

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C.P No. D-236 of 2017
[Tariq Hussain Umrani Vs. The State]

PRESENT: Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro

Petitioner Tariq Hussain Umrani : In person

The State : Through Mr. Liaquat Ali Shar, Addl. Advocate General, Sindh, assisted by Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh and Mr. Aftab Ahmed Bhutto, Assistant Advocate General, Sindh along with Muhammad Kaleem, SSP/AIGP Establishment on behalf of IGP Sindh, Karachi and Muhammad Hussain Simair, SP/AIGP Legal on behalf of DIGP, Larkana Range.

Date of hearing : 15.04.2025

Date of Order : 30.04.2025

ORDER

Muhammad Saleem Jessar, J.- The petitioner / applicant has filed instant application (M.A No.246/2019), seeking initiation of contempt proceedings against alleged contemnor for deliberately violating and defying the Order dated 01.11.2018 passed by a Division Bench of this Court in instant petition.

2. Brief facts of the case are that the petitioner had filed instant constitutional petition stating therein that his father namely late Khadim Hussain Umrani was serving in Police Department. Initially he was appointed as Assistant Sub Inspector and lastly he was posted as inspector in District

Kamber Shahdadkot @ Kambar, where he died on 23.05.2012, while in service. Respondent No.4, SSP Kamber Shahdadkot, issued such Obituary dated 31.05.2012. It was further stated in the petition that the petitioner being son of deceased Inspector, was one of his surviving legal heirs and as his father died while in service, therefore, the petitioner was entitled to employment on the basis of "Deceased's Quota", by virtue of the Sindh Civil Servants (Appointment, Promotion and Transfers) Rules, 1974 which entitles the petitioner to be provided job in the same department. It was further averred that after death of his father, the petitioner kept on approaching the respondents for his employment on deceased quota as provided in aforesaid provision of law but of no avail. According to the petitioner, the respondents were not inclined to act in accordance with law by taking the petitioner in service by virtue of aforesaid provision of law. It was further asserted that despite existence of vacant posts, coupled with the fact that the petitioner was eligible, being a Graduate, the respondents were avoiding to provide job to him. The petitioner, therefore, filed instant petition with following prayers:

"That this Hon'ble Court may be pleased to declare that the petitioner being son of deceased employee who died while in service, is eligible to be appointed to the post in the department as per provision of Rule 11-A of the Sindh Civil Servants (appointment, promotion and transfer) Rules, 1974 and direct the respondents to take petitioner in service / provide him job on the basis of "deceased quota" preferably to the rank of at least ASI."

3. This petition was disposed of vide Order dated 01.11.2018, For the sake of ready reference, relevant portion from the Order is reproduced as under:

"Learned Additional Advocate General Sindh submits that since the case of the petitioner for appointment on deceased quota has already been recommended for the post of Police Constable the same shall be considered in the light of pronouncement of the Hon'ble Supreme Court in C.P. No.482 to 503-K of 2016.

Accordingly this Petition is disposed of with the direction to respondent No.2/Inspector General of Police Sindh, Karachi to decide the case of the petitioner in the light of judgment of Hon'ble Apex Court in the above-referred matters within one month under intimation to this Court."

4. Thereafter, the petitioner repeatedly approached to concerned authorities in the police department for providing him service in compliance with aforesaid judgment passed by learned Division Bench of this Court;

however, no action was taken in the matter, thus he filed instant contempt application for initiating contempt proceedings under the Contempt of Court Act against alleged contemnor viz. Inspector General of Police Sindh, for wilful and deliberate violation of the Court's order. The petitioner has further prayed in the Contempt application for directing alleged contemnor to make compliance of the Order dated 01.11.2018 passed by a Division Bench of this Court.

5. We have heard the petitioner who appeared in person as well as learned Additional Advocate General, Sindh appearing for alleged contemnor, and have perused the material made available on the record.

