

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-628 of 2023

(Muhammad Bachal 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: 08-05-2024.

Nemo for the petitioner.

Mr. Ghulam Mustafa G.Abro, Additional A.G, Sindh.

ORDER.

Adnan-ul-Karim Memon J:- Petitioner Muhammad Bachal seeks direction to the respondent-Secretary Works and Services Department 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 Muhammad Usman was serving as Naib Qasid/Helper in Works and Services Department, who during his service passed away on 11-09-2011. The petitioner was aged about 12 years at the time of demise of his father; hence his sisters Mst. Afsa and Mst. Anam applied for their appointment and moved such applications dated 05-09-2012 and 25-04-2014 respectively and they continuously approached the respondents and on attaining the age of majority, the petitioner also approached the respondents for his appointment on deceased quota, but they have miserably failed to do so on the premise that the deceased quota was notified in 2002 and amended in 2014 and the father of the petitioner passed away during service and no application was entertain able on behalf of the sisters of the

petitioner, even after attaining the age of majority, the petitioner failed to apply for the job as per advertisement published in daily "Kawish" and daily "Jang" in the year 2016, however he applied for job in the year 2021 after lapse of nine years after the death of his father.

Learned AAG has opposed this petition on the analogy so put forward by the department with the assertion 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 start 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 no 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 in the case of *Province of Sindh & others Vs. Waheed Ali Amur & others* vide order dated 10-08-2016 and dismissed the petition of the Government of Sindh with findings at paragraph 6 to 9 and held at paragraph 8 that the notification dated 16-09-2014 bringing about amendments in Rule 10-A Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 were incorporated pursuant to the Orders passed by the Courts to ensure that restriction of two years imposed in the Rules applies only prospectively and not retrospectively and thus the children of the deceased whose right to employment prior to the date of making of the Rule providing limitation of two years will not apply to them on the basis that right to employment has already occurred to them. It is therefore clear from the notification dated 16-09-2014, the clog of two years for making of 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, meaning that the limitation of

two years will only apply to those children of the deceased whose right to employment has accrued after the date of making of this restrictive Rule, thus the approach of the respondent-department referred to above apparently is not in consonance with the notification dated 16-09-2014. Prima-facie 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.

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 Government of Sindh and Secretary Works and Services Department Government of Sindh, along with a copy of this order for its compliance in letter and spirit within 30 days.

Judge

Judge