

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Constitution Petition No. D-08 of 2020**

*(Ghulam Mustafa Mallah 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*

**Date of hearing and order: 23-04-2024.**

Mr. Sohail Ahmed Khoso, advocate for the petitioner.  
 Mr. Ali Raza Baloch, Assistant Advocate General, Sindh.

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**ORDER.**

Petitioner claims his appointment against the deceased quota in the Works and Services Department Government of Sindh.

The father of the petitioner Nawab Mallah was *Beldar* in the Works and Service department and during his service, he passed away on 20-11-2001, such intimation was given to the department with the disclosure that the petitioner could not apply for the Job reserved for the deceased employees in terms of Rules 11-A of Sindh Civil Servant (Appointment Promotion and Transfer) Rules 1974 on the premise that he was minor at the relevant time and when he became major in 2004, he applied for the job; however, the respondent department declined the request of the petitioner with the narration that father of the petitioner passed away in 2001 whereas Rule 11-A was inserted in the year 2002, as such there was no policy before the amendment brought in Rules 1974.

We have heard the learned counsels for the parties and perused the record with their assistance.

To clarify the legal position that has emerged in the present case we first take up the legal issue of appointment in various departments of the Sindh Government through policy decisions as provided under Rule-10-A & 11-A of Sindh Civil Servant (Appointment, Promotion, and Transfer Rules) 1974.

After a thorough examination, we have noted that Rule 10-A & Rule 11-A until 30th July 2011, published on 01.09.2011 were as follows:

“10-A. Notwithstanding anything contained in these rules, where a civil servant dies while in service or is declared invalidated or incapacitated for further service, one of his unemployed children or, as the case may be widow (when all the children of the deceased employee are minor) may be employed against a post meant for initial appointment in BPS16 and 17 for which he/she possess the minimum qualifications prescribed to that post; Provided that such child or widow may be given ten additional marks in the aggregate by the Sindh Public Service Commission or the appropriate Selection Board or Committee if he or she otherwise qualifies the test, examination or interview; Provided further that a person who may have applied under this rule and qualifies purely on merit shall not be awarded any additional marks and his selection shall be made on merit and not under this rule; Provided further that the cut of date shall be within two years of the death of the officer or official. 11-A. 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, widow (when all the children of the deceased employee are minor) shall be provided job who applies within a period of two years of death or declaration of invalidity of incapacity of a civil servant on any of the basic pay scales No.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 requirement rules and holding interview, for the post applied for; provided further that the cut of date shall be within two years of the death of the officer or official”

The third proviso of Rule 10-A, as well as the second proviso of Rule 11-A, specifically provides a cutoff date for making the application for appointment under the deceased employees' quota within 2 years of the occurrence of the death of the Government

Official. Through a further Notification dated 16.09.2014, two further provisos were added in Rule 10-A and 11-A and they are as follows:-

“1. Under Rule 10-A, after the third proviso, the following fourth proviso shall be added: - “Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notification dated 11.03.2008 and 17.07.2009 of these rules.”

Under Rule 11-A, after the second proviso, the following third proviso shall be added: -

“Provided further that if a right of employment has already accrued to any of the children of deceased or invalidated or incapacitated civil servant then the former shall not be deprived of the benefit accrued to him under Notifications dated 11.03.2008 and 17.07.2009 of these rules”

It further appears that initially, the Government of Sindh issued a Notification dated 02.09.2022 whereby after Rule 10-A(1) and after Rule 11-A were inserted whereby right to job for the family of deceased employees was protected; however, the respondent department claims that the petitioner’s father passed away before such policy was introduced. Be that as it may, the right accrued to the children of the deceased Civil Servant; that the recruitment against the deceased quota is being made in terms of the decision of the Supreme Court order dated 10.08.2016 in respect of deceased quota appointment where under such appointments are being made taking 02.09.2002 as the cut of date; however, Supreme Court in C. P. No. 482-K & 503-K of 2016 vide order dated 10.08.2016 has held that those candidates under the above quota whose right of employment has already occurred and the clog of two years for making the application for employment under the deceased quota for the children who have already applied for employment before making this rule, was done away with.

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.

In the light of the above discussion, it is crystal clear that the respondent department/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 Rule 11-A of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974.

Prima facie, the plea of learned A.A.G. is not tenable in the light of the latest verdict of the Supreme Court given on 10.08.2016 in C.P. No. 482-503- K of 2016. Accordingly, the instant petition is disposed of in the terms that the Chief Secretary Sindh shall 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 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.

Let notice be issued to the Chief Secretary Sindh, Government of Sindh, Secretary Works and Service Department Government of Sindh, and Chief Engineer Highways Sindh Hyderabad, along with a copy of this order for its compliance in letter and spirit.

**Judge**

**Judge**

Nasim/P.A