

(2011) 03 GAU CK 0065

In the Gauhati High Court

Case No : Writ Petition (C) No's. 1179, 1426, 1479 and 1971 of 2010

Dr. Champak Kumar Talukdar and Others

APPELLANT

Vs

The Assam Public Service Commission and Others
 Dr.
Diganta Buragohain and Others Vs The State of Assam, The
Assam Public Service Commission and Central Council of
Homoeopathy
 Dr. Naba Krishna Deb Nath and Others
Vs The Union of India and Others
 Dr. Asad Md. Abu
Sayeed and Dr. Dipak Kumar Kalita Vs The Union of India

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Assam Homeopathic Medicine Act, 1955 — Section 24, 24
Assam Homoeopathy Rules, 1958 — Rule 26, 27, 28, 29, 30
Homoeopathy Central Council Act, 1973 — Section 15(1), 15(2), 20, 33
Right to Information Act, 2005 — Section 2(1), 6

Citation : (2011) 2 GLT 1

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : B.D. Goswami, P.K. Tiwari and D.A. Kayum, for the Appellant; N. Choudhury, C. Baruah, SC, APSC and B. Gogoi, SC, for the Respondent

Final Decision : Allowed

Judgement

B.K. Sharma, J.—The matter relates to appointment of Lecturer in Homoeopathic Medical Colleges in the State of Assam. The Petitioners involved in all the 4 (four) writ petitions are aggrieved by deprivation of participation in the process of selection for the said post on the ground of being not eligible in terms of the prescribed qualification and experience, which is "Post Graduate qualification in Homoeopathy or a degree in Homoeopathy with 4 (four) years of professional experience. The qualification shall be the one included in the 2nd schedule of Homoeopathy Central council Act, 1973 (hereinafter referred to as the Act)". All the writ petitions having raised the common issue which is as to whether the Petitioners are eligible to offer their candidature for the said post in terms of the aforesaid qualification, they have been heard together.

2. The few basic facts as may be necessary to answer the issue raised in each one of the writ petitions, are briefly discussed below:

3. WP (C) 1479/2010:

The Petitioners involved in this writ petition, initially obtained diploma in Homoeopathic Medicine and Surgery (DHMS). Till the year 2002-03, the DHMS was the recognized medical qualification in Homoeopathy, in terms of the Schedule-II to the Homoeopathic Central Council Act, 1973. With effect from 4.2.99, the Central Council of Homoeopathy stopped admission to the diploma course in Homoeopathy by the Homoeopathy (Diploma Course) (Amendment) Regulations, 1998. Thus, the 1997-98 was the last session of diploma course conducted by the Board of Homoeopathic System of Medicine, Assam and the candidate of that session passed out in the year 2002-03.

4. The Petitioners after obtaining the diploma, also obtained degree in Homoeopathic Medicine and Surgery (BHMS), particulars of which are indicated in paragraph 4 of the writ petitions. u/s 33 of the aforesaid Act, the Central Council of Homoeopathy is empowered to make regulations with the previous sanction of the Central Govt. by notification in the official gazette to carry out the purposes of the Act. In exercise of powers u/s 20 and Section 33 of the Act, the Central Council of Homoeopathy made "Homoeopathy (Minimum Standards of Education) Amendment Regulation, 2002, prescribing the qualification for Lecturer in Homoeopathy". The qualification is as quoted above.

5. u/s 24 of the Assam Homoeopathy Medicine Act, 1955, the Assam Homoeopathy Rules, 1958 have been framed. Rules 26 to 36 lay down the method and procedure for registration as Homoeopathic Practitioner. Under Rule 32, every practitioner, whose application for registration has been accepted by the Board is granted a certificate in form "D". Such a practitioner is also granted a licence to practice Homoeopathy in form "E". Under Rule 33, the Board prepares and maintain separate registers of Homoeopathic Practitioners of the State. According to the Petitioners, the provisional experience referred to in the above qualification and experience obtained after a practitioner is granted a licence to practice homoeopathy and he is registered as Homoeopathic Practitioner.

