract in the cases where the civil servant died or became incapacitated to perform further service prior to the said date.*” Reliance is placed on judgments of the Hon’ble Supreme Court delivered post *Muhammad Jalal*.

8. Per Justice Memon, the Bench had duly considered the question of retrospectivity of *Muhammad Jalal* before dismissing the petition; therefore, there was no error apparent on the record to consider a review of that judgment; and in any case, review jurisdiction cannot be invoked to reopen a case to take a different view. On the point of retrospectivity of *Muhammad Jalal*, Justice Memon is of the view that since *Muhammad Jalal* had only saved appointments already made, it was binding precedent to stop any further appointment under Rule 11-A of the APT Rules.

Scope of Referee Judge in constitution petitions

9. The scope of a Referee Judge in constitution petitions, as distinct from the scope in criminal appeals, has been discussed by this Court in the cases of *Muzammil Niazi v. The State* (PLD 2003 Karachi 526) and *Aijaz Hussain Jakhrani v. National Accountability Bureau* (PLD 2023 Sindh 1). It is settled that in constitution petitions the scope of a Referee Judge is restricted to points on which the members of the Division Bench have differed; that such points can be both of law and facts; and that where the Division Bench does not formulate points of

difference for the opinion of Referee Judge, the latter may formulate those himself. It has also been held that upon the opinion of the Referee Judge, the judgment is passed by majority *i.e.* of the members of the Division Bench and the Referee Judge.

Points for determination

10. Learned members of the Division Bench have not formulated points for determination for the Referee Judge. Therefore, relying on the case-law *supra*, and after examining the separate opinion of the members of the Bench, I arrive at the following points over which the learned Judges have differed:

- I. Whether the enunciation of law by the Supreme Court in *Muhammad Jalal* is prospective in the sense that it does not apply to cases that were under process by the relevant departments for appointment on deceased quota ?
- II. Whether the review application by the Petitioner was maintainable ?
- III. What should the decision be ?

Opinion of Referee Judge

Point I:

11. 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.

12. After declaring that rules and policies for recruitment on deceased and son quota were unconstitutional, *Muhammad Jalal* 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.”

Though the Petitioner’s application for appointment on the deceased quota had been cleared by the scrutiny committee, it was far from an “appointment already made” as the DRC had yet to convene to assess his credentials and competence. Clearly, the Supreme Court was conscious that its judgment will hit applications under process by relevant authorities, but did not exempt those from the purview of its declaration while exempting only the appointments already made and rules/polices made for legal heirs of martyred personnel and those for civil servants who become victims of terrorist activities. The further direction given in *Muhammad Jalal* 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 *Muhammad Jalal* did not apply to applications under process.

13. I now advert to judgments of the Supreme Court post *Muhammad Jalal*.

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 *Muhammad Jalal*. The order dated 30.04.2025 passed by the High Court after *Muhammad Jalal*, 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. Huzaifa 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 *Muhammad Jalal*. It was in such circumstances that the Supreme Court did not interfere with orders of the High Court by observing that *Muhammad Jalal* 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 *Muhammad Jalal*, 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 *Muhammad Jalal* itself.

14. The fourth case post *Muhammad Jalal* 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, *Muhammad Jalal* 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 Muhammad Jalal "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".

15. The observation by the Supreme Court in *Ayaz Ali (supra)* by a learned Bench of equal strength (three members) that *Muhammad Jalal* did not affect pending applications, is apparently in conflict with *Muhammad Jalal*. As noted above, *Muhammad Jalal* did not save applications under process 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, I 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*.

16. Resultantly, the subsequent judgments of the Supreme Court discussed above, which of course do not overrule *Muhammad Jalal*, cannot be relied upon to advance the proposition that *Muhammad Jalal* does not apply to applications under process.

Point II:

17. In the first round, the judgment of dismissal passed by the Division Bench with concurrence, had noted the Petitioner's submission on the retrospectivity of *Muhammad Jalal*, but rejected that by observing that *Muhammad Jalal* makes Rule 11-A of the APT Rules void. Therefore, it cannot be argued by the Petitioner that such point

was overlooked. It is then settled law that a review is not synonymous of appeal; it cannot be invoked for rearguing or rehearing the matter; nor is it warranted merely because the conclusion drawn was wrong or erroneous. Reliance is placed on the cases of *Ahmed Sikander v. Commissioner Inland Revenue* (2025 SCMR 140), *Haji Muhammad Boota v. Member (Revenue) BOR* (2010 SCMR 1049) and *Sh. Mehdi Hassan v. Province of Punjab* (2007 SCMR 755). Therefore, the review application was not maintainable to begin with. Nevertheless, as already discussed above, since the Petitioner's case was not saved by *Muhammad Jalal*, no writ could otherwise issue for the Petitioner's appointment under Rule 11-A of the APT Rules.

Point III:

18. For the foregoing reasons, I concur with Justice Adnan-ul-Karim Memon on both *Point I* and *Point II*. The review application is to be dismissed.

REFEREE JUDGE

Karachi:
Dated 24-11-2025