

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

LPA No.945 of 2016 (O&M)

Date of decision: 12.07.2016

Narender Singh Sheoran

.....Appellant

versus

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Rajesh Bansal, Advocate for appellant.

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

DARSHAN SINGH J.

The appellant is aggrieved with the judgment/order dated 13.05.2016, passed by learned Single Judge in Civil Writ Petition No.15897 of 2015, vide which the writ petition filed by him has been dismissed.

2. The appellant took admission in D.Ed. Course for the session 2013-2015. He appeared in the examination in 1st Semester in January, 2014 and received re-appear in two subjects. The appellant was promoted to 2nd Semester of the Course. He appeared in the examination of 2nd Semester and passed in all the subjects. But in re-examination for re-appear, he could

clear only one subject and remained unsuccessful in the 2nd subject. The appellant was promoted to 3rd Semester. He could not appear for re-examination of one subject of the 1st Semester due to illness and inadvertent mistake. In February, 2015 he appeared in the examination of 3rd Semester and cleared the papers but his result was not declared in view of non-clearance of one subject of the 1st Semester. The appellant moved representation to the respondents to grant him one chance for re-appearance. The respondents used to give mercy chance to such like students but the claim of the appellant has not been accepted. Hence, he filed the writ petition.

3. The writ petition filed by the appellant was dismissed by the learned Single Judge vide impugned judgment/order dated 13.05.2016. Hence, this Letters Patent appeal.

4. We have heard learned counsel for the parties and meticulously examined the paper-book.

5. Learned counsel for the appellant contended that the appellant got re-appear in two subjects. He passed one subject in the re-examination but failed in the second subject. Though he was promoted to 2nd Semester and then to 3rd Semester. He has cleared all the subjects of 2nd Semester. He has also cleared the subjects of 3rd Semester but his result was not declared. Learned counsel for the appellant further contended that the appellant could not appear for re-examination of remaining subject of the 1st Semester due to illness. He contended that as per the Regulations of the respondent-Board of School Education, the mercy chance can still be granted by the Chairperson of the Board. But he has been denied the opportunity of mercy

chance as the appellant could not appear in the second attempt due to illness. He contended that the entire career of the appellant is at stake. The mercy chance should have been granted to the appellant by taking the sympathetic view, keeping in view the future of the appellant. He contended that the learned Single Judge has erroneously dismissed the writ petition.

6. On the other hand, learned counsel for the respondents No.2 & 3 contended that the appellant did not appear in re-appear subjects in July, 2014. So, the first chance was exhausted. In the second chance, he appeared in two re-appear subjects in January, 2015 but could clear only one. His application for mercy chance was duly considered by the competent authority but the same was found without any merit and was rejected by the Chairperson of the Board. Thus, he contended that the appellant is not entitled for any further chance and his writ petition has been rightly dismissed by the learned Single Judge.

7. We have duly considered the aforesaid contentions.

8. It is not disputed that the appellant has appeared in the 1st Semester Examination held in February, 2014. He got re-appear in two subjects *i.e.* Childhood and Development of Children, Code DE-101 and Education, Society Curriculum and Learns, Code DE-102. As per the Regulation 24 (B) (iv) of the Board of School Education, Haryana D.Ed. Examination Regulations (here-in-after called the 'Regulations'), the re-appear subjects has to be cleared within immediate next two chances, failing which the said student will be declared unfit to pursue the Diploma in Education.

9. The appellant was to clear the re-appear in both the subjects in

the immediate two next chances *i.e.* in July, 2014 and January 2015. The appellant did not appear for re-examination in July, 2014. So, his first chance was exhausted. In the second chance, he appeared for both the subjects but could clear only one subject *i.e.* Childhood and Development of Children Code DE-101, but he remained unsuccessful to clear the second subject of the 1st Semester in which he had got re-appear.

10. The plea taken by the appellant that he could not appear due to illness is without any substance. He has submitted the medical certificate issued by some private Ayurvedic doctor practising at Narnaund, Distt. Hisar, wherein he was shown to be suffering from anemia. This certificate is not supported from any supporting medical evidence like blood reports and treatment record. Moreover, as per this certificate, the appellant remained ill from 04.05.2014 to 04.06.2014. It is not disputed that the last date for submitting the application for re-examination was 09.06.2014 without late fee and 30.06.2014 with late fee. Thus, he had sufficient time to submit the application for examination of re-appear subjects and appear in first chance in July, 2014.

11. Regulation 24(B)(v) of the Regulations, which deals with the mercy chance reads as under:-

“(v) 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.”

12. The aforesaid Regulation provides that the Chairperson of the Board may grant an extra chance in exceptional circumstances to be recorded in writing. The appellant has moved an application for mercy chance which was duly considered by the Chairperson of the Board, finding no merit in the reasons given therein by the appellant for the grant of mercy chance and the said application was rejected by the Chairperson of the Board as the appellant has not been able to put up any extraordinary circumstance to make up an exceptional ground for grant of mercy chance. As per the Regulations, the discretion to grant mercy chance is vested with the Chairperson and the Court cannot substitute its own discretion. Moreover, the appellant has not been able to show as to how the discretion exercised by the Chairperson to reject his application for mercy chance suffers from any *mala fide* or arbitrariness.

13. Thus, keeping in view out aforesaid discussion, we have no reason to differ with the well reasoned findings recorded by the learned Single Judge.

14. Resultantly, the present appeal is without any merit and the same is hereby dismissed.

(DARSHAN SINGH)
JUDGE

(SURYA KANT)
JUDGE

12.07.2016
sunil yadav