

LPA No. 861 of 2019 (O&M)

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

**LPA No. 861 of 2019 (O&M)
Date of decision: 03.05.2019**

Sonu Kumar

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. D.S. Patwalia, Sr. Advocate, with
Mr. Gaurav Rana, Advocate,
for the appellant.

KRISHNA MURARI, CHIEF JUSTICE (Oral)

This intra-court appeal, under Clause X of the Letters Patent, is directed against a judgment and order dated 14.7.2017, passed by the learned Single Judge in CWP No. 19169 of 2016 as well as order dated 11.2.2019, dismissing the review application.

A bunch of writ petitions, including the one out of which the present appeal arises, challenging the correctness of certain questions of HTET Level 3 (PGT) Exam 2016 by the board of School Education, Haryana, came to be decided by the learned Single Judge vide order and judgment dated 14.7.2017, on the basis of concession made by the learned Advocate General on certain conditions, which were accepted by all the petitioners, including the petitioner-appellant herein.

It may be relevant to extract the order dated 14.7.2017 and the same reads, as under:-

By this bunch of petitions the petitioner(s) have challenged the answer key provided for HTET Level-3 (PGT) Exam held in February, 2016 by the Board of School Education, Haryana.

On a previous date the Court had requested the Advocate General, Haryana to appear personally in this Court to see if some solution could be worked out and he had graciously attended the Court on the last date. The Advocate General had undertaken to look into this matter. He has again come present today and stated that although due relief has been granted to all these petitioner(s) but keeping in view the fact that there are still contentious issues remaining and since now he is more interested in the fate of the students of the various schools who are awaiting the appointment of teachers he has persuaded the Govt. to give credit to all the candidates for the first five questions mentioned in the affidavit dated 21.03.2017 filed by Mr. Anil Nagar, HCS, Secretary, Board of School Education, Haryana, Bhiwani. He has, however, stated that the matter having been pending for a long time it should be made clear that no further litigation will be entertained on this issue for this test.

Learned counsel appearing for the petitioner(s) have accepted this offer and this condition because as per them also since the test was conducted about one year ago it would not be appropriate for any fresh action to be initiated in respect of this test.

In view of the magnanimous stand of the Advocate General the statement made by him is accepted, as is the condition. All the candidates will be given credit for the five questions referred to above, (after setting off whatever benefit was granted earlier) and it is further made clear that no fresh petition would be entertained in respect of HTET Level 3 (PGT) Exam held in February, 2016 by the Board of School Education, Haryana.

In view of this all these petitions are disposed of.”

Subsequently, the order was challenged by the appellant-petitioner by filing LPA No. 1691 of 2017, which was dismissed by a Division Bench vide following order dated 25.9.2018

“The impugned order before us was passed on a concession made by the learned Advocate General and accepted by the appellant, who was present before the learned Single Judge to offer no dissent.

In appeal, we therefore, do not find any reason to interfere being a correctional jurisdiction. If the appellant wanted to wriggle out of the commitment, it was open to him to approach the learned Single Judge. As the present appeal is totally misconceived and is therefore, dismissed.

The appellant, if so advised, may take recourse to his alternate remedies available to him in law.”

The appellant thereafter filed a review application, which has been dismissed vide order dated 11.2.2019.

Learned senior counsel appearing for the appellant vehemently

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contends that the concession was misunderstood and the appellant-petitioner was always under the impression that he shall be awarded marks in respect of the questions, correctness whereof has been challenged by him.

Undoubtedly, the order passed by the learned Single Judge, dated 14.7.2017, is an oral order passed in open court. The concession which was given by the learned Advocate General was in respect of first five questions, which were detailed in the affidavit dated 21.3.2017, filed by Mr. Anil Nagar, HCS, Secretary, Board of School Education Haryana, Bhiwani. Service of the copy of the affidavit on the learned counsel representing the appellant-petitioner is not denied.

In view of the above, we do not see any cause of confusion in respect of the questions for which concession was made by the learned Advocate General, for awarding marks. The petitioner-appellant was very well aware of the questions in respect of which the concession was given, as he was supplied the copy of the affidavit. Even, he was also aware of the questions, correctness of which was challenged by him. Thus, neither there was any scope of confusion and according to us, this plea of confusion is nothing but an afterthought.

There is one more aspect of the matter that the concession was given by the learned Advocate General on a condition that no further litigation shall be entertained on this issue for this test. Based on that, the learned Single Judge passed the order that no fresh petition would be entertained in respect of HTET Level 3 (PGT) Exam, held in February, 2016.

On this, learned senior counsel appearing for the appellant states that by a mandamus, doors of the Court cannot be shut for a litigant.

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However, the argument is totally misconceived, as the condition imposed for concession was duly accepted by learned counsel for the petitioners, including the petitioner-appellant herein. Once the appellant accepted the condition for availing the concession, now he cannot go back to start a fresh round of litigation on the ground of confusion.

In view of the above discussion, we do not find any infirmity in the judgment and order dated 14.7.2017, which may require any interference and also in the order dated 11.2.2019, dismissing the review application. The appeal is thus devoid of merits and accordingly stands dismissed.

Since the main appeal itself has been dismissed, no orders are required to be passed in the application for additional evidence.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

May 03, 2019
AK Sharma

Whether speaking / reasoned:	YES
Whether Reportable:	NO