

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.D-897 of 2025

[Hayat Ali Shah vs. Province of Sindh and others]

Date	Order with signature of the Judge
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FRESH CASES

1. For order on M.A No.3966/2025 (U/A)
2. For order on office objections
3. For order on M.A No.3967/2025 (Exemption)
4. For order on M.A No.3968/2025 ((Stay)
5. For hearing of main case.

27.5.2025

Syed Shahzad Ali Shah, Advocate for the Petitioner

The petitioner, through the instant constitutional petition, seeks appointment under the Deceased Quota in the Revenue Department, Government of Sindh, in accordance with Rule 11-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974¹.

2. Learned counsel for the petitioner contends that although Rule 11-A was declared *ultra vires*, its invalidation does not have retrospective effect. He submits that the petitioner had applied for appointment under the Deceased Quota in the year 2018, prior to the rule’s declaration, and had duly completed verification of all his educational documents. In support of his claim, learned counsel relies upon the judgment dated 17.03.2025, passed in the case of **Zahida Parveen**².

3. Upon hearing the learned counsel for the petitioner, thoroughly examining the available record, and reviewing the judgment pronounced by the Supreme Court of Pakistan, as relied upon by the learned counsel, we proceed to assess the legal implications of the matter. The referenced judgment, dated 17.03.2025, in the case of **Zahida Parveen** (supra), addresses the retrospective effect of Rule 11-A and its applicability to pending claims.

4. The petitioner, through the instant petition, asserts his entitlement to appointment under the Deceased Quota pursuant to Rule 11-A of the Sindh Civil Servants (Appointment, Promotion, and Transfer) Rules, 1974. The factual matrix presented in this petition highlights the grievance that the

¹ Omitted, vide Notification No.SORI(SGA&CD)2-25/2024, dated 19.12.2024, by Government of Sindh, Services, General Administration & Coordination Department (Regulation Wing), by exercising powers conferred under Section 26 of the Sindh Civil Servants Act, 1973.

² passed in C.P.L.A. No. 566-P/2024 (*Zahida Parveen v. Government of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education, Civil Secretariat, Peshawar & Others*)

petitioner's deceased father was an employee of the Revenue Department, Government of Sindh. Despite fulfilling the requisite eligibility criteria, no action has been taken on the petitioner's application.

5. The adjudication of the instant petition necessitates a meticulous examination of the authoritative pronouncements of the Supreme Court of Pakistan, particularly the *ratio decidendi* established in the case of **General Post Office, Islamabad & Others**³, as well as the subsequent elucidation rendered in the case of **Zahida Parveen**.

6. In the **General Post Office** case, the Supreme Court of Pakistan conducted a rigorous examination of the constitutional framework governing public employment and categorically held that provisions facilitating appointments under the Deceased Quota, including Rule 11-A, are discriminatory and contravene Articles 3, 4, 5(2), 18, 25(1), and 27 of the Constitution. The Supreme Court reasoned that appointment mechanisms bypassing open advertisement and merit-based competition inherently infringe upon the fundamental right of citizens to equal opportunity in public service. However, the Supreme Court carved out a crucial exception, stipulating that: -

"The instant judgment shall not affect the appointments already made of the widow/widower, wife/husband or child of deceased or retired civil servants."

7. This judicial pronouncement establishes a pivotal distinction: appointments finalized prior to the invalidation of Rule 11-A as unconstitutional remain safeguarded and shall not be disturbed. However, it is unequivocally evident that, in the present petition, the petitioner's application for appointment was pending, and no appointment had been effectuated before the Supreme Court's ruling in case of **General Post Office**. Consequently, the legal protection afforded to past appointments does not extend to pending applications, including that of the petitioner. Thus, the rationale enshrined in the **General Post Office** judgment is directly applicable to the instant petition, inevitably leading to the conclusion that the petitioner is not entitled to relief.

8. The judgment in case of **Zahida Parveen** provides a significant clarification regarding the applicability of the **General Post Office** ruling. In case of **Zahida Parveen**, the petitioner had already been appointed as a Primary School Teacher under the Deceased Quota, but her appointment order was subsequently rescinded following the Supreme Court's

³ General Post Office, Islamabad and Others v. Muhammad Jalal (PLD 2024 SC 1276)

declaration of unconstitutionality. However, in that case Supreme Court of Pakistan explicitly observed:

"For completeness of record, it is clarified that the judgment of this Court in General Post Office has struck down Rule 10(4) of the Rules as ultra vires the Constitution but has no application on appointments that have already been made. Therefore, the present case remains unaffected by the said judgment."

9. The operative reasoning in the case of **Zahida Parveen** establishes that appointments already made remain unaffected, whereas pending applications remain subject to the overarching constitutional framework. Consequently, in the present case, where the petitioner seeks an initial appointment rather than challenging the revocation of a prior appointment, the **General Post Office** ruling must be applied in its entirety, precluding any relief.

10. In light of the binding precedent established by the Supreme Court of Pakistan, the declaration of Rule 11-A as unconstitutional applies uniformly to all courts and authorities, leaving no room for exceptions in favour of the petitioner, whose appointment remains pending. The protection afforded to previously finalized appointments, as articulated in the **General Post Office** judgment, does not extend to pending applications, including the one under consideration in the instant petition. Furthermore, the ruling in case of **Zahida Parveen** is distinguishable on both factual and legal grounds, as it pertains to an appointment effectuated prior to the declaration of unconstitutionality.

11. Granting relief to the petitioner in the present matter would not only contravene the settled position of law but also undermine the fundamental principle of *stare decisis*. Consequently, the instant petition stands **dismissed in limine**, along with all pending miscellaneous applications.

JUDGE

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AHSAN K. ABRO