ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A. No.147-W/2012
NESCOM through its Chairman, Islamabad and another
Versus.
Nouman Zia and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	15.11.2017	**Barrister Amna Abbas, for the appellants.** **Mr. Ali Asghar Pasha, Advocate for respondent No.1.**

Through the instant intra Court appeal, the appellants impugn the judgment dated 03.04.2012, passed by the learned Judge-in-Chambers in writ petition No.3425/2011. Vide the said judgment dated 03.04.2012, the learned Judge-in-Chambers directed the appellants to accept the respondent No.1's resignation with effect from 08.06.2008. Furthermore, after the respondent's debriefing, his name was directed to be removed from the Exit Control List ("E.C.L.").

2. The record shows that on 06.02.2001, respondent No.1 (Nauman Zia) was appointed as Assistant Manager (Mechanical) in the National Development Complex (which is a constituent organization of National Engineering and Scientific Commission ("NESCOM")). On 19.09.2006, respondent No.1 (hereinafter referred to as the respondent) was granted ex-Pakistan leave from 11.09.2006 to 10.09.2007 for his studies at the University of Manchester, United Kingdom. On 20.10.2006, the competent authority in the National Development Complex approved the respondent's study leave to avail a scholarship awarded by the Higher

Education Commission. As per the letter dated 20.10.2006, the respondent was relieved from his duty from 21.10.2006 to 20.10.2010. The said letter dated 20.10.2006 was addressed by the National Development Complex to the Higher Education Commission. Apparently, the respondent was unable to proceed abroad due to the "weak emotional condition" of his wife, who need the respondent's presence with her. Therefore, the respondent, vide letter dated 18.10.2006, applied for the conversion of his ex-Pakistan study leave into a study leave from 21.10.2006 to 20.04.2008. Vide office memorandum dated 20.10.2006, the respondent was informed by the National Development Complex that his study leave had been approved from 21.10.2006 to 10.09.2007 for MS leading to PhD studies at the University of Engineering and Technology, Lahore ("U.E.T., Lahore"). The ex-Pakistan study leave earlier granted to the respondent from 11.09.2006 to 20.10.2006 was converted into leave with full pay, and the ex-Pakistan study leave from 21.10.2006 to 10.09.2007 was converted into a study leave for the indigenous program of MS leading to PhD at U.E.T., Lahore.

3. On 02.04.2007, the respondent's request for converting his ex-Pakistan study leave into study leave in-country was allowed by the National Development Complex from 21.10.2006 to 10.09.2007. One of the conditions on which the said request was acceded to was that the respondent would not ask for an extension or resign from his job, and would join the National Development

Complex on the expiry of his study leave. Nevertheless, an extension in his study leave from 11.09.2007 to 10.03.2008 was granted to the respondent vide office memorandum dated 29.10.2007. A further extension upto 12.05.2008 was also granted to the respondent.

4. The respondent claims to have rejoined his duties on 21.02.2008, whereas the appellants' claim that the respondent rejoined his duties on 13.05.2008. Be that as it may, the respondent, on 06.08.2008, tendered his resignation. The reasons put forth by the respondent for his resignation were "unavoidable circumstances" and "family commitments". The said resignation was not accepted, and the respondent was informed about this vide letter dated 02.01.2009. According to the said letter dated 02.01.2009, the respondent had been unauthorizedly absenting himself from duties with effect from 06.09.2008. The respondent was advised, vide the said letter to report for duty within three days. Since the respondent did not report for duty, show cause notice dated 08.09.2010 was issued to the respondent by NESCOM, wherein it was alleged that the respondent had unauthorizedly absented himself from duty with effect from 06.09.2008, and that he had committed misconduct by not rejoining his duties in accordance with the directions given in letter dated 02.01.2009. The respondent had been called upon to show cause as to why major penalty of "dismissal from service" should not be imposed on him. Vide office order dated 11.12.2009, major

penalty of removal from service was imposed on the respondent.

5. On 19.12.2011, the respondent filed writ petition No.3425/2011 in which the following relief was prayed for:-

> *"It is therefore respectfully prayed that this writ petition may kindly be accepted and the placement of the name of petitioner on ECL may kindly ordered to be set aside and Res. No 2 and 3 may kindly be directed to accept the resignation tendered by the petitioner in place of the order of his removal from service with all consequential benefits."*

6. Learned counsel for the appellants submitted that the impugned judgment dated 03.04.2012 was not in accordance with the law and facts of the case; that the respondent had been granted extensions in his study leave on the condition that he would not resign; that under the applicable rules, an employee of NESCOM and or National Development Complex was under an obligation to continue to perform his duties until his resignation was accepted; that even though the respondent's resignation had not been accepted, he unauthorizedly absented himself from duty; that such unauthorized absence from duty amounts to misconduct, and therefore, show cause notice dated 29.09.2009 was issued to the respondent; that after the respondent was found guilty of misconduct, major penalty of "removal from service" was imposed on him; that the respondent was also placed on the E.C.L., because appellant No.1 is a sensitive organization; and a suit for recovery was instituted against him; that through the said suit, appellant No.1 sought to recover the amount spent on the

respondent's scholarship; and that the learned Judge-in-Chambers erred by directing the appellants to accept the respondent's resignation with effect from the date when it was submitted. Learned counsel for the appellants prayed for the appeal to be allowed and for the impugned judgment dated 03.04.2012, to be set-aside.

