

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi
Justice Aqeel Ahmed Abbasi

Civil Petitions No. 804-K to 807-K of 2025

(Against the order dated 30.04.2025 passed by the High Court of Sindh, Circuit Court at Larkana in C.Ps. No. D-98, 101, 114, 161 of 2024)

The Registrar, High Court of Sindh, Karachi & another ...Petitioner(s)
(in all cases)

Versus

Rehana & another (in C.P.804-K/25)

Muhammad Usman & another (in C.P.805-K/25)

Muhammad Bux Abro & another (in C.P.806-K/25)

Peer Bux & another (in C.P.807-K/25)

...Respondent(s)

For the Petitioners : Malik Naeem Iqbal, ASC
Ch. Muhammad Iqbal, AOR

Respondents : Salih Jan s/o Rehana,
Muhammad Usman,
Muhammad Bux Abro, Peer
Bux (*all in-person*)

On Court's Call : Mr. Sibtain Mehmood, Addl.
AG

Date of Hearing : 17.07.2025

Judgment

Muhammad Ali Mazhar, J.- The abovementioned Civil Petitions are directed against the consolidated impugned order dated 30.04.2025, passed by the learned Division Bench of High Court of Sindh, Circuit Court, Larkana on M.A No.445, 532, 247 and

458/2025, moved under Section 151 of Civil Procedure Code (CPC) for implementation of order dated 17.04.2024, rendered in C.P. Nos. D-51, 97, 98, 101, 114, 135, 161, 193 & 194 of 2024.

2. The original judgment dated 17.04.2024 depicts that certain Constitution Petitions were filed by the descendants of deceased employees of District Courts with the common grievance that the policy framed by the High Court of Sindh for the appointment of sons of deceased, retired and serving employees of the District and subordinate Courts in Sindh is not being implemented in letter and spirit which deprived the petitioners (respondents in these civil petitions) of their legitimate expectation for appointment under the deceased employees' quota to any suitable post in District Judiciary Larkana. The petitions were disposed of with the directions to the District and Sessions Judge, Larkana (petitioner No.2) to reconsider the case and issue appointment letters for any suitable post equivalent to the status of Naib Qasid, on the basis of son-quota policy. The learned High Court also directed the Registrar, High Court of Sindh to circulate a copy of the judgment to all the District and Sessions Judges in the province of Sindh, with the directions to not cause unnecessary hurdles or delays in the implementation of the policy framed and directions already conveyed through various letters and circulars issued from time to time. By means of impugned order, the High Court observed that the matter of recruitment still subsists and the judgment dated 17.04.2024 passed by it holds the field, therefore, the Office was again directed to refer the cases of the said petitioners to the Registrar of the High Court for placing the same before the Chief Justice for passing appropriate orders.

3. The learned counsel for the petitioners argued that the learned High Court could not pass any directions for considering the appointment under Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and or deceased/son quota policy of Sindh High Court, after the said rule/policy had been declared *ultra vires* and unconstitutional by this Court in the case of General Post Office, Islamabad and others Vs Muhammad Jalal (PLD 2024 SC 1276). It was further contended that the impugned order is contrary to the law laid down by this Court in the aforesaid case. It was further averred that the respondents had no vested right to appointment, and the High Court failed to appreciate that no fundamental right exists to seek public employment without following the due process prescribed by law, including the publication of advertisement and allowing open competition. A mere application or pending request for appointment under a rule/policy, which was subsequently struck down as unconstitutional, does not constitute a vested or accrued right enforceable through a writ petition.

4. The respondents present in person supported the impugned order and stated that they repeatedly approached for implementation of the order from pillar to post but the order was not implemented for one pretext or another. They further contended that the petitioners approached this Court for challenging the order passed for implementation but the original order dated 17.04.2024 was never challenged by them which was rendered much earlier than the date of judgment passed by this Court in the case of General Post Office, Islamabad (*supra*)

5. Heard the arguments. Admittedly, the main judgment dated 17.04.2024 was not challenged by the petitioners

in this Court which, for all intent and purposes attained the finality. Obviously when the directions contained in the above judgment were not complied with, the persons who were petitioners before the High Court had no other remedy or option except to file applications for initiating contempt proceedings against the District Judge who failed to comply with the judgment. Following the norms of good manners, civility, courtesy and respect they opted to file applications under Section 151, CPC for implementation of the aforementioned order. The learned bench of the High Court after considering all nitty-gritties, again issued directions to the Registrar in paragraph 15 to refer the matter to the Chief Justice for appropriate orders. Instead of complying with the directions, the Registrar Sindh High Court challenged the order passed by the Division Bench of the same High Court in this Court. This conduct is not only incomprehensible but also strange and unusual in which, the High Court declined to implement its own order and filed present civil petitions.

6. The *raison d'être* for noncompliance is said to be a judgment of this Court in the case of General Post Office v. Muhammad Jalal (PLD 2024 Supreme Court 1276) wherein Rule 11-A of the Sindh Civil Servants (Appointment, Promotion and Transfer) Rules, 1974 and other corresponding provisions of the other Provincial Civil Servants' and Federal Civil Servants' Laws were struck down. If we look into the facts of the aforesaid case, a Writ Petition was filed in the Peshawar High Court for issuing directions to the concerned department to consider him for appointment against the quota reserved for the children of class-IV employees who retired on medical grounds and reliance was placed on the Office Memorandum ('OM') dated 13.04.2005,

issued by the Establishment Division, Government of Pakistan. The Writ Petition was disposed of by a Division Bench of the Peshawar High Court vide order dated 13.04.2021, whereby directions were issued to the concerned department to appoint the petitioner on contract basis in terms of OM and in accordance with the policy, with the further observation that OM dated 13.04.2005 could not be applied retrospectively.

