

PRESENTED

09/21/2013

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. 114 of 2013

Mansoor Ahmed S/O Mir Ahmed, by  
caste Kolachi, R/O Village Chakar  
Khan Kolachi, Deh Islam Lashari,  
P.O. Mirpur Mathelo, Taluka  
Ubauro, District Ghotki. . . . .Petitioner

VERSUS

- 1) Province of Sindh, through  
Secretary Irrigation Department,  
Sindh Secretariat, Karachi
- 2) Chief Engineer,  
Irrigation Department,  
Barrage Colony Sukkur.
- 3) Executive Engineer,  
Irrigation, Barrage Division,  
Sukkur. . . . .Respondents

CONSTITUTIONAL PETITION UNDER ARTICLE 199  
OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

**ORDER SHEET**

**THE COURT OF SINDH BENCH AT SUKKUR**

C.P. No. D- 114 of 2013.

For Katcha Peshi.



03<sup>rd</sup> April, 2013.

Mr. Shabir Ali Bozdar for the Petitioner.

Mr. Noor Hassan Malik, State Counsel a/w Aziz Ahmed Shaikh, AXEN,  
H.Q.

\*\*\*\*\*

Petitioner seeks his employment in Irrigation Department in terms of Rule 11-A of Sindh Civil Services (Appointment, Promotions & Transfer), Rules, 1974. Per learned counsel for the petitioner, Mir Ahmed Kolachi, father of the petitioner was serving as Senior Clerk in Irrigation Department and while being in service, he lost his breaths on 26.2.2001. Later-on, petitioner approached the respondents for appointment on the basis of deceased quota, but till date, his grievance has not been redressed.

2. Learned State Counsel has filed parawise comments on behalf of respondents No. 1 to 3. In their comments, respondents No.1 to 3 have not disputed the claim of the petitioner, however, they stated that at the time of death of petitioner's father, there was no policy for the appointment against deceased quota, as such case of the petitioner does not fall under the purview of Rule 11-A of Sindh Civil Services (Appointment, Promotions & Transfer), Rules, 1974.

3. Under similar circumstances, Divisional Bench of this court has allowed Const. Petition No. 498 of 2008, decided on 30.9.2010, wherein it has been held as under:

"It is by now well settled that notifications operate only prospectively. A vested right can be taken away retrospectively only through an enactment passed by an assembly or parliament but not through subordinate legislation i.e. through issuance of notifications by executive. In the present case, as the change in rule 11-A of Sindh Civil Services (Appointment, Promotions & Transfer), Rules, 1974 has been brought about through a notification, it can only have prospective effect. Therefore, the notification issued on 17.7.2009 shall become applicable from 17.7.2009 onwards only. Prior to this date, if a right of employment has already accrued to

## ORDER SHEET

2

# THE COURT OF SINDH BENCH AT SUKKUR

any of the children of a deceased or invalid or incapacitated civil servant then the former cannot be deprived of the benefit accrued to him under notification dated 11.3.2008 through a subsequent notification issued on 17.7.2009. These petitions are therefore, allowed to the extent stated above. Office to issue copy of this order to the learned AAG".



4. Since the respondents have not disputed the claim of the petitioner on merits, therefore, in the given circumstances and dicta laid down by this court in Const. Petition No. D-498 of 2008, we allow this petition and direct the respondents to do the needful within 40 days after receipt of this order and compliance report through Additional Registrar of this Court. Non-compliance of this order may expose the respondents to the Contempt of Court proceedings.

  
JUDGE,

  
JUDGE,

Ahmad