6. Under Assam Homoeopathic Rules, 1958, till the year 1978, 2 (two) types of registration numbers were issued by the Board, which are Class - A and Class - B. For Clause- A registration, medical practitioner should be institutionally qualified as per the qualification included in the 2nd schedule of the Act which is DHMS. Clause - B registration has been stopped since 1978. As per the system and practice in vogue, the DHMS qualification holders are registered as Class - A Homoeopathic practitioner and the BHMS graded qualification when acquired by such practitioners, same is added in their previously issued certificate.

7. The Petitioners are all registered as Class - A homoeopathic practitioners and such registration was after acquiring the DHMS qualification. The registration and

the dates of registration as such are indicated in paragraph 9 of the writ petition. It is in reference to such dates of registration, it is the stand of the Petitioners that they fulfill to the requirement of 4 (four) years of professional experience.

8. The Assam Public Service Commission (for short APSC) vide advertisement dated 17.6.08 invited applications from eligible candidates for appointment to 32 posts of Lecturer in the Homoeopathic Colleges of Assam under Health and Family Welfare Department, Govt. of Assam. The educational qualification prescribed in the advertisement was the one quoted above. In response to the said advertisement, the Petitioners offered their candidatures. However, a controversy arose as to how the prescribed 4 (four) years professional experience is to be counted ; namely, whether such experience is accountable after obtaining DHMS and registration or such experience is to be counted from the date of obtaining the BHMS. The Petitioners have referred to Annexure - P/5 letter dated 30.6.08 addressed to the members of the Executive Committee, Central Council of Homoeopathy, Assam by the Central Council of Homoeopathy, New Delhi enclosing therewith the minutes of the 126th meeting of Executive Committee of HCC, held on 26.3.2008 at New Delhi. Under additional agenda item, the Executive Committee resolved as follows:

ANY OTHER ITEM WITH THE PERMISSION OF THE CHAIR

1. Letter No. 76/08 dated 20.06.2008 from Joint Secretary, the Homoeopathic Medical Association of India (Assam Branch) was considered and the Executive Committee decided that professional experience starts from the date of registration of the practitioner with State Board/Council.

9. Placing reliance on the said resolution of the HCC, the Petitioners have asserted that 4 (four) years of professional experience is to be counted from the date of their registration as practitioners with State Board irrespective of whether such registration was after obtaining the DHMS or BHMS.

10. Pursuant to the aforementioned advertisement and candidatures offered by the candidates, the APSC short listed 53 candidates which excluded the Petitioners for interview. According to the Petitioners, such short listing of candidates is on the basis of recognizing four years of professional experience after the qualification of BHMS to the exclusion of the professional experience gathered after DHMS. In response to the objection raised in this regard, the APSC by its letter dated 5.8.09 sought for a clarification from the Appointing Authority i.e. the Govt. of Assam in the Health and Family Welfare Department. Responding to the said letter, the Govt. of Assam in the Health and Family Welfare (B) Department, intimated the APSC vide its letter dated 16.10.2009 that the professional experience is to be counted from the date of permanent registration with the State Homoeopathic Board after obtaining the BHMS and graded BHMS degree. For a ready reference, the said letter dated 16.10.2009 (Annexure- P/8) is quoted below:

GOVERNMENT OF ASSAM HEALTH & FAMILY WELFARE (B) DEPTT. DISPUR::

GUWAHATI-6

No. HLB.406/2009/7 Dated Dispur, the 16th October, 2009

From: Shri B. Singh, ACS, Joint Secy. To the Govt. of Assam, Health & Family Welfare (B) Deptt. Dispur, Guwahati-6.

To: The Deputy Secretary, Assam Public Service Commission, Jawaharnagar, Khanapara, Guwahati-22.

Sub: An application u/s 6 of RTI Act, 2005.

Ref: Your letter No 36.PSC/DR-3/4/98-99 Dtd. 05.08.2009.

Sir, With reference to your letter on the subject cited above, I am directed to furnish the following information point wise for taking necessary action from your end.

(A) Professional experience means experience gathered during practice after getting permanent registration as per Homoeopathic Central Council Act, 1973 under State Homoeopathic Board.