6. From perusal of the record it appears that upon service of notice of the Contempt Application, parawise comments have been filed by alleged contemnor. The main plea taken in said comments was; that In compliance with the order passed by Honorable Supreme Court of Pakistan dated 26.09.2024 in Civil Petition No.3390 of 2021, reported as **General Post Office, Islamabad and others v. Muhammad Jalal (PLD 2024 SC 1276)**, the competent authority viz. Chief Secretary had approved that all **pending** deceased quota cases, pertaining to all departments of Government of Sindh and their attached offices, whether lying in initial stage in the department or even approved by the scrutiny committee under the chairmanship of Chief Secretary Sindh and/or subsequently **pending** in the departmental recruitment committees / departmental selection committees wherein appointment orders were not issued for any reason whatsoever before passing of the Supreme Court Judgment on 26.09.2024, shall be deemed to be null and void.

7. It seems that the respondents have fallen in grave misconception while relying upon aforesaid Circular. In fact, in that said circular it was stated that consequent upon aforesaid judgment of Honourable Supreme Court, Chief Secretary had approved that all **pending** deceased quota cases, shall be deemed to be null and void. We are of the firm opinion that said Circular does not apply to and attract in instant case because case of the petitioner in instant petition does not fall within the ambit of '**pending**' cases as mentioned in aforesaid Circular but with passing of the judgment by learned Division Bench of this Court in the year 2018, the same stood in the category of

‘disposed of’ cases. In the circumstances, the aforesaid Circular cannot override the verdict of this Court.

8. On the date of hearing viz. 15.04.2025, Mr. Muhammad Kaleem, AIGP Establishment was present on behalf of Inspector General of Sindh Police and filed statement / compliance report supported by set of documents which were taken on record. In his comments, the Inspector General of Police has averred that case of the petitioner was placed before recruitment committee headed by Chief Secretary Sindh and after due deliberation his case was rejected. It was further asserted that the petitioner has also become overage, therefore, cannot be appointed in Police Department as Police Constable. He; however, admitted that petitioner had moved an application in the year 2022 seeking his alternate appointment as Junior Clerk and that too was declined. He, while referring to the verdict penned down by Honourable Apex Court as well as enactment made by the Provincial Government, stated that the provision regarding deceased quota in terms of Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 has been omitted / abolished. On query, he admitted that instant petition was allowed along with bunch of identical petitions by way of order dated 28.10.2022 i.e. much prior to the esteemed judgment passed by Hon'ble Supreme Court of Pakistan as well as enactment made by the Provincial Government; hence, by virtue of latest observations made by learned apex Court, the earlier judgment delivered by the Supreme Court as well as enactment made by the Provincial Government would not debar alleged contemnor to give appointment to the petitioner. As far as main prayer of the petitioner regarding his appointment under ‘deceased quota’ is concerned, it is stated that the petitioner has become overage; however, the officer present in Court stated that the petitioner could be given alternate-cum-suitable job under the deceased quota. Again says that since that prayer was also considered by the committee headed by Chief Secretary Sindh and was rejected; hence, he is not in a position to give specific statement in this regard; however, according to him, it is within domain of the competent authority to consider this aspect. Learned AAG when confronted with para 11 of the esteemed judgment dated 17.3.2025 penned down by Honourable Supreme Court passed in **C.P.L.A. No.566-P/2024 re: Zahida Parveen v. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar & others**, admitted that instant petition was disposed of

on 01.11.2018 and the case of General Post Office, Islamabad and others v. Muhammad Jalal (PLD 2024 SC 1276) was penned down in the year 2024, therefore, it has got no retrospective effect and would operate prospectively, unless declared otherwise. Hence, listed application could be entertained.

