

2

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

LPA no. 189/2013

Date of Order: 09.06.2014.

Mohammad Altaf Rather

Vs.

State of JK & ors.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice.

Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge.

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|------|--|--------|
| (i) | <u>Whether to be reported in</u>
<u>Media/Press.</u> | Yes/No |
| (ii) | <u>Whether to be reported in</u>
<u>Journal/Digest.</u> | Yes/No |

Appearing counsel:

For Appellant(s): Mr. Z. A. Qureshi, Adv.

For Respondent(s): Mr. Azhar ul Amin, Adv.

M. M. Kumar, CJ

1. The instant appeal is directed against judgment and order dated 08.05.2013 rendered by learned Single Judge holding that two questions in paper B concerning the examination of Excise and Taxation for the post of Excise and Taxation Officer namely Question no. 1 (a) and 2 (a) were not out of syllabus. The appellant is stated to have fallen short of 22 marks on account of those out of syllabus questions which carried 11 marks each. The Writ Court after noticing Section 11 of the Code of Civil Procedure concluded that both the questions cited in the question paper were very much provided in, and were not, out of syllabus. Mr. Qureshi, learned counsel had also frankly conceded before the Writ Court that the questions were not out of syllabus.

2.

Accordingly, the writ petition was dismissed along-with
CMPs.

2. Mr. Qureshi learned counsel for the appellant has argued that a concession given was erroneous because question no. 1 (a) was required to be read as part of the alternative question (1) and not with the principal question. To a Court query, Mr. Qureshi stated that after 2008, there have been a number of examinations and appellant might have appeared subsequently and succeeded.

3. Be that at it may, the fact remains that before the Writ Court, the concession was made. We find that the challenge was confined to question 1(a) which dealt with the rule of constructive res judicata. There was no issue with regard to the alternative question which relates to issue of joining of parties as plaintiff or defendant in a suit. With regard to question no. 2(a) Mr. Qureshi suggests that it was again out of syllabus.

4. However, we find that on account of efflux of time, the candidate must have taken examination in subsequent years and might have qualified. The matter has been rendered infructuous and does not call for any interference by Letters Patent Bench, particularly, when learned counsel for the

18

appellant had conceded before the learned Writ Court. The appeal is accordingly dismissed.

Srinagar 9/06/2014 Sd/- Hon'ble Mr. Justice M.M. Kumar (C.J. Justice)
Sd/- Hon'ble Mr. Justice Huzefa Hussain Altar (J. Justice)

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J. Registrar
High Court of Jammu & Kashmir
Srinagar

Dated 20th Day of Jun 2014
AUTHORISED UNDER SECTION
OF EVIDENCE ACT



3/12/14