7. On the other hand, learned counsel for the respondent submitted that the respondent could resign by simply giving one month's notice; that the respondent stopped attending his duties one month after tendering his resignation; that the appellants could not compel the respondent to work after he had submitted his resignation; that the respondent's resignation was not accepted by the competent authority without any plausible explanation; that the mere fact that the appellants had placed the respondent's name on E.C.L and had instituted a suit for recovery against the respondent shows the appellants ill-will and venom against him; and that the impugned judgment dated 03.04.2012 is strictly in accordance with the law and facts of the case. Learned counsel for the respondent prayed for the appeal to be dismissed.

8. We have heard the contentions of the learned counsel for the contesting parties, and perused the record with their able assistance. The facts leading to the filing of the instant intra Court appeal have been set out in sufficient detail in paragraph 2 to 5 above, the same need not be recapitulated.

9. It is an admitted position that the respondent had tendered his resignation on

06.08.2008 due to "unavoidable circumstances" and "family commitments". It is also an admitted position that this resignation had not been accepted by the competent authority. On the contrary, the appellants had called upon the respondent to rejoin his duties, failing which disciplinary proceedings were to be initiated against him. The applicable rules of appellant No.1 clearly provide that "an employee shall continue to perform his duties till such time as his resignation is formally accepted by the appointing authority". The respondent's resignation was not accepted at any material stage. Despite this, the respondent stopped attending his duties a month after tendering his resignation. This caused the appellants to issue show cause notice dated 29.09.2009 to the respondent wherein it was alleged that the respondent had committed misconduct by not rejoining his duties. Vide office order dated 11.12.2009, major penalty of "removal from service" was imposed on the respondent.

10. The respondent in his writ petition No.3425/2011 assailed the order, whereby his name was placed on the E.C.L., and sought a direction to the appellants to accept his resignation in place of the order of his removal. If the respondent was of the view that the decision not to accept his resignation was not in accordance with the law, he should have approached the appropriate forum at the earliest. He could not have absented himself from his duties without his resignation being accepted. The mere fact that the respondent absented

himself from his duty despite the fact that his resignation was not accepted, rendered the respondent's conduct unworthy of granting him relief in the equitable /discretionary jurisdiction of High Court under Article 199 of the Constitution.

11. It is well settled that when a public servant submits a letter of resignation, his service/employment stands terminated from the date on which the letter of resignation is accepted by the competent authority and, in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to stop attending his duties before this resignation is accepted. In the event, an employee stops attending duties despite the fact that his resignation has not been accepted, he can be proceeded against departmentally. Reference in this regard may be made to the following case law:-

(i) In the case of Hafiz Hamdullah Vs. Saifullah Khan and others (PLD 2007 SC 852), the Hon'ble Supreme Court of Pakistan after making reference to the instructions contained in Esta Code at Serial No.13 of the Chapter under the Heading, *"Termination of Services, Reversion to lower Scale/Post, resignation and Desertion from Duty"* held as follows:-

> ***".....on mere tendering/submitting of resignation the services of Government /Civil Servant would not come to an end and the same has to be accepted for its effectiveness by the competent authority. It also reveals that till such time as the resignation is accepted by the competent authority, the Civil/Government servant would continue to be in government service and would be under an obligation to perform his duties. In case he fails or***

> ***omits to perform his duties without prior authorization or leave, he would be deemed to be an absentee rendering himself liable for disciplinary proceedings under the appropriate law and rules. In view of the clear, express and unambiguous language used in instructions at serial No.13 of the Esta Code there can be no doubt that the resignation tendered/submitted by a civil servant does not become effective /operative unless it is accepted by the competent authority and till such time the resignation is accepted the government/civil servant shall be deemed to be in the service."***

The same view, as above, was taken by the Hon'ble Supreme Court of Pakistan in the case of Anwar-ul-Haq Vs. Secretary, Ministry of Industries and Production, Government of Pakistan Islamabad and others (2010 SCMR 1386).

(ii) In the case of Chaudhry Khush Akhtar Subhani Vs. Returning Officer and another (2008 YLR 2132), it has been held by the Hon'ble High Court of Sindh at paragraph 5 of the report as follows:-

> ***"..... If for the sake of argument we accept that respondent No.2 had resigned, the fact remains that mere tendering or submitting of resignation is not tantamount to termination of service of a Government servant. In order for the same to become effective, its acceptance by the competent authority is an essential requirement. Till such time the resignation is accepted by the competent authority, the Civil / Government servant would continue in service and would be under an obligation to perform his duties and if he omits to perform his duties without prior authorization, he would be deemed to be an absentee and would be liable for disciplinary action....."***

The same view, as above, has been taken in the cases of Mrs. Neelam Yasmin Abbasi Vs. Returning Officer and two others (2010 MLD 527), Saifullah Khan Vs. Hafiz Hamdullah and

4 others (PLD 2005 Quetta 145), Tahsin Ahmad Mehmoodi Vs. Pakistan Steel Mills Company Ltd (1990 MLD 1132), Muhammad Mansha Vs. Government of Punjab (1984 CLC 2231) and Mohammad Khan Vs. Pakistan through Secretary, Ministry of Interior, Karachi (PLD 1958 Karachi 75).

12. In view of the above, this appeal is partly allowed by setting aside the impugned judgment dated 03.04.2012 only to the extent of directing the appellants to accept the respondent's resignation with effect from 06.08.2008. There shall be no order as to costs.

(ATHAR MINALLAH)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*

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