

PETITIONER:
COUNCIL OF HOMEOPATHIC SYSTEM OF MEDICINE, PUNJAB AND ORS.

Vs.

RESPONDENT:
SUCHINTAN AND ORS.

DATE OF JUDGMENT 21/04/1993

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
VENKATACHALLIAH, M.N. (CJ)
THOMMEN, T.K. (J)

CITATION:
1994 AIR 1761 1993 SCR (3) 306
1993 SCC Supl. (3) 99 JT 1993 (3) 727
1993 SCALE (2) 632

ACT:

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Homeopathy Central Council Act, 1973:
Section 20- Homeopathy (Diploma Course) DHMS Regulations, 1983-Regulations 3,8,11-Construction of-Literary interpretation sufficient-Eligibility for admission to First, Second and Third DHMS examination-Conditions Pattern of DHMS examinations-Doctrine of relation back 'not applicable.

Homeopathy (Diploma Course) DHMS Regulations, 1983-Regulations 810-Whether a candidate to be permitted to take the third year DHMS examination, if he had not completed one year course of study between passing the first D.H.M.S. examination and appearing in the second one-Supreme Court's direction.

Education-Diploma in Homeopathic Medicine and Surgery- Third year examination of DHMS-Whether a candidate to be permitted to take the third year DHMS examination, if he had not completed one year course of study, between passing the first DHMS examination and appearing in the second one-Supreme Court's direction.

Homeopathy, (Diploma Course) DHMS Regulations, 1983-Regulations 810-Eligibility for admission to First, Second and Third DHMS examinations-Conditions 'Supplementary-Meaning of.

Interpretation of Statutes-Homeopathy (Diploma Course) DHMS Regulations, 1983-Regulation-8-10-Language Plain-Harmonious interpretation does not arise- "Supplementary "-Meaning of.

Words and Phrases-"Supplementary"--Meaning of.

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C.A.No. 2107/93

HEADNOTE:

The respondents appeared in the first year D.H.MS (Diploma in Homeopathic Medicine and Surgery) annual examination in June, 1988. They had to re-appear as they did not get the required percentage of pass marks in two or more subjects. They were permitted to join the second year class after June, 1988. Under the interim orders of the High Court, they appeared in the second year annual examination.

Simultaneously, the respondents appeared in the first year D.H.M.S. examination and cleared all the papers. After re-appearing in one or more subjects in the second year Supplementary examination in June, 1990, they were declared passed in the 2nd year D.H.M.S. examination.

The respondents joined the third year D.H.M.S. course and completed the course of study. When their examination forms were forwarded to the appellant-Council, they declined to permit the respondents to appear in the 3rd year D.H.M.S. annual examination, because they did not complete one year course of study between passing the first D.H.M.S. examination and appearing in the second year course.

The respondents preferred a writ petition before the High Court to direct the appellants to permit them to appear in the third year DHMS examination, commencing from 3.9.1991.

Following the view taken in the decision of the Court in C.W.P. No 2307/ 88. Gurinder pal Singh v.-Punjabi University & Ors., which was followed in Harinder Kaur Chandok (Minor) v- The Punjab School, Education Board through its Secretary, (1987) 2 PLA 638, the High court allowed the writ petition of the respondents.

Against that order of the High Court, the appeal (C.A.No. 2107/93) was filed by special leave.

The appellants submitted that the High Court was wrong in its construction on regulation 11 of the Homeopathy (Diploma Course) DHMS Regulations, 1983; that if a candidate passed on supplementary examination, he would have to wait till the next academic session; that none of the Regulations indicated carry forward scheme of the subjects, but on the contrary, it was a case of detention every year.

The respondents urged that the interpretation placed by the High Courts on Regulations 8 to 10 was correct; that four chances afforded to the

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candidate could be rendered nugatory, if the interpretation as stated by the appellants was accepted; that the Regulations did not say that after First D.H.M.S. examination, a student could not study for Second D.H.M.S. course and sit for examination provisionally; that the declaration of result for the Second D.H.M.S. course took place only after a student cleared the First D.H.M.S. examination; that if the Regulations were literally interpreted, that would lead to absurdity and it would run counter to the object of providing a supplementary examination.

As the other appeals (C.A.Nos. 2108-10/93) contained identical issue, all the appeals were heard and decided together.

Allowing, the appeals, this Court,

HELD:1.1. The Regulations 8-10 of the Homeopathy (Diploma Course) DHMS Regulations, 1983 are plain enough and are susceptible only to literary interpretation.

Maxwell: Interpretation of Statutes, 12th Edition, Page 29, referred to.

