

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.**

C.P. No.D-649 of 2013

Mst. Sahib KhatoonPetitioner

Vs.

Province of Sindh & othersRespondent

For hearing of M.A. No.14152/2015.
For hearing of M.A. No.2262/2016.

Date of hearing: 22.01.2019

Mr. Ahsan Gul Dahri, Advocate for petitioner.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

ORDER

The captioned petition was disposed of by this Court vide order dated 10.09.2015 with the following observations:-

“5. We are of the considered opinion that the petitioner’s son has applied within stipulated period of two years and this notification has been issued after filing of his application cannot be interpreted to apply retrospectively to the application, which has been filed before coming into force of this notification.

6. Alongwith parawise comments filed by respondent No.1, summary to the Chief Minister of Sindh was submitted by the respondent No.1 where the name of petitioner’s son was recommended, the same is annexed as annexure-2 with the comments filed by respondent No.1.

7. After examining the summary forwarded to the Chief Minister of Sindh by the respondent No.1 and commented filed by respondent No.1, as stated above, we are of the considered opinion that the regret made by the respondent No.1 is without any legal

justification. We, therefore, allow this petition and direct the respondents to consider the case of the petitioner's son namely Shahid Hussain after he fulfills the required formalities for recruitment for the subject post.

8. *Learned Addl. A.G. has placed reliance on the case of ASGHAR KHAN V. PROVINCE OF SINDH & OTHERS (2014 PLC (C.S) 1292. We have also examined the case law cited by learned Addl. A.G, the same is distinguishable, as the Petitioner's son applied for the post on deceased quota within time and the matter was processed, therefore, the same is not applicable in this case."*

2. On 2.12.2015, the Petitioner being aggrieved by and dissatisfied with the non-action by the alleged Contemnors, filed an Application (CMA 14152/2015) under Article 204 of the Constitution, praying therein to initiate the Contempt Proceedings against the alleged Contemnors, who willfully disobeyed and disregarded the order dated 10.9.2015, passed by this Court.

3. The alleged Contemnors have filed statements showing compliance of the order dated 10.9.2015, passed by this Court with the assertion that they offered the post of Beldar in BS-1 to the son of the Petitioner, who refused to accept the same on the premise that he shall be offered the post of Field Assistant in BS-11.

4. Mr. Ahsan Gul Dahri, learned counsel for petitioner has argued that the alleged Contemnors, despite clear directions have not complied with the above order in its letter and spirit. He further contended that directions were issued to the Respondents to consider the Petitioner's son for appointment to the post of field Assistant in (BS-11) and the Respondent No.1 in respect of Petitioner's son's eligibility recommended him for appointment as Beldar in BPS-1, which act on the part of alleged contemnors is illegal; that the Petitioner's son is entitled to be appointed on the post of Field Assistant as per directions contained in the order dated 10.9.2015 passed by this Court on the premise that his father was working as Field Assistant (BS-11), who passed away during service on 11.12.2001, however,

to date the Respondents have failed to comply with the orders of this Court, which amounts to Contempt of Court; that the Petitioner is agitating for the basic right of her son and seeking indulgence of this Court for directions to the Respondents for compliance of order dated 10.9.2015 passed by this Court; that the respondents have recommended other candidates for higher posts, whereas the petitioner's son has been left out without any justification under the law, which is a discriminatory attitude toward the petitioner .

5. Learned Additional Advocate General, Sindh has submitted that respondents have complied with the order passed by this Court and offered the petitioner for the post of Beldar in BS-1, which he has refused to accept, therefore, he is not entitled for further relief from this court. Learned AAG in support of his contentions has relied upon the statement dated 7.3.2018 filed on behalf of the alleged contemnor No.1 and argued that the post of Field Assistant in BS-11 cannot be filled without merit. He lastly prayed for dismissal of the listed applications.

6. We have heard the learned counsel for the respective parties on the listed applications and perused the material available on record.

7. This Court while disposing of the instant Petition vide order dated 10.9.2015, directed the Respondents that if Petitioner's son fulfills the required formalities for recruitment for the subject post he may be considered for appointment to the subject post according to the Rules.

8. In the light of above averments, the Petitioner in his Contempt Application has highlighted the violation of the order dated 10.9.2015, passed by this Court. Now, the question before us as to whether in the Contempt Proceedings, we can enlarge the scope and allow the Parties to argue the matter on merits of the case?

9. The answer is that the Contempt Proceedings is always between the Court and the alleged Contemnor, thus its scope cannot be enlarged, except to see as to whether the alleged contemnor has committed the contempt or otherwise.

10. We have also gone through the Contempt Application, the reply of the alleged Contemnors to the effect that they had complied with the aforesaid order of this Court in its letter and spirit.

