

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

W.P. No.315-2015

Mukhtar Hussain

Vs.

Federation of Pakistan etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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04.03.2020	Raja Saif-ur-Rehman, Advocate for petitioner. Mr. S.A. Mehmood Khan Sadozai, Advocate and Qazi Azhar Mehmood, Advocate for respondents with Ameer Ullah Marwat, Chairman, NCHD, Hafiz Said Rasool, Director, NCHD and Safiullah Baig, A.D. NCHD.
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The petitioner was an employee of National Commission for Human Development (NCHD); disciplinary proceedings were initiated against him and an inquiry was held. The report of the Inquiry Officer was submitted to the Authorized Officer, who then issued a show cause notice to the petitioner. The petitioner responded to said show cause notice and also made a request for personal hearing, which accordingly, was allowed; where-after the matter was referred to the competent authority and the petitioner was dismissed from service; he filed appeal before appellate authority, which under the regulations of NCHD, is the Chairman. At the relevant time, the Chairman, NCHD was not available and the petitioner made a similar appeal to the concerned Secretary, who ordered fresh inquiry. It seems that two subsequent inquiry committees were constituted but the matter never progressed, however, inquiry was held eventually and it

was concluded that petitioner has been rightly dismissed from service and his appeal should be dismissed.

2. Learned counsel for the petitioner, *inter alia*, contended that there were a number of inquiries, which is unheard of, and entire saga is due to the malafide of respondents. It was submitted that since appeal of petitioner was allowed, he was never taken back in service and with malafide, he was held responsible in the inquiry once again and consequently dismissed from service. It was further contended that in the subsequent inquiry, fresh charges were added.

3. Learned counsel for the respondents, on various dates including 03.03.2020, 04.11.2019, 28.01.2019, expressed ignorance about the subsequent inquiries on account of the fact that he has not been briefed by his client. Learned counsel contended that petitioner was employed on contract hence instant petition is not maintainable. It was also submitted that even-otherwise, service regulations of NCHD are non-statutory, even on this account, writ petition is not maintainable. It was submitted that opportunity of hearing was afforded to the petitioner and it is only there-after, the competent authority came to the conclusion that petitioner merits dismissal from service.

4. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. It is an admitted position that petitioner was an employee of NCHD on contract.

Though it was argued on behalf of petitioner that he stood regularized yet there is nothing on record to the effect. The mere efflux of time, qua probation period, does not automatically regularize the services of petitioner and there has to be an order to the said effect.

6. The facts, leading to filing of instant petition, have been mentioned with brevity hereinabove hence need not be reiterated. However, it is observed with dismay that learned counsel for respondents was not briefed by his client properly and resultantly, the matter lingered on for a considerable period of time; it is only when the Chairman, NCHD was summoned by this Court, learned counsel for the respondents confirmed the facts.

7. It seems that due to non-availability of appellate authority i.e. the Chairman, NCHD, appeal was not decided and only when representation/appeal was made before the Secretary, he passed the orders for fresh inquiry. There does not seem to be any regulation or law, which empowers the Secretary concerned namely Secretary, Ministry of Federal Education and Professional Training to decide the appeals of employees of NCHD. The order for re-inquiry by the said Secretary was without lawful authority and NCHD, for reasons best known, followed the same. In the facts and circumstances, since order was not passed by the competent authority, the formation of subsequent inquiry committees and even holding of inquiry, was without any legal

consequence. It is observed that Department was required to decide the appeal of the petitioner as and when the Chairman, NCHD was available. No action may be taken by the competent authority on the recommendation of last inquiry report.

8. It is trite law that a petition by an employee, whose terms of service, are governed by contract, is not maintainable; even where the terms of service are based on regulation/rules which are non-statutory, a petition under Article 199 of the Constitution is not maintainable.

9. In the facts and circumstances, as such, learned counsel for the petitioner failed to point out any illegality in the inquiry proceedings except the fact that the competent authority did not decide appeal of the petitioner.

10. In view of above, instant petition is disposed of with direction to Chairman, NCHD to decide the pending appeal of the petitioner in accordance with facts, circumstances and law.

11. Since the matter is pending since long hence it is expected that needful shall be done within a period of four weeks from the date of this order.

**(AAMER FAROOQ)**  
**JUDGE**