1.2. For admission to the First D.H.M.S. examination:

i) a student must have regularly attended the courses of instruction, theoretical and practical;

ii) for a period of not less than 12 months;

iii) to the satisfaction of the head of the College. (317-B)

1.3. Eligibility for admission to Second D.H.M.S. examination is based on two conditions:

i) A student has passed his First D.H.M.S. examination at

the end of one year previously. This means one year must elapse between the passing of the First year examination and taking of Second Year Examination.

ii) Subsequent to the passing the First year-
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- a) he must have regularly attended the courses both theoretical and practical;
- b) for a period of at least one year;
- c) to the satisfaction of the head of the College. (317-F-G)

Thus, unless and until, these two conditions are satisfied, a student is ineligible for admission to the Second D.H.M.S. examination. (317-H, 318-A)

1.4 The conditions for eligibility for admission to Third D.H.M.S examination are:

i) After passing the Second D.H.M.S examination, one and a half years must have elapsed before taking the Third D.H.M.S. examination.

ii) Subsequent to the passing of the Second D.H.M.S. examination:

- a) he must have regularly attended the courses both theoretical and practical;
- b) for a period of 11/2 years;
- c) to the satisfaction of the college. (318-F-G)

1.5. Mandatory requirements of Regulation 9 are;

i) The lapse of one year period between the passing of First D.H.M.S. examination and taking the Second D.H.M.S. examination.

ii) Subsequent to the passing of the First D.H.M.S. examination to undergo the course of study for one year. (321-G)

1.6. Therefore, if a candidate passes in the supplementary examination, the requirement of one year cannot be enforced. Worse still is a case of a student who passes only at the next annual examination. Could he be allowed to take the Second D.H.M.S. examination without even completing the First? Should he by chance pass the Second D.H.M.S. and not complete the First, since he has still one more chance to take this examination, what is to happen?

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The situation is absurd. The same principle should apply to Regulation 10 where the lapse is one and half years. (321-H, 322-A)

1.7. The pattern of the examination is: 12 months for First D.H.M.S. examination, 12 months for Second D.H.M.S. examination and 18 months for Third D.H.M.S examination. These put together with six months of compulsory internship, make up the four years prescribed for the Course-in Regulation 3. (318-G)

1.8. When a candidate completes the subjects only in the supplementary examination, then alone, he passes the examination. It is that pass which is declared. If the "doctrine of relation back" is applied, it would have the effect of deeming to have passed in the annual examination, held at the end of 12 months, which on the face of it, is untrue. (321 -A)

1.9. Whatever it is, a candidate has to complete all the subjects within four chances. Should he fail to do so, he will have to undergo the course in all subjects for one year unless of course, he gets the exemption as stated in proviso to Clause (vii). In Regulation 11 there is no 'system of carry forward'. On the contrary, it is detention every year. Harmonious construction violates the mandatory requirements of Regulation 9. (321-E-F)

1.10. If a student were to sit idle at home after passing the

supplementary examination that is his own making. To avoid such a situation, the Regulation cannot be construed causing violence to the language. (323-H, 324-A)

1.11. The candidates who, as on the day of Judgment of these appeals, have attended all the courses and have passed all the examinations might make an appropriate representation to the Council of Homeopathic System of Medicines (The appellant) to consider their cases. The representation shall be filed within a period of four weeks. The Council of Homeopathic System of Medicines (the appellant) will take appropriate decision. (327-C)

2. The adjective 'supplementary' means an examination to make up the deficiencies. Thus, it stands to reason only when deficiencies are made up, the whole becomes complete. (322-D)

Oxford Dictionary, Seventh Edition, page 1072, referred to. (322-B)

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: CIVIL APPEAL NOS. 2107-1 1993. From the Judgment and Order dated 9.3.1992 of the Punjab and Haryana High Court in Civil Writ Petition Nos. 13587, 13588, 13926 of 1991 and L.P.A. No. II 8 of 1992.

Dipankar Prasad Gupta, Solicitor General, N.N. Goswami and H.K. Puri for the Appellants.

Ranjit Kumar, Deepak Sibal, Ms. Binu Tamta and Tarun Aggarwal for the Respondents.

The Judgment of the Court was delivered by MOHAN, J. Leave granted.

All these appeals raise the identical issue as to the interpretation of the Regulations relating to Diploma in Homeopathic Course. Hence, they are dealt with under one and the same judgment.

We will refer to the facts of C.W.P. No. 13587/91 which will be enough for appreciating the issues involved.

