

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

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

**CP No. D- 738 of 2018**

Amjad Ali v. Province of Sindh and others

**CP No. D- 377 of 2019**

Ali Raza v. Province of Sindh and others

**CP No. D- 412 of 2019**

Bahadur Ali v. Province of Sindh and others

Date of hearing: 05.11.2019  
& decision: 05.11.2019

Mr. Intizar Ali Dahri, advocate for petitioner in CP No. D- 738 of 2018

Mr. MB @ Nouman Sehto, advocate for petitioner in CP No. D- 377 of 2019

Mr. Mian Taj Muhammad Keerio, advocate for petitioner in CP No.D-412 of 2019

Mr. Allah Bachayo Soomro, Addl.A.G.

**ORDER**

**ADNAN-UL-KARIM MEMON, J:** - Petitioners in these petitions are seeking appointment on ministerial posts on deceased quota in Agriculture Department, Government of Sindh, in terms of Rule 11-A of Sindh Civil Servant (Appointment Promotion and Transfer) Rules, 1974. Since the questions of facts and law involved in the above petitions are same, hence all are being disposed by this common order.

2. Mian Taj Muhammad Keerio learned Counsel for petitioner in CP No.D- 412 of 2019 has pointed out that his case is altogether different from the other cases; therefore, the same may be taken up however, he emphasized that in earlier round of litigation he filed CP No. D- 826 of 2016 before this Court, which was disposed of vide common order dated 13.10.2016 with certain direction to the competent authority for consideration of his case in terms of Rule 11-A of Sindh Civil Servant (Appointment Promotion and Transfer) Rules, 1974, but nothing could be done, compelling the petitioner to initiate contempt proceedings against the alleged

contemnors, however the same proceedings were dropped vide order dated 25.2.2019 on the premise that respondent department has passed speaking order dated 31.7.2017 and regretted his request in the light of policy decision as discussed supra. He next submitted that the petitioner has wrongly been nonsuited on the purported plea that he applied for the post belatedly, which is / was not the case of petitioner as such he is required to be accommodated under the policy on any post as per his qualification. In support of his contention, he heavily relied upon Rule 10-A and Rule 11-A which reads as under:-

“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 16 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 17 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”

3. Conversely, learned A.A.G. submitted that his case does not fall under Rule 11-A of Sindh Civil Servant (Appointment Promotion and Transfer) Rules, 1974.

4. We have heard learned counsel for the parties on the aforesaid issue.

5. Prima-facie, the plea of learned A.A.G. is untenable in the light of latest verdict of Honorable Supreme Court given 10.08.2016 in C.P. No. 482-503-K of 2016 wherein it has been 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 accrued. 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.

6. However, in other petitions learned A.A.G has consented for disposal of the same with the assertion that his consent is subject to all just exception more particularly in the light of Rule 11-A of Sindh Civil Servant (Appointment Promotion and Transfer) Rules, 1974. Accordingly, the rest of the petitions are disposed of in the following terms:

- I. Petitioners shall submit their respective applications along with supporting material / documents to the Chief Secretary, Government of Sindh, through any recognized courier service on or before 15.11.2019, for scrutiny and consideration and decision through a speaking order on or before 31.01.2020 strictly in accordance with law and the prescribed rules, procedure and policy, and after providing opportunity of hearing to the petitioners.
- II. Offer letters shall be issued only to those petitioners who are approved by the Chief Secretary/competent authority where after such petitioners shall complete all legal and codal formalities required under the law and the relevant rule, procedure and policy.
- III. Petitioners who are not approved by the competent authority may seek their remedy, if any, before the competent forum in accordance with law.

IV. Compliance report in the above terms shall be filed by the Chief Secretary, Government of Sindh, through learned A.A.G. with the Additional Registrar of this Court latest by 15.02.2020.

7. Let, notice be issued to the Chief Secretary Sindh and Secretary Agriculture Department, Government of Sindh, along with a copy of this order for its compliance in letter and spirit.

8. By consent, all these petitions are disposed of in the above terms with no order as to costs.

JUDGE

JUDGE

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