(B) The qualification required for the post of Lecturer is BHMS Degree of Graded BHMS Degree. So, the professional experience is to be counted from the date of permanent registration in the State Homoeopathic Board after obtaining BHMS and graded BHMS Degree.

Yours faithfully, Deputy Secy. To the Govt. of Assam, Health & Family Welfare (B) Deptt.

11. If the professional experience of four years is counted from the date of acquiring BHMS and not on the basis of DHMS registration, the Petitioners are not eligible to be considered for appointment as Lecturer. According to the Petitioners, the stand of the Govt. of Assam is not sustainable in law. In this connection, it has been stated that there being no distinction between the professional experience gathered after DH Ms and BHMS and that there being no change in registration number, etc. after acquiring BHMS, the said professional experience is to be counted from the date of registration. It has been stated that in the registration certificate of a DHMS practitioner, the newly acquired qualification of BHMS is just noted in the said previously issued registration certificate without any indication as to the effect of the same.

12. The Petitioners having been deprived of consideration for being appointed as Lecturer in Homoeopathic Colleges on the aforesaid analogy of lacking 4 (four) years professional experience, have filed the writ petition challenging their exclusion from the purview of selection.

13. WP (C) 1426/2010

In this writ petition also, same is the grievance as in WP (C) 1479/2010 with the exception that the Petitioners involved in this writ petition could appear in the

interview conducted by the APSC pursuant to the interim order passed on 4.3.2010. It is the further stand of the Petitioners that unlike them the Petitioners involved in WP (C) 1479/2010 having approached the Court belatedly after the selection, irrespective of the common grievance relating to the interpretation of "professional experience", the said Petitioners are not entitled to any relief.

14. WP (C) 1971/2010 and WP (C) 1179/2010

4.1 The Petitioners involved in these two writ petitions are BHMS. Their prayer is to count their professional experience from the date "June-July, 2004" when they applied for permanent registration of obtaining the BHMS degree.

15. The Petitioners were issued with the provisional registration certificate in June, 2003 and thereafter although they had applied for registration under the Board but such registration was not granted, as there was delay in granting necessary recognition to the Institution/ University in which they had undergone the course. The Petitioners were granted permanent registration on 7.10.2006 preceded by provisional registration pursuant to the Annexure-J notification dated 20.7.2006 issued by the Govt. of India, amending 2nd schedule to the Homoeopathy Council Act, 1973 incorporating under the head "Assam" and after the serial No. 3 E, the following Sl. No. and the entries.

1

2

3

4

?3F DibrugarhUniversity, Dibrugarh

Bachelor of Homoeopathic Medicine and Surgery

BHMS

2004 onwards

16. Thus, the degree of BHMS obtained by the Petitioners was recognized retrospectively i.e. 2004 and according to the Petitioners they continued to gather experience on the basis of the provisional certificate of registration issued in June, 2003 and during the pendency of their application for permanent registration, which was eventually issued in October, 2006, which otherwise would have been issued in 2004. Some amount of controversy has been raised as to fulfilling the professional experience of four years by the Petitioners even if their permanent registration is anti-dated to 2004, taking into account the APSC advertisement dated 17.6.2008.

Stand of the Respondents:

17. In the affidavit-in-opposition filed by the Central Council of Homoeopathy, New Delhi i.e. the Respondent No. 4, the stand of the Petitioners regarding professional experience has been supported. Referring to the essential qualification and experience for the post of Lecturer in Homoeopathic subjects, it has been stated that professional experience starts from the date of registration of practitioner with the State Board/Council irrespective of the fact whether the practitioner is registered on the basis of DHMS or BHMS.

18. It has been stated that registration (on regular basis) is issued once only by the State Board /Council and the same is Permanent Registration for all purposes, and therefore, professional experience should be counted from the date of registration of the practitioner with the State Board/Council, irrespective of his diploma or degree qualification. It has further been stated that if a registered practitioner acquires a higher qualification later on, the said qualification is simply added in the previously issued registration certificate and there is no change in the registration number. It has also been stated that the minimum eligibility for registration is any recognized medical qualification in Homoeopathy included in the 2nd and 3rd schedule of the Act of 1973, which includes DHMS qualification.

