

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-178 of 2019

(Khalid Ahmed Bozdar 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: 02-05-2024.

Mr. Alam Sher Bozdar, advocate for the petitioner.
Mr. Asfandayar Kharal, Assistant Advocate General, Sindh.

ORDER.

Adnan-ul-Karim Memon J:- The petitioner through the instant petition seeks direction for respondent-Education and Literacy Department Government of Sindh to appoint him against deceased quota in terms of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and dicta laid down by the Supreme Court in the case of *Province of Sindh Vs. Muhammad Taqi Shah (2018 SCMR 1607)*. The petitioner states that his father Sadar Din was serving as Primary School Teacher and during service he passed away on 12-09-2015. After the death of his father, the petitioner time to time approached the respondents to appoint him against deceased/son quota by submitting his applications along documents, but they kept him on hollow hopes, ultimately they refused to appoint him on deceased/son quota, hence this petition.

Learned AAG without filing comments has submitted that the father of the petitioner passed away in the year 2015 and he applied at belated stage; therefore, the request of the petitioner cannot be considered. He prayed for dismissal of the petition.

We have heard the parties and perused the material available on record.

We have noticed that this petition was filed on 30-01-2019 and several notices were issued to the respondents to file comments, but they avoided and sought time to file comments. Prima facie this is apathy on the part of the respondent- department as this lis has been pending since 2019 and there is no progress in the matter; as such we are compelled to hear the learned counsel for the petitioner and learned AAG on the subject issue without further delay.

At this stage, we put the question to the learned AAG as to why the petitioner has not been considered for the subject post against the quota reserved for deceased Civil Servants, he simply said that this is a policy matter and the Government has not considered his case for such appointment on any ministerial post and the same could only be filled as per recruitment Rules and not otherwise. However, he submitted that petitioner's father passed away in 2015 and he applied late for the subject post as he ought to have applied within two years from the date when his father passed away as such, he is not entitled for the subject post.

We do not agree with the reasoning of the learned AAG on the aforesaid proposition for the reason that that in the eventuality of the death of a Civil Servant during service, it empowers the appointing authority to appoint one of the children of such deceased Civil Servant in any of the basic pay scales and the only requirement provided by the law was that the child must possess minimum prescribed qualifications. There was not condition of any examination, test or interview, and such appointment should be made in any department of the Government of Sindh only in case of death of a Civil Servant during service. Additionally 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 the year 2015 during service and the petitioner applied in the year 2016 (his such application available at page 17 to 19) within the policy terms.

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 application(s) 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 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