9. It appears that the respondents have mainly relied upon the judgment passed by Honourable Supreme Court in the case of **GENERAL POST OFFICE, ISLAMABAD and others** (supra) wherein learned apex Court, *inter alia*, declared Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, on which entire case of the petitioner rests, to be discriminatory and ultra vires to Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution. Relevant portion from said judgment is reproduced as under:

“For the above reasons, while granting leave, Civil Petition No. 3390 of 2021 is converted into an appeal and is allowed. The impugned order dated 13 April 2021 passed by the Peshawar High Court in favour of the respondent is set aside. Policies, office memorandums, employment under the Package of the Prime Minister, the Financial Assistance Package, Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974, Rule 10 (4) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, Rule 12 of the Balochistan Civil Servants (Appointment, Promotion and Transfer) Rules, 2009 or any other rule, policy, memorandum, etc. whereunder appointments without open advertisement, competition and merit, of the widow/widower, wife/husband or child of civil servants in different grades, who die during service or become permanently disabled / invalidated / incapacitated for further service and take retirement from service, are declared to be discriminatory and ultra vires Articles 3, 4, 5(2), 18, 25(1) and 27 of the Constitution. The prescribed Federal and Provincial authorities are directed to withdraw the same.”

(emphasis is applied for the sake of convenience)

10. There is no, and cannot, at all, be any cavil to the dictum laid down by Honourable Supreme Court in aforesaid judgment; however, it seems that the respondents, either deliberately or due to oversight, have miserably failed to look into the observations made by Honourable Supreme Court in the same judgment immediately after the above-quoted dictum. The said observations are reproduced as under:

“However, it is clarified 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.”

11. Even recently in another verdict delivered by Honourable Supreme Court on 17.3.2025 in C.P.LA. No.566-P/2024 re-Zahida Parveen v. Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education, Peshawar & others this point has been clarified. It would be advantageous to reproduce hereunder para 11 from esteemed judgment:

"For completeness of record, it is clarified that the judgment of this Court reported as General Post Office, Islamabad and others v. Muhammad Jalal (PLD 2024 SC 1276) has struck down Rule 10(4) of the Rules as being ultra vires the Constitution but has no application on appointments that have been already made. It is well settled that the judgments of this Court operate prospectively, unless declared otherwise. Therefore, the present case remains unaffected by the said judgment."

12. As regards the plea of the respondents regarding the petitioner having become overage, it may be observed that it is an admitted position that father of the petitioner died in the year 2012 and after his death the petitioner applied for his appointment in the police department on the basis of deceased's son quota. As per record, petitioner's date of birth is 03.02.1991, as such in the year 2012 when his father expired and thereafter he applied for his appointment, his age was about 21 years, thus at that time he was within his age limit prescribed for appointment as Police Constable. It is now well settled that for the fault and lapse on the part of the department, an individual cannot be penalized, if otherwise there is no fault on his part. In this view of the matter, if there might not be any malafide on the part of the respondents, but surely there is slackness and indolence on their part for which the petitioner cannot be victimized. Had the respondents been vigilant to perform their function mandated under the law / rules and decided the matter within reasonable time, the petitioner would not have become overage. Even if counted from the date of the judgment passed in instant petition, and if relaxation, which till date has been granted by the government in this respect, the petitioner could be appointed as police constable and / or to any other suitable / equivalent post in the police department.

13. In view of above legal position, the judgment of Honourable Supreme Court passed in the case of General Post Office, Islamabad and others (supra) shall not affect the appointment of the petitioner which was ordered to be considered by this Court in instant petition, in the light of the judgment of

Hon'ble Supreme Court in C.P. No.482 to 503-K of 2016 much prior to the pronouncement of aforesaid judgment in the year 2024.

14. For the foregoing reasons, the listed contempt application is hereby converted into an application under Section 151, CPC and is accordingly allowed, with directions to the respondents to consider the case of Petitioner for appointment in accordance with law and applicable rules and decide it within a period of 3 months from date of this order. Office to assign proper number to the application as per institution.

15. Since the Petitioner has been running from pillar to post and agitating his grievance before the Department for last about more than 12 years and if by passage of time he has become over age for appointment, his upper age limit shall be deemed to have been condoned and relaxed and he shall not be denied appointment on this score as he is not a contributory towards delay in deciding the fate of his case. Office is directed to send copy of this Order to Respondents No I and 5 for compliance. The Petition stands disposed of along with listed applications. Learned Additional Registrar is directed to ensure compliance.

JUDGE

JUDGE

Larkana
Dated. 30.04.2025
Approved for Reporting