19. Reacting to the stand of the State Government that the professional experience is to be counted from the date of permanent registration after obtaining BHMS or graded BHMS degree, it has been stated that the same is against the spirit of Section 15(1) and (2) of the Act of 1973, since registration "on regular basis" is issued once only by the State Board/Council, which is permanent registration for all purposes. It has been specifically stated that professional experience starts from the date of registration of the practitioner with the State Board/Council, irrespective of the fact whether the practitioner is registered on the basis of DHMS or BHMS qualification.

20. In the counter affidavit filed by the Govt. of Assam in the Health and family Welfare Department, the stand in the aforementioned communication dated 16.10.2010 (Annexure-P/8) has been reiterated. However, it has also been stated that the final authority being the Central Council, New Delhi, it will abide by the decision of the said Council.

21. In the counter affidavit filed by the private Respondents, it has been stated that the professional experience is required to be counted and can be counted only from the date of acquiring the degree qualification. According to the said Respondents, the expression "with" relating to the professional experience has to be construed to be professional experience of 4 (four) years after obtaining the degree qualification as the said experience is relatable to the educational qualification of BHMS.

Arguments:

22. I have heard Mr. P.K. Tiwari and Mr. B.D. Goswami, learned Counsel representing the Petitioners involved in WP (C) 1479/2010 and WP (C)

1426/2010 respectively. I have also heard Mr. D.A. Kayum, learned Counsel representing the Petitioners in the other two writ petitions i.e. WP (C) 1971/2010 and WP (C) 1179/2010. Mr. B. Gogoi, learned Standing Counsel, Health has also been heard and so also Mr. N. Choudhury, learned Counsel representing the private Respondents.

23 While Mr. P.K. Tiwari, learned Counsel argued that the interpretation sought to be given by the private Respondents in respect of 4 (four) years of professional experience is a wrong interpretation, Mr. N. Choudhury, learned Counsel representing the private Respondents supporting the said interpretation submitted that any other interpretation will be absurd. Mr. B.D. Goswami, learned Counsel appearing for the Petitioners in WP (C) 1426/2010 submitted that the Petitioners involved in WP (C) 1479/2010 having approached the writ court belatedly, they are not entitled to any relief. Mr. Tiwari, learned Counsel representing the Petitioners, upon a reference to the proceedings in the said writ petition submitted that since the writ petition was filed well ahead of the selection, it will be unjust and improper to shut the door of the writ court, on the ground of delay in approach. He submitted that the Petitioners involved in both the writ petitions being on equal footing, it will be unjust to deprive the Petitioners in WP (C) 1479/2010 from participation in the selection process, merely because the Petitioners involved in the other writ petition i.e. WP (C) 1426/2010 could participate in the selection process on the strength of an interim order. He further submitted that the issue is one and the same, which is as to whether four years professional experience has to be counted from the date of registration irrespective of the qualification of DHMS or BHMS.

24. Mr. B.D. Goswami, learned Counsel for the Petitioners involved in WP (C) 1426/2010, in addition to the aforesaid submission, also made submissions in respect of the claim of the Petitioners involved in the other two writ petitions, namely, WP (C) 1971/2010 and WP (C) 1179/2010. According to him, irrespective of retrospective amendment referred to above, even from the date of making the application for registration, the Petitioners having not completed four years so as to conform to the requirement of four years of professional experience, they are not entitled to appear in the selection.

25. Mr. D.A. Kayum, learned Counsel appearing for the Petitioners in WP (C) 1971/2010 and WP (C) 1179/2010 submitted that the Petitioners having been provisionally registered on obtaining the BHMS degree followed by their applications for permanent registration, which was granted to them in October, 2006, they are entitled to count their professional experience from 2004, more so, when the amendment to the Act of 1973 was made retrospectively incorporating Dibrugarh University as one of the authority to confer such degree.

26. Mr. N. Choudhury, learned Counsel representing the private Respondents submitted that when any addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the professional experience of four years being relatable to the educational qualification of BHMS.

