

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD.
C.P.No.D-765 of 2017.

DATE ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection.
2. For orders on M.A-3482 of 2017.
3. For katcha peshi.

Date of hearing: 24.08.2017.

Petitioner present in person.

Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

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Through instant petition, petitioner seeks his appointment on deceased / disable quota in Revenue Department i.e. office of Deputy Commissioner / Assistant Commissioner Kandhkot on the ground that his father namely Amanullah Jakhrani was serving as Junior Clerk in the office of Assistant Commissioner / SDM Kandhkot who was murdered during service on 26.03.1994.

Learned A.A.G. files comments of respondent No.2, taken on record, copy whereof provided to the petitioner. In the said comments, such factual plea is not denied.

2. Learned A.A.G. contends that the petition is not maintainable on the point of latches.

3. Heard petitioner as well learned AAG.

4. Purpose of section 11 is only an assurance of job as a 'help' to the family of such civil servant (deceased). It would be conducive to refer the case of **Mir Hassan** (C.P. No.D-294 of 2011) decided by this Court, in which it is held that:-

*"8. The earlier portion of the said **rule** appears to be addressing the 'Authority' whereby bringing it under a mandatory obligation (by use of words shall) to provide a job to any of the unemployed children of such civil servant but by later portion such has been made subject to activation of such family itself but without any mechanism to first inform the **family** of such condition which may result in costing it (**family**) the benefit of such '**rule**' even. Let it be clear that said '**rule**' addressed the **family** of such a civil servant and even the later portion concludes to a result that it is not necessary for applying such*

*right that there must have been publication of **jobs** which usually is not advertised on falling of a single vacancy. Thus, reading of the above 'rule' as a whole would result that if such move (applying under this rule) is not within a period of **two years** the family shall stand deprived of benefit of **rule** which in all senses shall mean a **penal one** which should not happen without an opportunity. Therefore, if the '**Authority**' does not intimate to family of such civil servant before expiry of due date the object of such insertion/amendment cannot be said to have served its purpose and object but we regretfully note that we have not experienced a single case where department itself activated to serve the object of the said rule."*

The above *dicta* is sufficient to conclude that unless the Government places something so as to establish that despite an *intimation* of such *rule*, the family did not avail it, the plea of *limitation* and *laches* would not be available with the *Authority* because one cannot gain benefit of his own wrong particularly where same affects rights of others.

Further by Notification of Province of Sindh such post can be filled up to Grade-11 only.

4. Since there is no denial that petitioner's father lost his life during service and intention of Section 11-A is to rescue the deceased's family as discussed in above referred judgment; as well the petitioner is a disabled person hence *prima facie* the petitioner is entitled for the benefit of such *rule* as well *dicta*. Besides, all children of the deceased were minor at the time of his death; petitioner was aged about 08 years; since years petitioner is running from pillar to post; even concerned appointing authorities recommended his case for consideration.

Accordingly, the petition is allowed. Let appointment order shall be issued in favour of the petitioner on any suitable post, for which he qualifies, however, upto grade-11, according to service rules within one month, with compliance report.

Petition stands disposed of in above terms alongwith listed application.

JUDGE

JUDGE

