

(2011) 09 GAU CK 0085
In the Gauhati High Court
Case No : MC No. 1726 of 2011

Prasanta Kumar Baruah & Anr.

APPELLANT

Vs

Assam Public Service Commission & Ors.

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Homeopathy (Minimum Standards of Education) Regulations, 1983 — Rule 6, 6

Citation : (2011) 5 GLT 412

Hon'ble Judges : A.K.Goel, J and Amitava Roy, J

Bench : Division Bench

Advocate : Advocate appeared for the Appellants: Mr. M. Bhuyan., Advocate appeared for the Respondent: Standing Counsel, APSC, Advocates appearing for Parties

Judgement

A.K. Goel, J.—Register this appeal.

2. This appeal has been preferred against the judgment of learned Single Judge quashing the selection process for appointment of Lecturers in Homeopathy Colleges in Assam and directing that fresh selection be conducted for such appointment.

3. Challenge in the writ petition was based on claim of eligibility of candidates for the post of Lecturer in Homeopathy who had the requisite qualification of Degree in Homeopathy but instead of four year of professional experience after the degree, had such experience after their enrolment with the State Board of Homeopathy Council. This was opposed. According to the State, under the Rules, experience of four years was required after the qualification. On interpretation of the Homeopathy (Minimum Standards of Education) Regulations, 1983 framed under the Homeopathy Central Council, Act 1973, learned Single Judge upheld the plea of the writ petitioners.

4. We have heard Mr. M. Bhuyan, learned counsel for the appellants, learned State counsel and learned Standing Counsel, APSC for the respondents.

5. It has been submitted that interpretation of Rule 6, in the impugned judgment, is not justified. Rule 6 provides for "Degree in Homeopathy with four years of professional experience" which means the professional experience should be after the Degree. The Rule is reproduced below:

"6. Lecturer in Homeopathic Subjects A. Essential Qualification

Post Graduate qualification in Homeopathy or a Degree in Homeopathy with four years of professional experience. The qualification shall be the one included in Second Schedule of Homeopathy Central Council Act, 1973.

Age: Not more than 35 years as on the last date of receipt of application for the post. Age is relaxable by 5 years maximum for exceptionally qualified persons with prior approval of the University concerned."

6. The Hon'ble Supreme Court in *Sheshrao Jangluji Bagde Vs. Bhaiyya S/o Govindra Karali & Ors.*: 1991 Supp (1) SCC 367 while interpreting the Maharashtra Ground Water Service, Class (Recruitment) Rules, 1976, observed.:

"Normally when we talk of an 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 qualification."

7. Learned Single Judge distinguished the above judgment on the ground that the expression "and" was used in the said Rule which was not used in the present Rule. Learned Single Judge concluded:

"45. As in the case of *A. K. Raghumani 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 then registration on the basis of their qualification of DHMS. Thereafter, they also obtained the degree qualification of BHMS. The prescribed qualification is postgraduate qualification in Homeopathy or a degree in Homeopathy with 4(four) years of professional experience. This expression "with" conforms with the definition referred to in *A.K. Raghumani 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 factsituation and in the context in which the same has been applied.1"

8. We are of the view that the qualification of the experience prescribed under Rule6 has to be read as postdegree experience and not predegree experience. In our view, the language of the Rule as interpreted by the Hon"ble Supreme Court and the Rule with which we are concerned is almost identical.

9. Accordingly, we respectfully disagree with the view taken by the learned Single Judge.

10. This appeal will stand allowed with declaration that only those candidates who have four years of professional experience after Degree in Homeopathy will be considered as eligible for appointment as Lecturer in Homeopathy Colleges. This order, however, will be confined only to the selections to be held hereafter and the selections or appointments already made will not be affected.

28. In the case reported in (1996) 2 SCC 12 : Additional District Magistrate Vs. Prabhakar Chaturvedi & Anr. the Apex Court emphasizing on the probative value involved in a departmental enquiry held that the delinquent involved in the said case having voluntarily admitted the fact of nondeposit of the amount of Rs. 21,000/, the charge against him already stood proved. In the case reported in AIR 2005 SC 2090 : Canara Bank Vs. V. K. Awasthy, the Apex Court dealing with the proportionality of punishment imposed on a delinquent bank employee, held that the action of the delinquent being prejudicial to the bank's interest, dismissal from service was proper.

29. The basic fact, which cannot escape the notice of any prudent man are that the vehicle in question was not under any insurance coverage when the same was allegedly inspected at 10:20 A.M. of 10.10.1996. However, according to the petitioner, no insurance coverage could be provided in absence of the premium amount. Later on, a representative of the insurer allegedly came to the office at 3:45 P.M. and deposited the same and the petitioner without any nurther inspection of the vehicle accepted the same and issued the cover note No. 00964 after striking out the earlier cover note bearing No. 00963. Certain amount of overwriting in a document is understandable, but when the enquiry report itself reveals that there was numerous overwritings on vital pages of the cover note, it could not have simply brushed the same by saying that the earlier cover note had to be cancelled because of overwriting etc. The matter does not end here. The premium amount was deposited only on 14.10.1996 and too with certain mistakes, about which the petitioner himself has stated in the writ petition. The money receipt was also generated in the computer and issued on 14.10.1996. The policy records were general in the computer with correction of certain errors by using pen. The said error was in respect of the effective time.

30. All the above aspects of the matter will go the show the manner and method in which the insurance coverage was made through the process of manipulation. Unlike a criminal case, a charge in a departmental proceeding can be sustained

with the preponderance and probability, which are evident on the basis of the records, which in the instant case stare on the face of it.

31. For all the aforesaid reasons, I do not find any infirmity in the impugned order and consequently no relief can be granted to the petitioner.

32. The writ petition is dismissed, without, however, any order as to costs.