The expression "with" will have to be understood in that context and in reference to the said qualification and thus, there is no question of counting the professional experience, which the Petitioners might have gathered before obtaining the degree qualification i.e. BHMS.

27. While Mr. P.K. Tiwari, learned Counsel for the Petitioners have referred to the decisions reported in Anil Kumar Gupta and Others Vs. Municipal Corporation of Delhi and Others, ; Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and A. K. Raghmani Singh and Others Vs. Gopal Chandra Nath and Others, , Mr. B.D. Goswami, learned Counsel representing the other Petitioners has referred to the decision reported in Subhash v. State of Maharashtra and Ors. On the other hand, Mr. N. Choudhury, learned Counsel appearing for the private Respondents has placed reliance on the decisions reported in Sheshrao Jangluji Bagde Vs. Bhaiyya and others, , M.B. Joshi and Others Vs. Satish Kumar Pandey and Others, , N. Suresh Nathan and another Vs. Union of India and others, and Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another,

Appreciation and findings:

28. I have given my anxious consideration to the submissions made by the learned Counsel for the parties and have also given my consideration to the materials on record.

29. In N. Suresh Nathan (supra), a three Judges Bench of the Apex Court allowing the appeal and noticing the practice being followed in the Department that in the case of diploma holder Junior Engineers who obtained the degree during service, the period of 3 (three) years? service in the grade for eligibility for promotion as degree holders commenced from the date of obtaining the degree and the earlier period of service as diploma holders was not counted for this purpose, held that if the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same would not be appropriate. The dispute in the said case was whether a diploma holder Junior Engineer who obtains a degree while in service becomes eligible for appointment as Assistant Engineer by promotion on completion of 3 (three) years service including therein the period of service prior to obtaining the degree or the 3(three) years service as a degree holder for this purpose is to be reckoned from the date he obtains the degree.

30. Upholding the plea of the degree holders that the three years? of experience is to be counted from the date of obtaining the degree, the Apex Court tracing back the past practice being followed in the Department, which was in favour of the degree holders, held that the said past practice being one of the possible constructions which can be made of the rules instead of upsetting the same, it would be appropriate to do so. It was in that context, the question was answered in favour of the degree holders. It will be pertinent to mention here that this case was pertaining to promotion and it was in that context the eligibility criterion of experience was to be determined.

31. In *Sheshrao Jungluji Bagde (Supra)*, the Apex Court dealing with the requirement of practical experience in the particular field which was prescribed as "and" observed that normally the experience, unless the context otherwise demands, it should be taken as experience after acquiring the minimum qualifications required, and therefore, necessarily will have to be posterior to the acquisition of the said qualification.

32. in *M.B. Joshi (Supra)*, the Apex Court dealing with the seniority and length of service for promotion to the post of Assistant Engineer from Sub-Engineer prescribing separate quota for those who acquired Engineering Degree during the course of service and completed 8(eight) years qualifying period of service, held that the entire length of their service as Sub-Engineer, irrespective of the date of attaining the degree qualification has to be taken into account in absence of any specific rule to the contrary, more so, when the practice of determining seniority in that way was already in vogue. In the said case, *N. Suresh Nathan case (supra)* was referred to. In paragraph 11 and 12 of the said Judgment, it has been observed thus:

11. A perusal of the above observations made by this Court clearly show that the Respondents diploma-holders in that case had admitted the practice followed in that department for a long time. It was clearly laid down in the above case that if the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It was clearly said "it is in this perspective that the question raised has to be determined." It was also observed as already quoted above that the Tribunal was not justified in taking the contrary view and unsettling the settled practice in the department. That apart the scheme of the rules in *N. Suresh Nathan's* case was entirely different from the scheme of the Rules before us. The rule in that case prescribed for appointment by promotion of Section Officers/Junior Engineers provided that 50 per cent quota shall be from Section Officers possessing a recognised degree in Civil Engineering or equivalent with three years" service in the grade failing which Section Officers holding Diploma in Civil Engineering with six years" service in the grade. The aforesaid rule itself provided in explicit terms that Section Officers possessing a recognised Degree in Civil Engineering was made equivalent with three years" service in the grade. Thus, in the scheme of such rules the period of three years" service was rightly counted from the date of obtaining such degree. In the cases in hand before us, the scheme of the rules is entirely different.

