

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

C. P No. D-746 of 2022

Before:

Justice Adnan-ul-Karim Memon
Justice Abdul Mobeen Lakho

The petitioner

Umeed Ali Zangejo,
Through Mr. Muzafar Ali Wadho,
advocate

Respondents

Deputy Commissioner, Larkana through Mr.
Abdul Hamid Bhurgri, Additional Advocate
General a/w Ahmed Ali Soomro, Assistant
Commissioner, Larkana.

Date of hearing & order: 02-08-2022

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ORDER

Adnan-ul-Karim Memon, J. Through instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, the petitioner has prayed that official respondents be directed to expedite the procedure for the appointment of the petitioner as Jr. Clerk (BPS-11) against deceased quota under Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974.

2. Learned Counsel for the petitioner has argued that the petitioner's father passed away during service; that upon his death, he applied to the respondent-revenue department and since then no decision has been taken by the respondent department for his appointment on deceased quota on a suitable post as per his qualification and eligibility. In support of his contention, he heavily relied upon Rule 10-A and Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, and argued that the petitioner is entitled to be considered for the post of Junior Clerk and/or any suitable post under law.

3. At the outset the representative of Deputy Commissioner, Larkana, submits that the respondents are ready and willing to take the decision, in the case of the petitioner, in terms of Rule 11-A of Sindh Civil Servant (Appointment, Promotion, and Transfer) Rules, 1974.

4. Mr. Abdul Hamid Bhurgri learned Additional Advocate General has supported the viewpoint of Ahmed Ali Soomro, Assistant Commissioner, Larkana, and also pointed out that Rule 11-A supra clearly, spells out that 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 a widow (when all the children of the deceased employees are minor) shall be provided job 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. He next submitted that the case of the petitioner for appointment on quota reserved for deceased employees may be referred to the competent authority of the Government of Sindh for consideration in the light of Rule 11-A of Sindh Civil Servant (Appointment Promotion and Transfer) Rules, 1974, subject to the exception made therein.

5. Proposal, as put forward by the learned AAG, seems to be fair enough; and, the learned counsel representing the petitioner has no cavil to the aforesaid proposal and seeks disposal of the instant petition in terms of the statement of Ahmed Ali Soomro, Assistant Commissioner, Larkana, duly supported by the learned AAG.

6. We have heard the learned counsel for the parties, perused the record, and also examined the stance of the parties on the subject issue.

7. To clarify the legal position that has emerged in the present case we first take up the legal issue of appointment in various departments of the Sindh Government through policy decisions as provided under Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion, and Transfer Rules, 1974). After a 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 BPS16 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 a 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”

8. The third proviso of Rule 10-A, as well as the second proviso of Rule 11-A, specifically provides a cutoff date for making the 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 the 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 the 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”

9. We are also cognizant of the fact that the 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 the Notification dated 17.07.2009, the cutoff date for making the application for employment under the above quota was provided as 17.07.2009. It is clear from the Notification dated 16.09.2014 that the clog of two years for making the

application for employment under the deceased quota for the children who have already applied for employment before making this rule, was done away.

10. In our view public employment is a source of livelihood; therefore, no citizen shall be discriminated against in the said matter on the grounds as provided under Article 27 of the Constitution. The government is bound to make certain quotas in appointments or posts in favor of any less privileged 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 to that situation to accommodate the aforesaid categories of civil servants.

11. In the light of the above discussion, it is crystal clear that the respondent-revenue department/Government of Sindh has to make recruitment to every post applied by the candidates under the law as discussed supra as well as based on invalidated or incapacitated/minority/differently-abled and deceased quota reserved for those employees by issuing appointment order by invoking Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974.

12. Prima-facie, the plea of learned A.A.G. is tenable in the light of the latest verdict of the Honorable Supreme Court given on 10.08.2016 in C.P. No. 482-503-K of 2016. Accordingly, the instant petition is disposed of in the terms that the Offer letter shall be issued to the petitioner by the competent authority in terms of Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 where after the petitioner shall complete all legal and codal formalities required under the law and the relevant rule, procedure and policy.

13. Let notice be issued to the Chief Secretary Sindh, Government of Sindh Senior Member Board of Revenue, Secretary Board of Revenue, and Deputy Commissioner Larkana, along with a copy of this order for its compliance in letter and spirit.

14. By consent, this petition is disposed of in the above terms with no order as to costs.

Judge

Judge