

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP. No. D- 1644 of 2021

Nawaz Murad

v. Province of Sindh and others

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner: Nawaz Murad through Mr. Naveed Ahmed Khan,
Advocate
Respondents: Nemo for respondents
Date of decision: 27.10.2021

O R D E R

ADNAN-UL-KARIM MEMON, J:- Through instant petition the petitioner has prayed as under:-

- a. direct respondent No.5 not to take any coercive and/or adverse action against the petitioner until and unless all codal necessities and legal formalities, after affording the full opportunity of being heard to petitioner, are fulfilled and satisfied.
- b. Direct the respondents 2 and 3 to render them and the record(s) and document(s) in relation to the examination and a result of the petitioner who set into final examination at Seat No. 37/2003 Bachelor of Computer and Information Technology (BCIT) held by respondent No. 2.

2. Brief facts of the case are that the petitioner was appointed by respondent No.5 in the year 2005 after completing all codal formalities as System Engineer vide appointment letter No. NADRA/HR/148/NE/Qta/P dated 5.5.2005. After completing service of more than 15 years, the petitioner was issued show cause notice dated 11.11.2020 by respondent No.5 wherein it was mentioned that the petitioner's Degree of Bachelor of Computer & Information

Technology was forwarded to respondents 2 & 3 for verification; and, that they declared the said Degree as Bogus vide letter dated 9.10.2020; and, the petitioner was called upon to show cause as to why one or more penalties including major penalty i.e. dismissal from service may not be imposed upon him; the petitioner replied to the show cause notice and since last about one year no any action was taken against him by respondent No.5. The petitioner has now filed the instant petition with the above prayer.

3. At the very outset, we asked learned counsel representing the Petitioner to satisfy this Court about maintainability of the captioned Petition on the premise that the Rules and Regulations of NADRA are non-statutory, thus the terms and conditions of service of the petitioner cannot be enforced through the Constitutional Petition under Article 199 of the Constitution, more particularly in view of the latest decision rendered by Hon'ble Supreme Court in the reported case of Major Retd. Syed Muhammad Tanveer Abbas and other connected appeals vs. Federation of Pakistan through its Secretary, Ministry of Interior & others (2019 SCMR 984).

4. Mr. Naveed Ahmed Khan learned counsel for the petitioner has replied to the query and submitted, first of all the instant petition is maintainable and can be heard and decided on merit by this Court, on the premise that the present Petition relates to the service issues of the Petitioner, who admittedly, is not a Civil Servant as defined under Section 2(1) (b) of Civil Servants Act 1973, but an employee of a Statutory Authority, who cannot invoke the jurisdiction of Federal Service Tribunal, and thus the only remedy if any, lies by way of filing Constitutional Petition under Article 199 of the Constitution. He next argued that employees of Statutory Authorities, who were proceeded under Government Servants (Efficiency and Discipline) Rules, 1973 can invoke the jurisdiction of this Court under Article 199 of the Constitution and argued that the right of appeal is a substantive right as provided under the law and it was a statutory intervention, thus Constitutional Petition filed by the Petitioner, seeking enforcement of his fundamental rights is maintainable. He next argued that the Rules and Regulations of NADRA are statutory and in this regard, he referred to various sections of NADRA Regulations 2002. On merits, he argued that the acts and actions of respondents are based on malafide, unreasonable as the petitioner is working in NADRA-office since last more than 16 years; that all

educational testimonials of the petitioner i.e Bachelor of Computer and Information Technology are genuine.

5. We have heard learned Counsel for the petitioner on the question of maintainability of the instant petition and perused the material available on record.

6. The record reveals that disciplinary proceedings were initiated against the Petitioner by Respondent-NADRA under Regulations 2002 on account of serious misconduct of producing Bogus Degree Certificate and still on the preliminary stage. Thus, it cannot be the petitioner's case that action against him is against the rules and natural justice or the Rules of Service. In our view, the disciplinary matters fall within the expression "Terms and Conditions of Service" and admittedly, the same is non-statutory rules of service, which is an internal matter of service of the Respondent-Authority, which in our view cannot be thrashed out in a Writ Petition.

7. For the aforesaid reasons, we are of the view that the relationship of `Master and Servant` exist between the Petitioner and the Respondent-Authority, hence, his grievance pertains to the terms and conditions of service which cannot be enforced through a Writ.

8. As to the Service Rules-2002, these are non-statutory and mere instructions for internal control and management of the employees of Respondent-Authority. The guidance could be taken from the judgment of Hon'ble Apex Court's enunciating the test of Statutory Rules and non-Statutory Rules in *Shafique Ahmed Khan and others v. NESCOM through Chairman Islamabad and others (PLD 2016 SC 377)* and *Muhammad Zaman etc. v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad (2017 SCMR 571)*.

9. We, thus, are of the view that it is for the Respondent-Authority to place its employees in accordance with its Service Rules and Regulations, which is an internal matter of the Respondent-Authority, thus do not need any Constitutional interference, at this juncture. Our view is supported by the latest decision announced on 13.5.2019 by the Honorable Supreme Court in the reported case of *Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals (2019 SCMR 984)*. The Honorable Supreme Court, in the aforesaid Appeals, has provided guiding principles on the issue of

statutory and non-statutory rules of service (NADRA) and its enforcement, contractual service of employees (NADRA) and their remedy and finally the issue of maintainability of Constitutional Petition in like matters.

10. In view of the above legal position of the case, the instant Constitution Petition is held not maintainable in law, hence is dismissed along with the listed application(s).

JUDGE

JUDGE

Karar_hussain/PS*