

**IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS**

Constitutional Petition No. D-672 of 2024
(*Sonu Rajput Vs P.O Sindh and others*)

DATE ORDER WITH SIGNATURE OF JUDGE (S)

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

Date of hearing and Order: 19.08.2024.

Mr. Hitesh Kumar Maheshwari advocate for the petitioner.

Mr. Ayaz Ali Rajpar Additional A.G., Sindh, a/w Dr. Jairam Das
DHO Mirpurkhas respondent No.6.

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ORDER

Adnan-ul-Karim Memon, J. Through the captioned Constitution petition, the petitioner Sonu Rajput is seeking the appointment to the suitable post on deceased quota in terms of the policy decision of the Government of Sindh including the Rule 11-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. (Rules-1974) on the premise that his Mother Guddo and Father Babu Lal were serving as a sanitary worker in BPS-5 in the Health Department Government of Sindh and passed away during service on 01.02.2001 and 15.11.2015 and at the time of death of his mother, he was 14 years of age; thus, could not apply to be minor; however, when became major he applied for the post but was refused on the ground that petitioner did not apply in time as his other legal heirs were major.

2. The case of the petitioner has been objected to by the respondent Department, Government of Sindh, on the premise that his case does not cover Rule 11-A of Rules-1974 as the father of the petitioner passed away and he applied for appointment under the deceased quota on after the lapse of the stipulated two years as envisaged under the Rules.

3. We have given our anxious consideration to the contentions raised by learned counsel for the respective parties, perusing the material placed on record and the relevant provisions of law. 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.

4. To go ahead further, initially, the Supreme Court has interpreted the law on the subject issue and interpreted 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.

5. Rule 10-A of the Appointment Rules, 1974 was originally introduced vide notification No. SOR-1(S&GAD)/2-3/2002 dated 2.9.2002 and started with a non-obstante clause thereby overriding all other provisions in the appointment rules. A perusal of the above-reproduced rule 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. In 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.

6. The Supreme Court further 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 of 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. Second time Rule 10-A was substituted vide notification dated 30.07.2011.

7. It appears 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 on 16th September 2014 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. However, the petitioner in his petition claims treatment in terms of rule 11-A for appointment on the pay scale. However, 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.

8. In view of the above legal position of the case, we put the question to the learned AAG as to why the candidature of the petitioner has not been considered against the quota reserved for deceased civil servants. He replied that the petitioner's mother had passed away in the year 2015 and he did not apply within two years of the death of her mother as he claimed to be 14 years and now his case has been forwarded to the competent authority for consideration.

9. We do not agree with the contention of learned AAG as well as the DHO Mirpurkhas, Health Department on the aforesaid analogy for the reason that when the petitioner reached the age of majority i.e. 18 years when he applied for appointment on the deceased quota vide applications and his case has been forwarded, thus his case is covered under the policy decision of the Government of Sindh discussed supra, as the candidature of the petitioner has already been adjudged by the respondent-department and found him eligible for any suitable post, if this is the position of the case, respondents ought to have considered his case for appointment on any suitable post as per his qualification.

10. Before parting with this order, we may observe that the Supreme Court in the case of the Province of Sindh and others Vs. Muhammad Taqi Shah **2018 SCMR 1607** wherein the Supreme Court while taking cognizance of the appointment in BPS-17 directly by the Sindh Government under Rule 10-A of the Rules 1974, without Sindh Public Service Commission.

11. In view of the aforesaid decision, we direct the Sindh Government to comply with the judgment passed by the Supreme Court in the case of the Muhammad Taqi Shah, supra in its letter and spirit and avoid making appointments in BPS-17 and above on a contract basis in any department of the

Government of Sindh, without competitive process i.e. through Sindh Public Service Commission as discussed supra.

12. This being the legal position of the case. This petition is, therefore, allowed along with the pending application(s) with direction to the competent authority /Chief Secretary, Health Department Government of Sindh, to appoint the petitioner against any suitable post reserved for deceased civil servants in terms of the policy decision of the Government of Sindh, if the petitioner qualifies for the ministerial post.

13. The aforesaid exercise shall be undertaken by them within 15 days from the date of receipt of this order. Let a copy of this order be transmitted to the Chief Secretary Sindh and the Secretary Health Department, Government of Sindh, for compliance.

JUDGE

JUDGE

Ali Sher