

ORDER-SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constt. Petition No.D-294 of 2011

Date of hearing	Order with signature of Judge
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**BEFORE: MR. JUSTICE SYED HASSAN AZHAR RIZVI
MR. JUSTICE SALAHUDDIN PANHWAR**

For Katcha peshi.

Mr. Ahsan Gul Dahri, advocate for petitioner.
Mr. Allah Bachayo Soomro, Addl. Advocate General.

Date of hearing : 22.09.2015

Date of order : 22.09.2015

ORDER

Salahuddin Panhwar, J: Through instant petition, petitioner Mir Hassan has sought following relief(s):-

- a) *That this Honourable Court may pleased to direct the above respondents to appoints (appoint) the petitioner against the suitable job as clear vacancies are existing in each category from BPS 1 to 10;*
- b) *To award cost to the petitioner;*
- c) *Any other relief which this Honourable Court deems filed (fit) proper under the circumstances may also be granted to the petitioner.*

2. The facts, describing necessary back-ground, are that petitioner is real son of Sain Bux Chakrani, who was serving as Tapedar in Revenue Department and died during service on 18.10.2001. The petitioner after death of his father approached to respondent No.4 by moving proper application for his appointment on *deceased quota* as provided in Rule-11-

A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, which was forwarded to respondent No.2. The respondent No.2 directed to inform the respondent No.4 that application of petitioner is not covered by new policy dated 17th July, 2009.

3. It is further case of the petitioner, that in similar circumstances sons of some of deceased employees of same department approached to this Court by filing C. P. No.D-353 of 2007, which was disposed of vide order dated 14.5.2009, directing the respondents to decide the cases of those petitioners for appointment under rule 11-A *ibid* within one month. Some of those candidates were appointed by respondents, whereas the petitioner was refused.

4. In response to notice(s), the respondent No.3 has filed comments disputing the claim of the petitioner with reference to new policy dated 17.7.2009 and that of cut-off date per Notification No.SORI (SGA&CD)2-3/92 dated 17th July, 2007.

5. Mr. Allah Bachayo Soomro, learned Addl. Advocate General, on being confronted with order of this Court (Sukkur Bench) passed in C.P. No.D-614/2012, conceded to the relief claimed by petitioner. The operative part of such order reads :-

'...however, it is stated that the cut off date for the appointment against son quota was within two years of the death of the petitioner's father. Even in Constitution Petition No.D-611 of 2009 re: Irrigation & Power Employees Union SCARP Project, Khairpur v. Province of Sindh and others, the Division Bench of this Court held as under:

'It is by now well settled that notification operate only prospectively. A vested right can be taken away

retrospectively only through an enactment passed by an assembly or parliament but not through sub-ordinate legislation i.e through issuance of notifications by executive. In the present case, as the change in rule 11-A of Sindh Civil Services (Appointment, Promotion & transfer) Rules, 1974 has been brought about through a notification, it can only have prospective effect. Therefore, the notification issued on 17.7.2009 shall become applicable from 17.7.2009 onwards only. Prior to this date, if a right of employment has already accrued to any of the children of a deceased or invalid or incapacitated Civil servant then the former cannot be deprived of the benefit accrued to him under notification dated 11.3.2008 through a subsequent notification issued on 17.7.2009. These petitions are therefore allowed to the extent stated above. Office to issue copy of this order to the learned AAG'.

6. Consequently, instant petition is allowed. The respondents are directed to issue appointment order to the petitioner on any post, for which he qualifies, within a period of two months after receipt of this order and submit compliance report through Additional Registrar of this Court.

