

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D – 1285 of 2020
(*Sarfaraz Ahmed vs. P.O Sindh & others*)

Constitution Petition No. D – 1006 of 2024
(*Muhammad Yahya vs. P.O Sindh & others*)

Before:
Adnan-ul-Karim Memon, J;
Amjad Ali Bohio, J;

Date of hearing and order: 01-08-2024.

M/s Achar Khan Gabol and Deedar Ali M. Chohan, Advocates for the Petitioners.

Mr. Ghulam Abbas Kubar, Assistant Advocate General Sindh along with Raza Hussain Qureshi, Focal Person of Ghulam Muhammad Mahar Medical College, Sukkur, and Ali Ahmed Soomro, P.A to Principal, Ghulam Muhammad Mahar Medical College, Sukkur.

ORDER

ADNAN-UL-KARIM MEMON, J: Through this common order, we intend to decide the present petitions as the controversy and questions raised, on behalf of the petitioners, are common.

2. The petitioner Sarfaraz Ahmed in Constitution Petition No. D – 1285 of 2020 has raised his voice of concern about the reluctance of the Secretary Irrigation Department Government of Sindh 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, as per petitioner his father passed away during service on 17.1.2012 and he applied for the post of Driver within time period, however, he was refused on the ground that his case did not fall within the ambit of policy decision as he applied for the post at a belated stage, compelling him to file the instant petition on 14.11.2020, on the premise that under Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 explicitly provides that where a civil servant dies while in service, his son / daughter shall be provided job, however, this legal position has been ignored by the competent authority on the false pretext that petitioner failed to apply within a period of two years of death of his father, but the legal position is contrary and as the Supreme Court has already dilated upon the subject issue and cleared that the clog of two years is not applicable, in such a

situation the petitioner is entitled to be accommodated for the post falls within the basic scale (BPS-1 to 3).

3. The case of the petitioner Muhammad Yahya in Constitution Petition No. D – 1006 of 2024 is that his father was working as an Administrative officer at Ghulam Muhammad Mahar Medical College (GMMMC), Sukkur, as per petitioner his father passed away during service on 11.8.2006, however, he was refused on the ground that his case did not fall within the ambit of policy decision as he applied for the post at a belated stage, compelling him to file the instant petition on 13.7.2024. Learned Counsel for the petitioner has submitted that the law on the subject is clear as well as Supreme Court has dealt with such a situation when the children of the deceased civil servant were denied job in terms of Rule 11-A as discussed supra. He prayed for allowing the petition and the petitioner be provided the post in basic scale 3 to 10 as per his qualification. At this stage, we reminded him that initial appointment to the post in basic scales 3 to 10 is to be made on the recommendations of the Departmental Selection Committee after the vacancies in these basic scales have been advertised in newspapers, whereas, the posts in basic scales 1 to 2 could be made without such advertisement, but by the recommendation of the Departmental Selection Committee. He in principle agrees such preposition of law and seeks disposal of this petition in terms of Rule 11 and 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974. Proposal seems to be fair enough, however, learned Assistant Advocate General Sindh submits that these are the policy decisions of the Government of Sindh and propriety demands that these sort of matters may be referred to the competent authority of Government of Sindh to scrutinize the candidature of the petitioners if they are found fit to be appointed, appropriate orders shall be passed in this regard. This proposal is also acceptable.

4. In view of the above, the cases of the petitioners are required to be referred to the competent authority of the Government of Sindh for consideration 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. (Province of Sindh and others against Waheed Ali Amur and others).

5. We have noticed that there are so many petitions coming up on the subject issue, therefore, it would be appropriate to dilate upon such issue once for all. It appears that the Government of Sindh while exercising power conferred under section 26 of the Sindh Civil Servants Act, 1973, amended Rules 10 and 11 of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974 (hereinafter referred to as 'the appointment rules, 1974') which provided for initial appointments to the posts in Grade 16 to 22 through Public Service Commission and Grade 3 to 15 on the recommendations of Departmental Selection Committee by introducing Rules 10-A and 11-A respectively. To go ahead further, initially, the Supreme Court has interpreted the law on the subject issue and held that Rule 10-A was inserted in the appointment Rules, 1974 on 2.9.2002, and thereafter it was substituted and amended thrice; firstly on 15.10.2008, second on 30.7.2011, and finally on 16th of September, 2014.

