

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.15897 of 2015 (O&M)

Date of Decision:13.05.2016

Narender Singh Sheoran

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Rajesh Bansal, Advocate for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

Mr. D.K. Khanna, Advocate for respondents No.2 and 3.

RAKESH KUMAR JAIN, J.(Oral)

This petition is filed, seeking a direction to the respondents to allow the petitioner to appear in re-examination of one paper (Education, Society, Curriculum and Learns, subject Code DE/102 of D.Ed Course Ist Semester.

Shorn of unnecessary details, the petitioner got admission in D.Ed course for the session 2013-15. He appeared in the first semester in January, 2014 and got re-appear in two subjects, i.e. Code DE/101 and DE/102. The petitioner had a chance to re-appear in both the exams in the examination of next semester in July, 2014 in which he actually appeared but failed again in one subject, i.e. Code DE/102. Thereafter, the petitioner had the second chance to appear in February, 2015 in which he did not

appear at all but the present petition is filed. In order to avail another chance in July, 2015.

At the time of notice of motion, issued on 6.8.2015, the petitioner was allowed to take the examination, subject to the final outcome of the writ petition. The petitioner, however, could not appear in the examination of Code DE/102 because by that time, the examination was over. He also could not appear in two papers of fourth semester.

The only issue to be decided by this Court is as to whether the petitioner is entitled to a mercy chance in terms of the Regulations called “Board of School Education Haryana D.Ed Regulations”.

Counsel for the petitioner has submitted that as per Clause V of promotion criteria under semester system of the aforesaid Regulation, the chairperson of the Board has the jurisdiction to grant an extra chance to the person like the petitioner in exceptional circumstance which has to be recorded by him in writing as well. It is thus prayed that direction may be issued to the Chairman of the Board to grant a mercy chance to the petitioner to clear the subject code DE/102 of the first semester in the next examination.

Counsel for the respondents has submitted that the petitioner cannot be granted another chance because it is contrary to the Regulations. In order to appreciate the respective arguments of the parties, Regulation 24 (B)(V) is reproduced as under:-

“Such pupil teacher whose backlog of re-appear of 1st or/ and 2nd semesters remained of only one course even after availing two chances admissible to him/her, the Chairperson of the

Board may grant an extra chance to such pupil-teacher in exceptional circumstances to be recorded in writing. However, such extra chance will be immediately next to the aforesaid two chances availed by such pupil-teacher. Such pupil-teacher shall be deemed to be unfit for Diploma-in-Education if he/she still does not qualify in that one course of 1st or/ and 2nd semester in the extra chance.”

It is submitted by the respondents that the petitioner has not set up any extraordinary circumstance on the basis of which mercy chance could have been granted by the Chairman because all that has been said by the petitioner is that he was suffering from Anemia and in that regard, he has submitted the sickness certificate, purported to have been issued by some private Ayurved Doctor practising at Narnaund, District Hisar. It is also submitted that even the said certificate has also been considered by the Chairman and his prayer has been rejected because it does not find favour with him, in the category of exceptional circumstances, for the purpose of granting mercy chance. It is also submitted by the respondents that even the belated application was considered and rejected.

I have heard learned counsel for the parties and after perusing the record, am of the considered opinion that the petitioner has been granted two chances to clear the subjects in which he had failed. In the first chance, he appeared in both the papers but cleared only one paper as in the other paper he failed again and in the subsequent chance i.e. second chance, he did not appear at all. Once both the chances have been given and have been availed by the petitioner as it was available to him, the discretion lies with

the Chairperson of the Board to grant mercy chance to the petitioner to clear the subject which he could not clear earlier even though there was an availability of two chances with him. The discretion vested with the Chairperson is qualified to the extent that the extra chance has to be given by him out of mercy but after recording reasons in writing. The Regulation says that it has to be an exceptional circumstance on which mercy chance can be given by the Chairperson. The reason given by the petitioner even to the Court, much less to the Chairperson of the Board, does not show that it was an exceptional circumstance because of which he could not appear in the exam because he was only suffering allegedly from anemia and obtained the sickness certificate from a Vaid. Thus, keeping in view the facts and circumstances of the case, I do not find any merit in the present petition.

Dismissed.

May 13, 2016
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(RAKESH KUMAR JAIN)
JUDGE