

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-1576 of 2023

(Khan Muhammad Ansari 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: 21-05-2024.

Mr. Shabbir Ali Bozdar, advocate for the petitioner.
 Mr. Shehryar Imdad Awan, Assistant Advocate General,
 Sindh.

ORDER.

Adnan-ul-Karim Memon J:- The petitioner Khan Muhammad seeks direction to the respondents-Secretary Public Health Engineering 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 Achar was serving as Beldar in respondent-Department, who during his service passed away on 03-01-2007. After the demise his father, the brother of the petitioner namely Muhammad Yousif approached the respondents for his appointment against the deceased quota and ultimately he filed C.P No.D-1278 of 2018 before this Court which was withdrawn vide order dated 12-08-2020 as the petitioner intended to avail the same remedy before this Court, hence the petitioner filed C.P No.D-1226 of 2020 which disposed on 21-02-2023 with direction to the respondent No.1 to decide the fate of the application of the petitioner within two months, thereafter Secretary Public Health Department issued letter dated 13-03-2023 to

respondent No.2 for getting advice; thereafter the respondent No.2 issued impugned letter dated 20-03-2023 with the narration that the case of the petitioner does not fall against the deceased quota on the as failed to apply within the period of 60 days from the date of publication of the corrigendum i.e. 28-02-2017, hence the petitioner has preferred the instant petition against the letter dated 20-03-2023.

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. So far as the rejection of the candidature of the petitioner is concerned, by the respondents suffice to say that 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. Besides, the Supreme Court has already set a naught the clog of cutoff date of two years as such the respondents are precluded from taking undue advantage of the situation and misinterpret the ratio of the judgment of the Supreme Court as discussed *supra*.

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, which request was declined on erroneous premises, compelling the petitioner to file this petition on 18-10-2023.

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 as a fresh candidate 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. So far as the decision taken by the respondents on the advice of Law department is concerned, the same will not come in their way and they shall abide by the law laid by the Supreme Court vide order dated 10-08-2016 in C.Ps No. 482-503-K of 2016 in its letter and spirit without fail.

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

Judge

Judge