

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 552 of 2022
(*Mst. Najma Khokhar and another vs. P.O Sindh & others*)

Before;

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

Date of hearing and Order: 14.05.2024.

Mr.Mian Mumtaz Rabbani, Advocate for Petitioner.

Mr. Liaquat Ali Shar, Additional Advocate General Sindh.

ORDER

Adnan-ul-Karim Memon J:- Through the instant petition, the petitioner Mst. Najma is seeking direction to respondent-District & Sessions Judge Ghotki to appoint her son/petitioner No. 2 namely Zain-ul-Abdin on any suitable post as per his qualification, on quota reserved for the deceased employees of the subordinate judiciary under the policy decision /directives of the Hon'ble Chief Justice of this Court vide letters dated 03.03.2010, 23.7.2012 & 4.3.2013.

2. Learned counsel for petitioners has submitted that the learned District & Sessions Judge Ghotki was/is reluctant to appoint petitioner No.2 in the light of the policy decision of the Hon'ble Chief Justice of this Court on the subject issue as well as in terms of Civil Judicial Staff Service Rules, 1992 and Rule 11-A of Sindh Civil Servant (Appointment, Promotion & Transfer) Rules, 1974. He averred that he has a legitimate right to know the reasons for declining her request for the appointment of her son by the competent authority. He further argued that after the death of her husband who was father of petitioner No.2 from the subordinate Court on 23.2.2017, has the right to ask for the appointment for her son/petitioner No.2 under the aforesaid policy as well as law laid down by the Supreme Court on the subject issue. Learned counsel referred to the documents attached with memo of the petition and submits that the matter of the petitioner was referred to the District & Sessions Judge Ghotki by the Registrar Office vide letter

dated 01-10-2020; however, nothing has been done compelling her to approach the District & Sessions Judge Ghotki for appointment of her son against any post on deceased quota in Judicial District Ghotki vide application dated 06-05-2021. He prayed for the direction to the District & Sessions Judge Ghotki to appoint petitioner No.2 on any ministerial post based on deceased quota.

3. Learned AAG, Sindh has referred to the comments filed by the office of District & Sessions Judge Ghotki and submitted that brother of the petitioner No.2 namely Ghous Bux was appointed as driver on son quota whose services were discharged/dismissed because having fake/bogus driving license. He further submitted that lower grade appointment were made in terms of Circular dated 03-03-2010 and 23-07-2012 where more than 20% appointment were made on son quota and since no fresh appointment in District Judiciary Ghotki has been made after 2017. He prayed for dismissal of this petition on the premise that elder son of the petitioner No.1 was appointed in Judicial District Ghotki on son quota; as such there is no concept of appointment on deceased/son quota twice.

4. We have heard the learned counsel for the parties on the subject issue and perused the record with their assistance.

5. It appears from the record that elder son of petitioner No. 1 Ghous Muhammad was appointed in Judicial District Ghotki vide order letter dated 16-03-2017 against the vacant post, which prima-facie show that compliance of the Rule 11-A of Sindh Civil Servant (Appointment, Promotion, and Transfer) Rules, 1974 was met, which 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. If this is the position of the case, we cannot direct the learned District & Sessions Judge Ghotki to appoint the petitioners' younger son/petitioner No.2 on any post, subject to the condition that as and when the advertisement is made he can apply for the post and his case can be considered on merits rather than quota reserved for deceased Civil Servant in District Judiciary.

6. In the light of the above discussion, it is crystal clear that the subordinate judiciary has to make recruitment to every post applied by the candidates on open merit 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.

7. In our view public employment is a source of livelihood; therefore, no citizen shall be discriminated 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 favour 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.

8. Before parting with this order, we may observe that the appointment in the public office can only be made through the competitive process on merit as provided under the recruitment rules and not otherwise as discussed supra. It is a well-settled law that appointments in public office are to be made strictly under applicable rules and regulations without any discrimination and in a transparent manner. Thus, all appointments in the public institution must be based on a process that is palpably and tangibly fair and within the parameters of its applicable rules, regulations, and bylaws. However, if the candidate has applied based on Rule 11-A of Sindh Civil Servants

(Appointment, Promotion, and Transfer) Rules, 1974, he/she can be accommodated subject to his/her qualification for the post under the dicta laid down by the Supreme Court of Pakistan in the case referred to hereinabove. On the aforesaid proposition, if any case law is needed to fortify our view a reference can be made to the following cases decided by the Supreme Court of Pakistan (1) Muhammad Yaseen v. Federation of Pakistan, **PLD 2012 SC 132**, Muhammad Ashraf Tiwana v. Pakistan, **2013 SCMR 1159**, Tariq Azizuddin: in re, **2010 SCMR 1301**, Mahmood Akhtar Naqvi v. Federation of Pakistan, **PLD 2013 SC 195**, Contempt Proceedings against Chief Secretary Sindh and others, **2013 SCMR 1752** and Syed Mubashir Raza Jafri and others v. Employees Old-age Benefits Institution (EOBI), **2014 SCMR 949**.

9. So far as the role of Registrar of this Court is concerned, the petitioner has not sought any relief against him, therefore, no direction is required to be given to him; even otherwise it is well-settled law that writ under Article 199 of the Constitution does not lie against such administrative decision of the Administrative Committee of the High Court of Sindh, if any, in the light of latest verdict pronounced by the Supreme Court of Pakistan on 16.3.2020 in the case of Gul Taiz Khan Marwat v. The Registrar, Peshawar High Court, Peshawar & others.

10. In the light of the above rule position, no further action is required on our part in exercising the power under Article 199 of the Constitution on the premise that the petitioner No.2 is at liberty to apply for the post on merit as and when the vacancy occurs in the office of Judicial District Ghotki and on submission of his /her application the same be considered under law and policy as discussed supra.

11. This petition stands disposed of in the above terms.

J U D G E

J U D G E