12. In the cases before us 50 per cent of the posts of Assistant Engineers has to be filled by direct recruitment of persons having degree of graduation in engineering. The remaining 50 per cent of the vacant posts are to be filled by promotion from the lower cadre of sub-Engineer and Draftsman. Out of this 50 percent, 35 per cent quota is fixed for diploma-holders who have completed 12 years of service on the post of sub-Engineer, 5percent quota for Draftsman who have completed 12 years of service and the remaining 10 per cent with which we

are concerned has been kept for such Sub-Engineers who during the continuation of their service obtained a degree of graduation or equivalent in engineering and in that case the period of service is reduced from 12 to 8 years. The Rules in our case do not contemplate any equivalence of any period of service with the qualification of acquiring degree of graduation in engineering as was provided in express terms in N. Suresh Nathan's case making three years service in the grade equivalent to degree in engineering. In our opinion, in the rules applicable in the cases before us clearly provide that the diploma-holders having obtained a degree of engineering while continuing in service as sub-Engineers shall be eligible for promotion to the post of Assistant Engineer in 8 years of service and quota of 10 per cent posts has been earmarked for such category of persons

33. In the aforesaid case, the rules applicable provided that the diploma holders having obtained the degree of Engineering while continuing in service as Sub-Engineer shall be eligible for promotion to the post of Assistant Engineer in 8(eight) years of service. In the instant case also, it was argued that since the diploma holder practitioners while in practice after obtaining the registration, obtained the degree qualification, they are eligible for appointment as Lecturer counting their professional experience from the date of obtaining the first registration, which in fact, is the only registration, provided for irrespective of the qualification of DHMS or BHMS.

34. In Aswini Kumar Ghosh (Supra), has been pressed into service so as to contend that the expression "with" as has been applied in the above quoted qualification and experience is normally to be taken with the immediately preceding term or expression. However, as has been observed in the said decision, this rule has to be discarded if it is against common sense and natural meaning of the words and the expression used.

35. Madan Lal's case (Supra) has been pressed into service so as to counter the contention made by the learned Counsel for the private Respondents that the Petitioners having not had the practical experience of four years even before the DHMS registration, even otherwise also, they are not entitled to say that they are professionally experienced. However, this aspect of the matter need not detain us in view of the stand of the Council that the professional experience is recognized and starts from the date of registration of the practitioners with the State Board irrespective of the fact whether the practitioner is registered on the basis of DHMS or BHMS qualification.

36. In Subhas (supra), the Apex Court dealing with the issue relating to working experience of one year in a reputed Automobile Workshop and as to whether the said experience was to be counted prior or subsequent to acquisition of basic qualification, held that as per the provisions of the rules applicable to the case, the said experience of one year could be prior to or after the acquisition of the basic qualification. In the rule, there was no distinction between acquisition of such experience prior to or after the acquisition of the basic qualification. However, the Tribunal on the basis of a circular in the form of Administrative

Instruction, laid down otherwise. It was held that when the rule itself did not make any distinction, the Tribunal could not have taken a different view on the basis of the said administrative instruction.

37. In Anil Kumar Gupta (Supra), the Apex Court consisting of a three Judges Bench, dealing with the question as to how two years of professional experience is to be counted in the context of essential qualification as (i) degree and (ii) two years' professional experience and noticing the said provision, observed that the professional experience of two years? did not in any manner counted with the degree qualification. Dealing with the N. Suresh Nathan's case (supra) it was observed that the said decision was on the basis of the practice obtaining in the Department from a long number of years. The Apex Court also noticed the distinction made out in the said case in M.B. Joshi's case (supra). Dealing with its earlier decisions, it was held that the two years' professional experience need not entirely be experience gained after obtaining the degree.

