

# IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No. D –576 of 2020**

Mahmood Hussain

**Versus**

Province of Sindh and 05 others

Date of hearing &  
Decision : 07.03.2022

Mr. Manzoor Hussain Khoso, advocate for the petitioner  
Mr. Ali Safdar Depar, AAG.

### **ORDER**

Through the captioned Constitutional petition, the petitioner is seeking the appointment on the ministerial post, on the quota reserved for the deceased civil servants, in respondent- Forest & Wildlife Department, Government of Sindh, in terms of Rule 11-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 and dicta laid down by the Hon'ble Supreme Court of Pakistan on the subject issue.

2. The grievance of the petitioner is that his father deceased Mamoon Palijo was working as Forester (BPS-7) in Forest & Wildlife Department, Government of Sindh, passed away during service in 2009, and the petitioner's mother had moved an application on 03.12.2010 for appointment on deceased quota as provided under Rule 11-A supra before the worthy Chief Minister Sindh stating therein that the petitioner may be accommodated in the place of his father under the quota reserved for deceased civil servants, however, the respondent Department has declined the request of the petitioner on the premise that the applicant did not apply within the stipulated period of two years after the death of his father and another candidate was accommodated in the year 2018.

3. Mr. Manzoor Hussain Khoso, learned counsel for the petitioner, has submitted that the Respondents are discriminating the Petitioner in violation of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 ; learned counsel further added that Petitioner is entitled to be appointed to the ministerial post on the basis of deceased quota as well as on merits ; that the Petitioner has been seriously prejudiced and not treated equally, therefore, the Petitioner is entitled to be treated equally in accordance with law, as provided under Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 ; that grave injustice has been done with the Petitioner with no fault on his part by depriving him for his appointment to the ministerial post, for which he is fit and qualified ; that due to such acts and deeds of the Respondents, the Petitioner has suffered a lot of mental torture, agonies and by such situation, the Petitioner is facing problems too ; that the denial in this regard by the Respondents amounts to invade upon and infringement of fundamental and legal rights of the Petitioner as guaranteed by the Constitution of Islamic Republic of

Pakistan 1973, which are enforceable by this Court in exercise of its Constitutional jurisdiction ; that the Petitioner has been continuously approaching personally to the Competent Authority of respective department to appoint him for any suitable post on the basis of deceased Quota / policy in vogue, but nothing has been done so far; that the Petitioner is aggrieved by the illegal action of the Respondents. In support of his contentions, he heavily relied upon the case of *Ayaz Ali and others versus the Government of Sindh & 67 others* **2014 PLC (C.S.) 1060** and argued that the case of the petitioner is akin to the decision referred to hereinabove; therefore, he may be treated accordingly. He lastly prayed for allowing the instant Petition.

4. We put the question to the learned AAG as to why the petitioner has not been considered for the subject post against the quota reserved for deceased civil servants. He replied that his father had passed away on 18.06.2009 and he did not apply within two years from the death of his father. He further submitted that as far as widow's application dated 03.12.2010 is concerned, the same is without any endorsement/directives or signature of the Worthy Chief Minister, Sindh, and has never been received to the respondent department.

5. We do not agree with the contention of learned AAG on the aforesaid proposition as Rule 11-A as discussed supra, is clear in its terms, needs no further deliberation. Prima facie, the action of the respondent does not align with the law laid down by the Hon'ble Supreme Court of Pakistan on the subject issue and the petitioner has been discriminated. The respondents have failed and neglected to look into the matter at the time of death of his father, he was a minor boy and his mother moved an application under Rule 11A for the aforesaid purpose within the stipulated time, however, they have taken the plea that this was not received by the office. This plea is also an afterthought as they have already accommodated someone else in place of the petitioner, which is the discriminatory attitude on the part of respondents.

6. Besides the above, the plea of learned A.A.G. is not tenable in the light of the latest verdict of Honorable Supreme Court given on 10.08.2016 in C.P. No. 482-503-K of 2016. This petition is, therefore, allowed along with the pending application(s) with direction to the Chief Secretary, Government of Sindh, and respondents to appoint the petitioner against a post reserved for deceased employees in terms of the order dated 10.08.2016 passed by the Hon'ble Supreme Court of Pakistan as discussed supra. The aforesaid exercise shall be undertaken by them within one week from the date of receipt of this order. In case of failure, contempt proceedings shall be initiated against the competent authority.

Let a copy of this order be transmitted to the Chief Secretary Sindh and respondents for compliance.

JUDGE

JUDGE

Nadir\*