Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 4202/2021

Nawazish Ali
Vs.
Chairman NESCOM, Islamabad.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	10.01.2022	Mr. Abdul Rehman S Alvi, Advocate for petitioner.

The instant petition is arising out of orders dated 08.10.2018 and 03.08.2021 passed by the respondents whereby on account of disciplinary proceedings, petitioner was dismissed from service under Rule 5 (b) (4) of the NCA Employees E&D Rules-2010 while service appeal under Section 3(6) of NCA Act, was turned down.

2. Relevant facts are that petitioner, who joined the respondent department on regular basis w.e.f 03.05.2001, was subjected to disciplinary proceedings on account of obtaining service on the basis of bogus/tempered FSC Certificate which was declared as such by the Board of Intermediate and Secondary Education, Lahore (BISE). He was dismissed from service vide order dated 08.10.2018 while his appeal was turned down by the appellate authority by order dated 03.08.2021.

3. The petitioner seeks his reinstatement or, at the most, retirement with benefits by taking lenient view as he has rendered more than ten year service.

4. The petitioner had been employee of the National Engineering & Scientific Commission of Pakistan (NESCOM) and the relief sought for pertains to terms and conditions of his service.

5. The question of invoking the jurisdiction of judicial review under Article 199 of the Constitution by the employees of NESCOM had been the subject before the Hon'ble Larger Bench of this Court in the case of "*Waqas Rafi Awan v. National Engineering & Scientific Commission, Islamabad through Chairman and two other.*" **(2021 PLC (CS) 1309).** It has been laid down in paragraph 24 that:-

> "*The petitioners have also taken the stance that depriving them from invoking the jurisdiction of judicial review under Article 199 amounts to denial of the right of access to justice. We are afraid this argument is misconceived. As discussed the principle of master and servant and the determination of the relationship between an employee and employer on the basis of non-statutory rules/regulations is imbedded in our jurisprudence. It is within the competence of the Majlis-e-Shoora (Parliament) and the latter's prerogative under the Constitution to declare the nature of the relationship between an employer and its employees. Moreover, we have carefully perused the scheme of law, particularly the NCA Employees (Appeal) Rule, 2019 and we are satisfied that effective and efficacious remedies by way of appeal and review have been provided for the resolution of employment dispute. The composition of Authority under Section 3 of the Act of 2010 raises a presumption that effective resolution of employment related disputes and grievances of the employees would be dealt with fairly and in accordance with the law. There is also a presumption of empathy towards the employees. A complaint alleging malafide or coram non judice actions/orders are likely to be rare. But in case of such exceptional and extra ordinary circumstances or the alleged denial of justice, the aggrieved employee after exhausting all remedies of appeal and review, has the opportunity of bringing the grievances to the attention of the high powered Authority through a representation. The Authority, in such an eventuality, may refer the grievances to a committee or entity in exercise of powers vested under Section 3 (6) of the Act of 2010. The mechanisms and forums provided for redressing employment related disputes meets the requirement of due process and fair trial. The grievances of contractual employees and relating to regularization are also governed under the non-statutory rules and thus not amenable to the jurisdiction of a high court under Article 199 of the Constitution."*

6. In paragraph No. 27 of the judgment (*supra*) it is declared that:-

> *"the petitioners are related and governed under non statutory rules and thus not amenable to the jurisdiction of this Court under Article 199 of the Constitution. The Constitutional petitions are consequently not maintainable and accordingly dismissed. In case any petitioner, after availing all remedies available under Section 11 of the Act, 2010 of the rules made there under, has a grievance of exceptional or extraordinary nature based on the ground of malafide or coram non judice the latter may submit a representation before the Authority. In such an eventuality the Authority would be expected to constitute a committee pursuant to power conferred under Section 3 (6) of the Act, 2010 for consideration of the grievances. Likewise the Authority is also expected to constitute a committee and refer to it the petitions wherein non-compliance of judgements/directions of this Court have alleged and, resultantly, the contempt petitions are accordingly disposed of. Section 11 of the Act, 2010 provides a right of appeal against an order action or inaction in respect of terms and conditions of an employee and consequently the bar contained under the proviso of Section 3 of the Law Reforms Ordinance, 1972 is attracted in the case of Intra Court Appeals. The appeals are not maintainable and, therefore, accordingly dismissed."*

7. In view of the principle laid down in the judgment (*supra)*, the petitioner is related and governed under non-statutory rules and thus instant writ petition is not maintainable and accordingly **dismissed in limine.**

(ARBAB MUHAMMAD TAHIR*)*
JUDGE

Kamran.