38. In A.K. Raghumani Singh (Supra), the Apex Court was concerned with the Manipur PWD/Irrigation and Flood Control/Public Health Engineering (Superintending Engineer (Civil)/ Superintending Surveyor of Works) Recruitment Rules, 1977, prescribing the qualification for a particular promotion. It was laid down that for promotion the required qualification would be degree in Civil/mechanical Engineering or its equivalent from a recognized Institution with six years regular service in the grade. In that case the writ Petitioner had put in more than six years regular service in the grade and little over two years after he had obtained the prescribed qualification.

39. The controversy was on the interpretation of the word "with" used in the eligibility criteria. It was held that even on a point of principle it would be unreasonable to distinguish between the nature of the regular service required, as if the service in the grade subsequent to the obtaining of the necessary educational qualification were qualitatively different from the service in the grade prior thereto. In fact, no such case had been made out. Referring to the definition of the word "with" in the New Shorter Oxford Dictionary (1993) defining diversely depending on the context in which it is used, it was noticed that when the same is used to connect two nouns, it means - "Accompanied by ; having as an addition or accompaniment", frequently used to connect two nouns in the sense "and" - "as well".

40. In the aforesaid decision, the Apex Court noticed all its earlier decisions on the issue including the decisions in Suresh Nathan's case (supra) and M.B. Joshi's case (supra) and Anil Kumar Gupta's case (supra) and it was observed that Suresh Nathan (supra) was an exception to the accepted principle of interpretation of the rule on the plain language.

41. In the instant case, the qualification and experience prescribed has been noted above. The requirement is post-graduate qualification in Homoeopathy or a degree in Homoeopathy with 4 (four) years professional experience. It is the

expression a degree in Homoeopathy with 4(four) years professional experience centering around which the whole controversy has arisen. While according to the Petitioners, such professional experience of 4 (four) years starts from getting the name registered as a practitioner after obtaining the DHMS, it is the stand of the private Respondents that the same would only mean the experience after obtaining DHMS.

42. The plea of the Central Council of Homoeopathy, New Delhi, has been noted above. The said Council has been constituted by the Govt. of India under the provisions of Homoeopathy Central Council Act, 1973, for maintaining the central register of Homoeopathy and the matters connected therewith. The Central Council is vested with the powers u/s 70 of the CCH Act, 1973 for prescribing minimum standard of education in Homoeopathy, required for granting recognized medical qualification by University, Board or Medical Institution in India. Thus, it is the central body to regulate the minimum standards of education in Homoeopathy. In its affidavit, it has been maintained that the professional experience starts from the date of registration of practitioner with the State Board/Council irrespective of whether the practitioner is registered on the basis of DHMS/BHMS qualification. Such registration is issued once only and the same is the permanent registration for all practical purposes. Therefore, professional experience should be counted from the date of registration of practitioner, irrespective of his diploma or degree qualification.

43. As has been noted above, till the year 2002-03, the DHMS was the recognized medical qualification in Homoeopathy in terms of Schedule-II of the Act of 1973. It was only with effect from 4.2.99, the Central Council of Homoeopathy stopped admission to diploma course in Homoeopathy by the Homoeopathy (Diploma Course) (Amendment) Regulation, 1998. The 1997-98 was the last session of diploma course conducted by the Board of Homoeopathic System of Medicine, Assam and the candidates of that issue passed out in the year 2002-03. Merely because BHMS was introduced after the last batch of DHMS, who passed out in 2002-03, on which basis they also got registration, it cannot be said that their earlier experience on the basis of qualification of DHMS or graded DHMS is to be ignored altogether.

44. There is no any provision so as to confer a separate registration to DHMS qualification holders. Registration was granted to the Petitioners on the basis of their qualification of DHMS and such registration is treated as permanent registration for all purposes, whatsoever. If a registered practitioner acquires a higher qualification later on, the said qualification is simply added in the previously issued registration certificate and there is also no change in the registration number. The minimum eligibility for registration in any recognized medical qualification in Homoeopathy is included in the 2nd schedule/3rd schedule of the Act of 1973, which included DHMS qualification also. Section 2(1) (g) of the said Act recognizes medical qualification which means any of the medical qualification in Homoeopathy included in the 2nd/3rd schedule.