11. We are cognizant of the fact that this Court while disposing of the matter directed the Respondents that in case the Petitioner meets all the eligibility criteria, he be considered for appointment to the subject post i.e. Field Assistant.

12. Learned counsel for the Petitioner while laying emphasis on Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer Rules), 1974 argued that Petitioner's son cannot be non-suited on the ground of non-availability of the vacant post of Field Assistant. However, after thorough examination, we have noted that Rule 10-A and Rule 11-A until 30th July, 2011, published on 01.09.2011 were as follows:-

“10-A. Notwithstanding anything contained in these rules, where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his unemployed children or, as the case may be widow (when all the children of the deceased employee are minor) may be employed against a post meant for initial appointment in BPS-16 and 17 for which he/she possess the minimum qualifications prescribed to that post:

Provided that such child or widow may be given ten additional marks in the aggregate by the Sindh Public Service Commission or the appropriate Selection

Board or Committee, if he or she otherwise qualifies the test, examination or interview;

Provided further that a person who may have applied under this rule and qualifies purely on merit shall not be awarded any additional

marks and his selection shall be made on merit and not under this rule.

Provided further that the cut of date shall be within two years of the death of the officer or official.

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, widow (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 of incapacity of civil servant on any of the basic pay scales No.1 to 15 in the Department where such civil servant was working; Provided that such appointment shall be made after fulfillment of formalities as required in the requirement rules and holding interview, for the post applied for;

provided further that the cut of date shall be within two years of the death of the officer or official”

Third proviso of Rule 10-A as well as second proviso of Rule 11-A, specifically provides cutoff date for making of application for appointment under the deceased employees quota within 2 years of the occurrence of death of the Government Official. Through a further Notification dated 16.09.2014, two further provisos were added in Rule 10-A and 11-A and they are as follows:-

“1. Under Rule 10-A after third proviso, the following fourth proviso shall be added:-

“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 Notification dated 11.03.2008 and 17.07.2009 of these rules.”

2. Under Rule 11-A, after second proviso, the following third proviso shall be added:-

“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 11.03.2008 and 17.07.2009 of these rules.

13. We are not impressed by the contention of learned counsel for the Petitioner that the petitioner's son is entitled to be appointed on the post of Field Assistant under Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer Rules) 1974, for the simple reason that the aforesaid post can only be filled as per recruitment Rules and after due public notice as per proviso of Rule 11-A, which Provides that such appointment shall be made after fulfillment of formalities as required in the recruitment rules and holding interview, for the post applied for.

14. The Honorable Supreme Court in C. P. No. 482-503-K of 2016 vide order dated 10.08.2016 has held that the above two provisos added by Notification dated 16.09.2014 omit the application of Notifications dated 11.03.2008 and 17.07.2009 to those candidates under the above quota whose right of employment has already occurred. In Notification dated 17.07.2009, the cutoff date for making application for employment under the above quota was provided as 17.07.2009. It is clear from Notification dated 16.09.2014 that the clog of two years for making application for employment under the deceased quota for the children who have already applied for employment prior to making of this rule, was done away.

15. In the light of above discussion, it is crystal clear that respondent Department cannot circumvent the law to make recruitment to the post of Field Assistant on deceased quota by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, more particularly without resorting to the proviso of Rule 11-A as discussed supra.

16. We have perused the summary for the Chief Minister Sindh dated 30.11.2015 which explicitly show that substantial compliance of the order passed by this court has been made. An excerpt of the same is reproduced as under:-

“6. However, in order to comply with the orders passed by the Honourable High Court of Sindh, Circuit Court Hyderabad in C.P. # D-649 dated 10.09.2015, it is proposed that Mr. Shahid Hussain S/O Late Muharramuddin Keerio, may be appointed as Beldar (BS-1), under deceased quota, in Agriculture Extension Wing of Agriculture Department, against an existing vacancy in relaxation of ban.”

17. The explanation offered by the Respondents vide (CMA 14152/2015), prima facie, is tenable under the law as the Petitioner’s son was offered the post of Beldar in BS-1 by the Respondents in compliance of order dated 10.9.2015 passed by this Court; but the same was refused by the Petitioner’s son.

18. In view of the facts and circumstances of the case and for the reasons alluded as above; we are satisfied with the explanation offered by the alleged Contemnors that substantial compliance of the order dated 10.9.2015 passed by this Court has been made in its letter and spirit, therefore at this juncture, no case for initiating Contempt Proceedings is made out against the alleged Contemnors. Thus, we are not minded to proceed with any further on the listed applications bearing (CMA 14152/2015) and (CMA No.2262/2016), having no merits, are accordingly dismissed.

JUDGE

JUDGE