

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-1676 of 2023

(Aqib Ali Mirani Vs. Province of Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Date of hearing and order: 07-05-2024.

Mr. Abdul Sallam Abbasi, advocate for the petitioner.
Mr. Shaharyar Imdad Awan, Assistant A.G, Sindh.

ORDER.

Adnan-ul-Karim Memon J:- The petitioner Aqib Ali seeks direction to the respondents-Secretary Irrigation Government of Sindh to appoint him against deceased quota in terms of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and dicta laid down by the Supreme Court in the case of *Province of Sindh Vs. Muhammad Taqi Shah (2018 SCMR 1607)*.

The grievance of the petitioner is that his father Allah Bux Mirnai was serving as Boatman in Irrigation Department, who during his service passed away on 15-11-2011. After the demise his father, the mother of the petitioner approached the respondents along with application dated 17-04-2012 for appointment of her son/petitioner against the deceased quota, but she was asked that her son/petitioner was minor and as and when her son/petitioner attains the age of majority she or petitioner may approach them. It is urged that after attaining the age of majority, the petitioner approached the respondents for his appointment against the deceased quota and the respondent No. 2 forwarded his application to respondent along with letter No. D-7-7/GN-07/RCC/@-A(i)/1890 dated 14-05-2020 and then respondent No. 5 through

Section Officer for Secretary to Government of Sindh refused to approve the application of the petitioner on the premise that his case is not covered under the policy vide dated 24-11-2020.

Learned AAG has opposed this petition on the analogy that petitioner did not apply for deceased quota within two years of death of his father of as per Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. He prayed for dismissal of the petition.

We have heard the parties and perused the material available on record.

Prima facie this is apathy on the part of the respondent-department as this lis has been pending since 2023 and there is no progress in the matter; as such we are compelled to hear the learned counsel for the petitioner and learned AAG on the subject issue without further delay.

At this stage, 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 simply said that this is a policy matter and the Government has not considered his case for such appointment on any ministerial post and the same could only be filled as per recruitment Rules and not otherwise. However, he submitted that petitioner's father passed away in the year 2011 and petitioner applied for the subject post at the belated stage, who ought to have applied within two years from the date when his father passed away as such, he was/is not entitled for the subject post.

We do not agree with the reasoning of the learned AAG on the aforesaid proposition for the reason that petitioner was minor at the time of the death of his father as per record and as and when he reached the age of majority, he applied for the post of ministerial nature; however, his request was erroneously declined for the reason that a minor legal heir of deceased Civil Servant, the period of two years to apply for appointment on deceased quota would

starts after he/she attains the majority. This proposition has not been disputed by the learned AAG Sindh. Additionally Rule 11-A as discussed *Supra* is clear in its terms and needs no further deliberation on our part. Additionally in the eventuality of the death of a Civil Servant during service, it empowers the appointing authority to appoint one of the children of such deceased Civil Servant in any of the basic pay scales and the only requirement provided by the law was that the child must possess minimum prescribed qualifications. There was not condition of any examination, test or interview, and such appointment should be made in any department of the Government of Sindh only in case of death of a Civil Servant during service. Additionally Rule 11-A as discussed *Supra* is clear in its terms and needs no further deliberation on our part.

Prima facie the action of the respondent department does not align with the law laid down by the Supreme Court of Pakistan on the subject issue and the petitioner has been subjected to the irony of the department which is a hardship as his father passed away in the year 2011 during service and the petitioner applied within the policy terms, which application was processed and later-on declined vide office order dated 27-07-2020 on erroneous premises, compelling the petitioner to file this petition on 15-11-2023.

The respondents have failed and neglected to look into the matter in its true perspective and violated the command of the Constitution and law; therefore, this petition is liable to be allowed with direction to the Chief Secretary Government of Sindh and respondents to take into consideration the verdict of the Supreme Court on the subject issues as well as keeping in view the Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, where after if the petitioner is found eligible in all respect for appointment against the quota reserved for deceased Civil Servant, he shall be accommodated in any suitable ministerial

post by allowing him to complete all legal and codal formalities as required under the law and the relevant rule, procedure, and policy.

Let notice be issued to the Chief Secretary Sindh, Government of Sindh, Secretary Irrigation Department, Government of Sindh, Karachi, along with a copy of this order for its compliance in letter and spirit within 30 days.

Judge

Judge

Nasim/P.A