45. As in the case of A.K. Raghmani Singh (Supra), even at a point of principle, it would be unreasonable to distinguish between professional experience gained after DHMS or BHMS, inasmuch as, as in the said case in the instant case also, no such distinction has been made out. It is not the case of the private Respondents that the professional experience gathered after registration on the basis of DHMS is qualitatively different from that of the professional experience acquired by the DHMS practitioner. Had it been the intention of the legislature to qualify 4 (four) years professional experience after BHMS, it would have been spelt out and thus, this Court would not be justified in reading the interpretation sought to be given by the private Respondents and/or the professional experience of 4 (four) years into the conjunctive word and imply the word "after BHMS" after the word "with 4 (four) years of professional experience."

46. The Petitioners obtained their registration on the basis of their qualification of DHMS. Thereafter, they also obtained the degree qualification of BHMS. The prescribed qualification is post-graduate qualification in Homoeopathy or a degree in Homoeopathy with 4 (four) years of professional experience. This expression "with" conforms with the definition referred to in A.K. Raghmani Singh (Supra), which is "Accompanied by ; having as an addition or accompaniment", frequently used to connect two nouns in the sense "and" - "as well". It will be inappropriate for this Court to interpret the same otherwise than the clear meaning it conveys. Same will also have to be considered in the background of the fact-situation and in the context in which the same has been applied.

47. As noted above, till the year 2002-03, the Board had imparted diploma course of Homoeopathic Medicine and Surgery and it was only thereafter, BHMS course was introduced with effect from 4.2.99. The last batch of DHMS passed out in the year 2002-03. Nowhere in the relevant provisions, it having been prescribed that the 4 (four) years of professional experience must be after the qualification of BHMS. It will be inappropriate to read the same into the said experience as has been contended on behalf of the private Respondents.

Conclusions

48. In view of my above conclusion, the Petitioners must be held to be entitled to get consideration for selection and appointment as Lecturer in Homoeopathic Medical Colleges in Assam, subject however, to the condition that they fulfill the requirement of 4 (four) years of professional experience from the date of registration, which however, will be from the date of their initial registration.

49. This now leads us to other two writ petitions, namely, WP (C) 1971/2010 and WP (C) 1179/2010, where the issue involved is as to whether the Petitioners are entitled to count professional experience of four years from the date of making the application for registration. As noted above, they were conferred with professional registration and their applications could not be entertained in absence of the required amendment to the schedule to the HCC Act, 1973. The

amendment was brought in vide notification dated 20.7.2006 with retrospective effect. Prior to that the Petitioners were provided with provisional registration followed by their applications for formal registration. In view of the retrospective amendment they have been provided with the formal registration in October, 2006. However, in view of the retrospective amendment, their such registration would be relied back to 2004 and thus it is on that basis, their experience will have to be counted. Their cases are required to be considered as if they were registered in 2003/2004. However, while considering their candidatures, the authority, as in the case of first two writ petitions, will have to examine as to whether they conform to the requirement of 4 (four) years of professional experience from the said deemed date of registration.

50. The writ petitions having been answered in the above manner, the question which falls for consideration is as to whether the selection which has already been conducted by the APSC will have to be redone again. After short-listing of the candidates excluding the Petitioners involved in this proceeding, the APSC has already conducted a selection. Now, in view of the findings recorded in this proceeding, the APSC will have to carry out a fresh exercise towards consideration of the case of the Petitioners consistently with the observations made above. As to whether the APSC does it in addition to the earlier selection conducted by means of a separate selection, confining the Petitioners alone and thereafter declare the results on the basis of the combined selection or the entire exercise is carried out afresh by abandoning the earlier exercise is a matter to be decided by the Appointing Authority as well as the APSC.

51. Having regard to the facts and circumstances involved and considering the fact that the different parameters and yardsticks might come into the joint while considering the case of the Petitioners afresh, I am of the considered opinion that it will be appropriate for the authorities to cancel the earlier selection and conduct a fresh selection confining the same to all eligible candidates, which naturally will include the Petitioners as well, subject to verification of their eligibility criterion of 4 (four) years of professional experience from the date of registration as practitioner.

52. Subject to the aforesaid directions and observations, the writ petitions are allowed. There shall be no order as to costs.