

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-1244 of 2021
(Abdul Rauf Mahar Vs. P.O 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: 23-05-2024.

Mr. Abdul Naeem Pirzada advocate for the petitioner.
Mr. Asfandyar Kharal, Assistant A.G, Sindh.

ORDER.

Adnan-ul-Karim Memon J:- The petitioner Abdul Rauf /legal heir of the deceased civil servant of the Government of Sindh has come forward and raised his voice of concern about the reluctance of the official respondents, to appoint him under the quota reserved for deceased civil servants as per policy/guidelines of the Government of Sindh, issued from time to time, and dicta laid down by the Supreme Court in the case of *Province of Sindh Vs. Muhammad Taqi Shah (2018 SCMR 1607)*, therefore, the captioned petition is being taken up for disposal.

2. Learned counsel for the petitioner submits that father of the petitioner namely Mushtaque Ali was serving as Senior Clerk in the Revenue Department Government of Sindh and lastly / at the time of his death was posted in the office of respondent No 5, where he passed away during his service on 21.06.2010. He next submits that at the time of the death of his father, the petitioner was 09 years old as such could not apply in time; however his mother being the widow of the deceased and elder of the family moved an application to respondents for her appointment on the deceased quota, which was declined by the Additional Deputy Commissioner-I, Sukkur, on

the ground that case of the petitioner was beyond the policy framed by the Government of Sindh. He, therefore submits that the rule quoted by respondent No 5 in his order does not apply to the case of the petitioner on the ground that at the time of the death of his father, he was a minor therefore, right in government services in his favor accrued after attaining the age of majority which in the present case is 20 years, as such right was accrued to him earlier than the year 2018, therefore, the clog of 02 years does not apply to the case of the petitioner. He prayed for allowing the petition.

3. Learned A.A.G., representing the respondent departments initially resisted this petition on the premise that the petitioner legal heir of the deceased civil servant did not apply in time for the subject post, as such his case could not be considered for appointment and was rejected on 15.3.2021, however, we confronted the legal position of the case; and, several cases, decided by this Court on the subject issue, he in principle agreed for disposal of this petition accordingly. However, he submitted that the case of the petitioner for appointment on quota reserved for deceased employees if applicable in his case may be referred to the competent authority of the Government of Sindh for reconsideration in the light of the policy/guidelines of the Government of Sindh and/or under Rule 10-A, 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, subject to the exception made therein and more particularly in the light of order dated 10.08.2016 passed by the Supreme Court in C. P. No. 482-K & 503-K of 2016. **(Re-Province of Sindh and others against Waheed Ali Amur and others)**.

4. The Supreme Court has observed in the above matter that (a) applicant whose father/mother (civil servant) had expired during service between 02.09.2002 to 15.09.2014 would be entitled to apply against deceased quota appointment; (b) applicant whose father/mother (civil servant) has expired during service on or after 16.09.2014 would be required to apply against the deceased quota

appointment within two years from the date of death of his father/mother (civil servant).

5. In the wake of these clear-cut directions by the Supreme Court, a notification was issued in December 2016 by the Government of Sindh incorporating the aforesaid directions. It is not disputed that the father of the petitioner had died before the restraining clause envisaging a cap of two years on legal heirs of deceased or incapacitated employees to apply for a job was introduced in section 11-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974. Therefore limitation of two years to apply for a job after the death of his father does not apply to the case of petitioner for the reason that just after attaining the age of majority, the petitioner became entitled to apply against the deceased quote appointment.

6. In our view public employment is a source of livelihood; therefore, no citizen shall be discriminated against 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 favor 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.

7. Primarily, the purpose of making beneficial policies like in the case in hand about appointment against deceased quota is to minimize the miseries of the family of the deceased on the death of a serving employee has to face in society. However, by introducing such a policy a citizen cannot be deprived of his/her protected rights. Under Article 35 of the Constitution of the Islamic Republic of Pakistan, 1973, the State is under obligation to protect the family of the deceased. Therefore, any policy that violates guaranteed rights cannot be sustained. If such a policy is approved, it will

amount to defeat another constitutional guarantee provided under Article 34 of the Constitution. It is an inalienable right of every citizen to have the protection of the law and also to be treated and dealt with under the law with the particularity that no one can take action against him/her detrimental to his/her life and liberty and cannot be prevented from an act which is not prohibited by law.

8. In the light of the above discussion, it is crystal clear that the respondents/Government of Sindh has to make recruitment to every post applied by the candidates under the law as discussed supra as well as based on invalidated or incapacitated/minority/differently-abled and deceased quota reserved for those employees by issuing appointment order by invoking either Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 or policy/guidelines of Government of Sindh on the subject issue.

9. Prima facie, the plea of learned A.A.G. present in court is tenable in the light of the verdict of the Supreme Court given on 10.08.2016 in C.P. No. 482-503- K of 2016. Accordingly, the aforesaid petition is disposed of in the following terms:-

i) Petitioner/family/ one of the legal heirs of the deceased civil shall submit his application along with supporting material/documents to the Chief Secretary, Government of Sindh, through any recognized courier service on or before 10.06.2024, for scrutiny and consideration and decision through a speaking order on or before 27.06.2024 strictly under the law and the prescribed rules, procedure and policy, and after providing the opportunity of hearing to the petitioner.

ii) Offer letter shall be issued to the deserving petitioner if his case for appointment on deceased quota, is approved by the Chief Secretary/competent authority where after petitioner shall complete all legal and codal formalities required under the law and the relevant rule, procedure, and policy.

iii) Petitioners' case if not approved by the competent authority, may seek his remedy, if any, before the competent forum under the law.

iv) The compliance report in the above terms shall be filed by the Chief Secretary, Government of Sindh, through learned A.A.G. with the Additional Registrar of this Court.

10. Let notice be issued to the Chief Secretary Sindh, and concerned head of the department along with a copy of this order for its compliance in letter and spirit.

11. By consent, the above petition is disposed of in the above terms with no order as to costs.

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Nasim/P.A