

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-78 of 2023

(Sikandar Ali Butt 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: 23-04-2024.

Mr. Sohail Ahmed Khoso, advocate for the petitioner.
 Mr. Ali Raza Baloch Assistant A.G Sindh along with Ayaz
 Hussain Mahesar D.E.O (Primary) Khairpur.

ORDER.

Petitioner Sikandar Ali Butt has brought this lis against the School Education and Literacy Department Government of Sindh in terms of Rule 11 (A) of Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974, seeking the appointment on the ministerial post on deceased quota.

Brief facts of the case are that father of the petitioner namely Ali Murad Butt was serving as a Primary School teacher at Government Boys Primary School Setharja Lower and passed away on 22-01-2004 during service. The petitioner being the legal heir of the deceased having a degree of B.com (Honours) from the University of Sindh Jamshoro approached the respondent department for appointment on the deceased quota; however, he was denied on the premise that the father of the deceased passed away in the year 2004 whereas after laps 17 years, his case was forwarded by the Taluka Education Officer (Male) Primary Sobhodero in the year 2023.

Learned AAG has filed statement dated 23-04-2024 and relied upon the letter dated 22-04-2024 issued by Government of Sindh Services, General Administration and Co-ordination Department with the narration that a corrigendum was issued in the year 2016 whereby 60 days cutoff date was provided to apply for the job; however, the same was clarified in terms of judgment passed by the Supreme Court in C.Ps No. 482 to 503 K of 2016 by holding that the clog of two years for making application for employment under the deceased quota set through Notification dated 16-09-2014 would only apply to those children of the deceased whose right to employment had accrued after the date of making of the Restrictive Rule. Be that as it may, the Supreme Court has held that restrictions of two years imposed in the Rules 10-A and 11-A of the Sindh Civil Servant (Appointment, Promotion and Transfer) Rules, 1974 applied only prospectively and not retrospectively and this was the reason applications for certain posts under Ruled 11-A were invited without specifying the age limit as disclosed in the aforesaid corrigendum; however, to make convenience for those children (whose mother/father had died during the period of 2nd September 2002 to 15th September 2014) to apply timely to conclude the matter, once for all those aspirants /candidates fell within such category. However, in the present case, the candidates who otherwise fell in such category were not required to apply for appointment on the deceased quota within any timeline as per policy decision.

At this stage, we put the question to the learned AAG and Officers present in Court as to why the petitioner has not been considered for the subject post against the quota reserved for deceased Civil Servants on the aforesaid analogy so put forward by the respondent department, they simply said that this is a policy matter and the Government has to decide in terms of law laid down by the Supreme Court in the judgment discussed *Supra*.

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

We do not agree with the reasoning of the learned AAG on the aforesaid proposition as Rule 11-A as discussed *Supra* is clear in its terms and needs no further deliberation on our part. 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 2004 and the respondent department failed to provide any ministerial post to the legal heirs of the deceased as per their eligibility and allowed them to litigate on the issue.

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 along with the pending applications 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 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 School Education and Literacy Department Government of Sindh, along with a copy of this order for its compliance in letter and spirit within 30 days.

Judge

Judge