

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

C.P No. D- 3199 of 2018

**Present:-
Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon**

Date of hearing: 31.10.2019
& decision: 31.10.2019

Petitioner: Anees Raja through Mrs. Razia Ali Zaman,
Advocate.

Respondents: Province of Sindh and others through Mr. Allah
Bachayo Soomro, Addl.A.G.

ORDER

ADNAN-UL-KARIM MEMON, J: - Through instant petition, the petitioner is seeking direction to Respondents to appoint him as Junior Clerk or any other suitable post as per his qualification, on quota reserved for the employees who were declared invalidated and incapacitated during service and subsequently retired from Government service, under policy decision taken by the Government of Sindh vide Notification No. SORI(S&GAD/2-3/02(P-III) dated 30.07.2011.

2. Petitioner has premised his case with the assertion that his father Muhammad Soomar Katyar was appointed as Constable in Sindh Police Department, District Hyderabad in the year 1990 and stood retired from service on Medical ground vide letter dated 7.3.2015; that after his retirement, the petitioner moved various applications to respondents for his appointment as Junior Clerk or any other suitable post on the aforesaid quota and finally he appeared in the test and interview and was declared successful candidate for the aforesaid post vide letter of recommendation dated 7.3.2018 ; but unfortunately he was not appointed and in his place respondent No.5 was appointed by depriving him from his basic right of employment; that time and again he approached the Respondents for issuance of appointment letter on the plea that he had already been declared successful candidate for the aforesaid post but his all efforts went in vain, compelling him to file the instant petition on 23.11.2018.

3. We have heard the parties on the issue of initial appointment of the petitioner on son quota under policy decision taken by the Government of Sindh vide notification No. SORI(S&GAD/2- 3/02 (P-III) dated 30.07.2011 and perused the material on record.

4. Learned A.A.G has controverted the stance taken by the petitioner with the assertion that an application was received by SSP Hyderabad from DIGP Hyderabad Range vide letter No. Estt/-12296 dated 12.6.2017, which was submitted by father of the petitioner for appointment of his son as Junior Clerk, same was moved to DIGP Range for further action on 10.7.2017; thereafter the case of the petitioner along with other candidates was sent to IGP Sindh Karachi with direction to complete the required formalities vide letter No. 9884-87/EB-III/T-7/S&S dated 8.9.2017, & DIGP Estt: No. 23523-25 dated 7.11.2017, the case of petitioner was resubmitted after completion of all the relevant documents vide office letter No.13271 dated 24.11.2017 for further process. Thereafter a letter was received from IGP Sindh Karachi Vide No. 3175-78/EB-III/T-7/S&S dated 7.3.2018, and DIGP Hyderabad Estt: No.E-III/6630-33 dated 8.3.2018 returning the cases of candidates on the ground that there is/was no vacancy. In our view this is hardly a ground to non-suit the petitioner. Since he had already been recommended for appointment against quota reserved in the light of Rule 11-A of Sindh Civil Servant (Appointment Promotion and Transfer) Rules, 1974 vide letter dated 7.3.2018 on the ground that the father of petitioner was serving in police department on different posts and finally retired in the year 2015 as Head Constable on medical grounds; that his case does come under the purview of the aforesaid Notification as discussed supra as he stood retired well after the issuance of Notification regarding invalidated or incapacitated quota reserved for those employees; that Services, General Administration and Coordination Department, Government of Sindh vide Notification No.SORI (S&GAD/2-3/02(P-III) dated 30.07.2011 in supersession of the department's all Notifications issued in this behalf, the Government of Sindh made the following amendments:-

“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 employees are minor) shall be provided job applies within a period of two years of death, or declaration of invalidity or incapacity of civil servant on any of the basic scales 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 recruitment rules and holding interview, for the post applied for” (emphasis added).

5. In order to clarify the legal position that has emerged in the present case we first take up legal issue of appointment in various departments of Sindh Government through policy decision as provided under Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion and Transfer Rules, 1974). After thorough examination, we have noted that Rule 10-A & Rule 11-A until 30th July, 2011, published on 01.09.2011 was 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; 4 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”

6. Third proviso of Rule 10-A as well as second proviso of Rule 11-A, specifically provides cutoff date for making application for appointment under 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”

7. We are also cognizant of the fact that Honorable Supreme Court in C. P. No. 482-K & 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 deceased quota for the

children who have already applied for employment prior to making of this rule, was done away.

8. In the light of above discussion, it is crystal clear that the Respondent Department can make recruitment to the post applied by the petitioner on the basis of invalidated or incapacitated quota reserved for those employees by issuing appointment order by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974.

9. In our view public employment is a source of livelihood; therefore, no citizen shall be discriminated in the said matter on the grounds as provided under Article 27 of the Constitution. The government is bound to make certain quota in appointments or posts in favour of any backward class of citizen which in the opinion of the government is not adequately represented in the services under the state. That's why Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 as amended up-to-date is introduced to cater that situation to accommodate the invalidated or incapacitated civil servants. Resultantly, we do not find any impediment in allowing the instant petition on the aforesaid analogy.

10. In the light of above facts and circumstances of the case, the instant Petition is hereby disposed of in the terms, whereby the Chief Secretary to Government of Sindh is directed to consider the case of the Petitioner for his appointment as Junior Clerk as recommended earlier vide letter dated 7.3.2018 on the basis of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, subject to his qualification for the post in accordance with the dicta laid down by the Honorable Supreme Court of Pakistan in the case referred to herein above within a period of two months from the date of receipt of this order.

Let a copy of this order be communicated to the Respondents for information and compliance.

JUDGE

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