7. However, while parting, we cannot ignore a regretting fact that despite clear language of rule-11-A the members of a deceased's family have to run from pillar to post and *even* to seek intervention of this Court for a *relief* which *otherwise* appears to be assured by use of the word '**shall**' in the Rule-11-A. Let's have a look at the Rule 11-A which reads as:-

*'Where a civil servant dies while in service or is declared invalidated or incapacitated for further service **one of his children shall be provided job** on any of the basic pay scales No.1 to 15 in the Department where the deceased declared in validated or incapacitated civil servant was working without observing the prescribed formalities if such child is otherwise eligible for the post in accordance with the recruitment rules.*

The object and purpose of use of phrase “*one of his children*” in said rule *prima facie* appear to be nothing but an *assurance* of job as a ‘*help*’ to the family of such civil servant. However, such mandatory assurance (help) has been subject to ‘*applying within a period of two years of death or declaration of invalidity or incapacity of civil servant*’.

8. The earlier portion of the said *rule* appears to be addressing the ‘*Authority*’ whereby bringing it under a mandatory obligation (by use of word shall) to provide a job to any of the unemployed children of such civil servant but by later portion such has been made subject to activation of such family itself but without any mechanism to *first* inform the **family** of such condition which *may* result in costing it (**family**) the benefit of such ‘*rule*’ *even*. Let it be clear that said ‘*rule*’ addresses the **family** of such a civil servant and even the later portion concludes to a result that it is not necessary for applying such right that there must have been publication of *jobs* which usually is not advertised on falling of a single vacancy. Thus, reading of the above ‘*rule*’ as a whole would result that if such move (applying under this rule) is not within a period of *two years* the family shall stand deprived of benefit of **rule** which *in all senses* shall mean a *penal one* which should not happen without an opportunity. Therefore, if the ‘*Authority*’ does not intimate to family of such civil servant before expiry of due date the object of such insertion / amendment cannot be said to have served its purpose and object but we regretfully note that we have not experienced a single case where department itself activated to serve the object of the said rule.

9. It has also been noticed that *normally* when such application is moved the '**Authority**' does not decide the fate of such application at its own though legally required rather summary (ies) are submitted to Chief Minister or other high-ups for approval to fill-up post(s) under said '**rule**' although the '**rule**' *no where* insists for any such procedure rather its insists upon appointment subject to two qualification (s) only i.e:

i) application for such benefit should be within two years from death, invalidation or incapacitation of civil servant;

ii) fulfillment of formalities as required in the recruitment rules and holding interview;

10. Thus, mechanism of *sending summary* is not within object of said rule. This *prima facie* means adopting a way not permitted by the law itself. If this is allowed to continue holding the field it shall frustrate the settled principle '*things should be done strictly in the manner provided for doing so or not otherwise*'. Therefore, in future the '**authority**' should not resort to such procedure which *otherwise* does not find place in the picture (rule). The '**department**' , *referred in said 'rule'* shall mean competent '**Authority**' to make appointment from BPS-1 to 15, as referred in said '**rule**'. Thus, summaries, if any, moved by '**department(s)**' either to Chief Minister or any other superior authority, be considered to have never been sent/moved and the departments shall decide the fate of such applications within guidelines, so provided in number of judgments of this Court and that of Apex Court.

11. Since the benefit of said rule is applicable to all civil servants, therefore, the Chief Secretary, Government of Sindh is hereby instructed to circulate a directive to all the head of the departments that in future the

department shall intimate families of all such civil servant (falling within rule-11 A) about their right to apply and **deserving** be given their **due** without allowing anything to increase the agony of family of such civil servants. This procedure be completed within a period of three (03) months and if applying person of family of such civil servant qualifies the requirements, should be given job.

12. The Chief Secretary, Government of Sindh shall also frame a policy whereby mechanizing that son-quota/deceased-quota is not exploited by '**authority**' rather merit is considered in such recruitment (son-quota/deceased quota) which (merit) is order of the death or invalidation of civil servant. The policy shall also address the issue of **cut- off** date within guidelines, provided in the judgments of this Court or honourable Supreme Court.

13. These are the detailed reasons of short order dated 20.09.2015, whereby instant petition was allowed.

14. Office shall communicate this order to all concerned as well learned AG, Sindh for compliance.

JUDGE

JUDGE