IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C. P. No. D – 945 of 2025

[***Mazhar Ali Abro v. Province of Sindh and others***]

Before:
Mr. Justice Arbab Ali Hakro,
Mr. Justice Muhammad Osman Ali Hadi,

Petitioner by	:	Mr. Manzoor Ali Kalhoro, Advocate
Respondents by	:	Mr. Liaquat Ali Shar, Addl. A.G. Sindh, assisted by Mr. Aftab Ahmed Bhutto, Asst. Advocate General.
Date of Hearing	:	**05.11.2026**
Date of Decision	:	**05.11.2026**

O R D E R

ARBAB ALI HAKRO, J. – Through this constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks a declaration that the action of the respondents in not considering his case for appointment in the Health Department, Govt. of Sindh under deceased quota, is illegal and without lawful authority. The petitioner further seeks directions to the respondents to appoint him in accordance with Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974.

2. The facts, stated briefly, are that the petitioner is the son of the late Abdul Fatah Abro, who was serving as Gate Keeper in the office of Medical Superintendent, RBUT Hospital, Shikarpur and died in service on 23.04.2008. At the time of deceased employee's death, the petitioner was admittedly a minor, having been born on 01.04.2004. He attained majority in April 2022 and then approached the departmental authorities for appointment under the deceased quota through his application dated 11.08.2025, but no decision was

taken, compelling the petitioner to invoke the constitutional jurisdiction of this Court.

3. Learned counsel for the petitioner contended that the petitioner's father died on 23.04.2008, well before the cut-off date. According to him, the petitioner could not be penalized for being a minor when the cause of action accrued. He submitted that, after attaining majority, the petitioner approached the department. Learned counsel further maintained that the right under Rule 11-A accrued on the employee's death and was protected by subsequent pronouncements as well as the saving proviso inserted on 30.04.2026.

4. Conversely, learned Additional Advocate General, Sindh, submitted that the petitioner remained a minor for a considerable period after the death of his father; neither the widow nor any other legal heir availed the opportunity available under the policy and the deceased quota scheme did not envisage keeping vacancies reserved indefinitely until a minor attained majority, therefore, instant petition is not maintainable.

5. We have heard learned counsel for the parties at considerable length, carefully examined the record and considered the relevant statutory provisions.

6. There is no dispute regarding the foundational facts. The deceased employee died in service on 23.04.2008. The petitioner is his son and legal heir. No other legal heir has been appointed under deceased quota.

7. The principal question requiring determination is whether the petitioner's minority at the time of death of his father extinguished his entitlement for consideration under Rule 11-A.

8. Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 was conceived as a welfare measure intended to provide financial support to the bereaved family of a government servant who dies during service. Although the constitutional validity and future operation of deceased quota schemes came under consideration before the Supreme Court in ***General Post Office, Islamabad***[1], subsequent judicial developments have clarified the legal position relating to rights which had already accrued prior to that judgment.

[1] General Post Office, Islamabad v. Muhammad Jalal (PLD 2024 SC 1276)

9. It is now well settled that where the death of a government servant occurred before the cut-off date and rights had accrued under the then prevailing legal regime, such accrued rights cannot be defeated merely because the process of consideration or appointment remained pending. The Federal Constitutional Court[2], while examining the effect of PLD 2024 SC 1276, categorically held that the occurrence giving rise to accrual of rights is the death of the employee in service, whereas application, scrutiny and issuance of appointment orders are administrative acts consequential to such accrual. The said pronouncement, being declaratory of law, is binding under Article 189 of the Constitution.

10. Equally important is the subsequent amendment whereby a saving proviso was inserted on 30.04.2026, protecting rights that had accrued before 26.09.2024 and requiring such cases to be decided on merit in accordance with the omitted Rule 11-A. In Province of Sindh v. Azhar Ali[3], the Supreme Court expressly considered cases where legal heirs were minors at the material time and held that a child cannot be deprived of a beneficial statutory right solely on account of minority. The Court observed that a minor cannot be blamed for legal incapacity and that such incapacity cannot be employed as a ground to defeat a claim otherwise protected by law.

11. The deceased employee died on 23.04.2008. His case falls within the category of deaths that occurred prior to 26.09.2024. In ***Nadir Ali Khoso***[4], a case founded on substantially similar facts, the Divisional Bench of this Court, held that the rigid application of the two-year requirement could not be invoked against legal heirs belonging to the pre-26.09.2024 category. The said view subsequently survived challenge before the superior forum and attained finality.

12. That said, it must also be observed that entitlement to consideration under the saved regime does not automatically translate into an unconditional judicial appointment. Matters relating to educational qualification, availability of a suitable post, fulfillment of recruitment formalities, verification of credentials, observance of codal requirements and determination of the appropriate scale and post continue to fall within the domain of the competent

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[2] Vide Order dated 27.02.2026, passed in F.C.P.L.A Nos.508, 591, 346, 347, 348, 589, 267, 593, 130 and 353 of 2026

[3] c.a. 106 k 2024.pdf

[4] Order dated 15.11.2023, passed in Const. Petition No. D-110 of 2022 (Nadir Ali Khoso v. P.O. Sindh & others)

Administrative Department. The Court cannot itself assume the role of an appointing authority.

13. For the foregoing reasons, the matter is referred to the concerned Administrative Department, who shall consider and decide the petitioners' claim strictly in accordance with the saved Rule 11-A, the said Notification and the applicable service rules and keeping in view the principles laid down in General Post Office, Islamabad v. Muhammad Jalal (PLD 2024 SC 1276), Province of Sindh v. Azhar Ali, Nadir Ali Khoso, and other relevant precedents governing the field, by passing a reasoned, speaking order within a period not exceeding ninety (90) days, from the date of receipt of this order. With these directions, the instant petition stands **disposed of**.

14. It is clarified that while the petitioner possesses a legally protected right of consideration, the competent authority shall remain at liberty to examine the residual questions relating to qualifications, suitability, availability of vacancy, verification of credentials and fulfillment of all statutory and codal requirements. Subject to fulfillment of such requirements, the petitioner's case shall be processed and decided strictly in accordance with law.

15. Office is directed to communicate a copy of this order to the concerned Administrative Department through all available modes, including electronic transmission, for compliance.

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