

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-2124 of 2018

(Mehtab Hussain Jogi 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: 14-05-2024.

Mr. Shahid Hussain Jogi, advocate for the petitioner.
 Mr. Ali Raza Baloch, Assistant Advocate General, Sindh.

ORDER.

Adnan-ul-Karim Memon J:- The petitioner Mehtab Hussain Jogi seeks direction to the respondent-Chief Engineer Highways Department Sukkur 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 Mithan was serving as Chowkidar in respondent-department, who during his service passed away on 11-12-2007 and at that time, he was minor and when he reached the age of 18 years, he approached the respondent-department for his appointment on deceased quota and moved such application on 31-05-2018, but till today they are avoiding to appoint him on deceased quota, although he is entitled for such relief, hence this petition.

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 2018 and there is no progress in the matter even comments have not been filed, which shows that the interest of the respondent-department; 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 2007 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 not entertained; primarily a minor legal heir of deceased Civil Servant cannot apply and 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 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 2007 during service and the petitioner applied within the policy terms, compelling the petitioner to file this petition on 20-12-2018.

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

Judge

Judge