7. The judgment in the case of General Post Office (supra) reflects that notice was issued to the respondent/petitioner which was received by his cousin who stated that the said respondent shifted abroad. The learned Additional Attorney General clarified that the respondent was not appointed as directed by the High Court Peshawar because he had shifted abroad. However, on 04.01.2024, two questions were framed by this Court on its own motion i.e. (1) Whether the policy conforms with Articles 25 and 27 of the Constitution of Islamic Republic of Pakistan insofar as it creates separate categories of persons who are to be given preference in employment; and (2) Whether the Prime Minister of Pakistan has the power to relax rules and/or to issue the Policy. In order to ascertain as to whether the policy accords with the Constitution of the Islamic Republic of Pakistan, 1973, the learned bench issued notices to the Attorney General, Pakistan as well as to the Advocate Generals of all the Provinces under Order XXVII-A of the C.P.C. Seemingly, certain constitutional questions requiring interpretation were framed by the learned bench in exercise of its Suo motu jurisdiction therefore, with all humility to our command, the matter ought to have been dealt with according to Section (4) of the Supreme Court (Practice and Procedure) Act 2023 (as stood prior the 26th Constitutional Amendment),

which provided in its original form that the matters where the interpretation of the Constitutional provisions is involved, Committee should constitute the bench comprising not less than five judges of the Supreme Court. Though Section 3 and 4 were omitted and substituted by the Supreme Court (Practice and Procedure) (Amendment) Act 2024 but the fact remains that when the judgment was rendered by learned three member bench in the case of General Post Office (*supra*), Section 4 was very much in field, therefore, the matter should have been referred to the Committee under Section 2 of the aforesaid Act to constitute a bench not less than five judges of this Court but we think that this elemental and crucial aspect escaped the attention of the honorable bench seized of the matter.

8. Nevertheless, an important facet cannot be lost sight of that the judgments of this Court has prospective effect unless declared otherwise. The prospective declaration of law cannot reopen the past and closed matters to avoid or prevent the multiplicity of proceedings and undermining the doctrine of finality of judgments. The doctrine of prospective overruling originated from American Judicial System, which allows to overrule or overturn/set aside a precedent that should no longer be considered a good law. The doctrine of prospective overruling demonstrates a substantial evolution and expansion in legal jurisprudence which allows this Court to render verdicts without prejudice to the past decisions. In the case of Sakhi Muhammad and another vs. Capital Development Authority, Islamabad (PLD 1991 S.C 777), it was held by this Court that the consequence of the Supreme Court judgment was that as from the date of decision all courts subordinate to the Supreme Court and all executive and quasi-judicial

authorities were obliged by virtue of the Constitution to apply the rule laid down by the Supreme Court in cases coming up before them for decision. The decision of the Supreme Court did not have and it could not be contended that it had, the effect of altering the law as from the commencement of relevant law so as to render void of its own force all relevant orders of the Authority or of the High Court made in the light of the earlier interpretation. Whereas in the case of Pakistan Medical and Dental Council & others vs. Muhammad Fahad Malik & others (2018 SCMR 1956), this Court held that the judgment of the Supreme Court, unless declared otherwise, operates prospectively. Whilst in the case of Pir Bakhsh and others vs. Chairman, Allotment Committee and others, (PLD 1987 S.C. 145), it was held that the fact that Supreme Court in an appeal, titled *Abdul Hafiz v. Rehabilitation Commissioner and others*, against the judgment of the High Court set aside the same judgment in another writ petition would not reopen the concluded rights of the parties under the decision of the High Courts against to which no appeal was filed, nor could the appellants who were respondents in that writ petition avail the benefit of the law laid down by the Supreme Court under Article 189 of the Constitution. The fact that the law laid down by this Court (supreme court) is prospective, it cannot be doubted.

9. In a nutshell, the High Court in the present case passed the original judgment on 17.04.2024, whereas the judgment in the case of General Post Office (supra) was rendered by this Court on 26.09.2024, much after the decision of the High Court. The Administration Committee of the High Court on the anvil of aforesaid judgment, decided to withdraw the earlier policy which

was in force for dealing the appointments on deceased/retired employees' quota but in all fairness, the said decision neither can affect the past judgments of this Court on the same subject nor its decision can be enforced with retrospective effect to subside/overrule, nullify or quieten down the effect or existence of original decision passed on 17.4.2024, which attained finality much earlier. The law declared by this Court will apply to the cases arising in future but the cases which have attained finality are protected and all actions taken contrary to the declaration of law prior to its date of declaration shall be deemed to be valid and binding. Therefore, in our view, the learned High Court rightly passed the order for implementation of its judgment and the Registrar, Sindh High Court and District Judge, Larkana had no lawful justification to challenge the order.

10. As a result of the above discussion, we do not find any illegality, perversity, or impropriety in the impugned order passed by the learned High Court. The Civil Petitions are dismissed and leave is refused.

Judge

Judge

Judge

Karachi

17.07.2025

Approved for reporting

M.Farhan/-