6. A perusal of the rule, which reflects that in the eventuality of the death of a civil servant during service, it empowered the appointing authority to appoint one of the children of such deceased civil servant in any of the basic pay scales from 11 to 20 and the only requirement provided by the proviso was that the child must possess minimum prescribed qualifications. There was no condition of any examination, test, or interview, and such appointment could be made in any department of the government of Sindh only in case of the death of a civil servant during service. The effect of Rule 10-A was widened when it was substituted by notification No. SOR-1(S&GAD)/2-3/02, dated 15.10.2008.

7. Perusal of the substituted Rule 10-A reflects that with widening its scope, certain conditions were also imposed. Earlier the benefit of such rule was provided only to the children of the deceased civil servant who died during service whereas the substituted rule included the children of the civil servant who were declared invalidated or incapacitated for further service and the post against which such category of persons could be appointed, was curtailed to BS-16-17 only instead of BS 11-20.

8. At this stage, the learned counsel for the petitioners asserted that the treatment in terms of rule 11-A for appointment in pay scale 1 to 10 be

meted out with them if this is the stance of the petitioners, we have noticed that the Government of Sindh, while exercising powers conferred under section 26 of the Sindh Civil Servants Act, 1973, made amendments to the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, and vide notification No.SORI(SGA&CD)2-3/2002 (P-IV), dated the 10th October 2016 published in Sindh Government Gazette on 27.10.2016 deleted Rule 10-A. However, the Supreme Court has dilated upon the subject proposition so put forward by the petitioner and held that under substituted rule 10-A, the powers of direct appointment were taken from the appointing authority, and the appointment was made subject to the qualifying test, examination, or interview from the Sindh Public Service Commission or the appropriate Selection Board and the only concession which was extended through the substituted Rule 10-A was to give 10 additional marks in aggregate to such candidate by the PSC or appropriate selection board or committee and that too only when the candidate of such category qualifies the test, examination or interview just to enhance his/her chances of employment with a further addition that in case he/she qualifies on merits, he/she would not be given the benefit of additional 10 marks.

9. Further it appears from the rule position that no substantial amendment was made except the entitlement of the widow of the deceased civil servant to such appointment in cases where all the children of the deceased employee are minors. Additionally, a cutoff date of two years was introduced restricting the rights of the children and the widow of such deceased civil servant for such employment within two years after the death of the civil servant. It appears that lastly fourth proviso to Rule 10-A was introduced to ensure that the cutoff date of two years provided vide 3rd proviso does not take away the right of employment from those to whom such right had accrued. Further the Supreme Court has observed in the above matter that (a) applicant whose father/mother (civil /public 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).

10. 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 petitioners passed away during service before the restraining clause envisaging a cap of two years on legal heirs of the deceased or incapacitated employee 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 the deceased father does not apply to the case of petitioners.

11. We are cognizant of the fact that 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. 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.

12. 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.

13. 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 petitions are disposed of in the following terms:-

i) Petitioners shall submit their application along with supporting material/documents to the Chief Secretary, Government of Sindh, through any recognized courier service on or before 06-08-2024, for scrutiny and consideration on any ministerial post based on deceased quota and decision through a speaking order on or before 19-08-2024 strictly under the law and the prescribed rules, procedure and policy, and after providing the opportunity of hearing to the petitioners.

ii) Offer letters shall be issued to the petitioners if their case for appointment on deceased quota as well as based on invalidated or incapacitated for further service quota, is approved by the Chief Secretary/competent authority where after petitioners 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 their remedy, if any, before the competent forum under the law. However, that is subject to strong reasons to be recorded, except the plea of not applying within time.

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.

14. Let notice be issued to the Chief Secretary Sindh, Government of Sindh, and concerned Secretary of the department along with a copy of this order for its compliance in letter and spirit. They are directed to coordinate with Chief Secretary Sindh for early compliance of the order.

15. By consent, the above petitions are disposed of in the above terms with no order as to costs.

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