The respondents joined the Homeopathic Medical College, Chandigarh in the year 1987 to secure a diploma in Homeopathic Medicine and Surgery (hereinafter referred to as 'DHMS'). The said course is of a duration of four years. It is divided into 3 1/2 years of academic study and six months of internship. The course of study, their duration and the scheme of examination are regulated by the Homeopathy (Diploma Course) DHMS Regulations, 1983 (hereinafter called the 'Regulations'). These Regulations have been framed by the Central Council of Homeopathy under Section 20 of the Homeopathy Central Council Act, 1973. Part VI of the Regulations deals with examination. Regulations 8 to 10 occurring in part VI are relevant for our purpose., Regulation 8 talks of first First D.H.M.S. examination. That examination has to be held at the end of 12 months of the Course. Regulation 9 deals with second D.H.M.S. examination to be held at the end of second year. Regulation 10 deals with 3rd D.H.M.S examination, 1 1/2 years subsequent to the passing of the second D.H.M.S. examination.

The respondents appeared in the first year D.H.M.S. annual examination in

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June, 1988. Since, they did not get required percentage of pass marks two or more subjects, they had to re-appear. They were permitted to join the 2nd year class after June, 1988. Under the interim orders of the High Court made in

C.W.P.No 437510/1990, they appeared in the examination. The respondents simultaneously took their third chance for the first year D.H.M.S. examination and finally, cleared all the papers. They also got re-appeared in one or more subjects in the 2nd year D.H.M.S. examination and accordingly, took supplementary examination in June, 1990. They were declared 'pass' in that examination.

The respondents joined the third year D.H.M.S. examination and completed the course of study. In view of that, the Principal of the college in August, 1991 recommended and forwarded their examination forms for the third year Examination to the appellant namely, the Council of Homeopathic System of Medicines, Punjab. The appellant declined to permit the respondents to take the examination since they had not completed one year course of study between passing the first D.H.M.S. examination and appearing in the second one; hence, they were not eligible to appear in the third year examination. In other words, the examination has not been passed in accordance with the scheme prescribed under Regulations 8 & 9. It was under these circumstances, the writ petitions came to be preferred before the High Court of Punjab & Haryana in C.W.P. No. 13587/91 praying for a direction to permit them to take third year D.H.M.S. examination commencing from 3.9. 1991.

The writ petition came up before a Division Bench. By judgment dated 9.3.1992 allowing that writ petition on the reasoning that if the minimum course of study as provided by Regulations 9 and 10 if held to be mandatory, such a provision would be liable to be struck down in view of the decision of the Court in C.W.P. No. 2307/88, Gurinder Pal Singh v. Punjabi University & Ors. Which in turn has followed Single Judge decision reported in Harinder Kaur Chandok (Minor) v. The Punjab School Education Board through its Secretary (1987) 2 PLA 638. It is the correctness of this judgment, which has been questioned in all these appeals.

The learned Solicitor General took us through Regulations at length. Part II deals with course of study. Regulation 3 states that a Diploma Course in Homeopathy shall be spread over a period of four years. Those four years include six months compulsory internship after the passing of the final year diploma examination.

When we look at Regulations 8 to 10, three concepts emerge from them:

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- i) Subjects;
- ii) Time;
- ii) Marks.

The duration of the examination is, first year: 12 months, Second Year: 12 months; and third year: 18 months. Regulation 8 states that a candidate may be admitted to the first D.H.M.S. examination. Similarly, Regulation 9 also states that a candidate shall be admitted to the second D.H.M.S. examination. Identical language is used under Regulation 10 for Third D.H.M.S. examination. The submission of the learned Solicitor General is, admission to these examinations is entirely different from 'admission to a course'. With reference to admission to each of the examination, First, Second and Third year, the respective Regulations 8, 9 & 10 prescribe the eligibility. Unless and until, that eligibility is possessed, admission to an examination is impossible.

The High Court has taken a view that since the duration of the Course is four years, this Regulation must be so construed as to fit in within those four years. This is

wrong.

Regulation 11 talks of re-admission to an examination. That Regulation has nothing to do with the eligibility prescribed under Regulation 8 to 10. In other words, Regulation 11 cannot control the operation of these Regulations. Regulation 11 (iv) talks of supplementary examination. In that supplementary examination, it is open to a candidate to pass in a subject or subjects in which he has failed. When he so passes, Clause (v) of that Regulation states that he shall be declared to have passed at the examination as a whole. Even thereafter, if he fails in the subject or subjects at the supplementary examination and he has to appear in the examination in the failed subject or subjects at the next annual examination, Clause (vi) prescribes:

i) Production of a certification;

ii) In addition, if he had put a necessary attendance, a further course of study in the subject or subjects in which he had failed, the minimum number of chances as per this clause are only four.

If he fails to complete the subjects within these four chances, he will have to prosecute a further course of study in all the subjects of all parts for one year, in other words, he has to start the course afresh and appear for examination in all the

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subjects. Thus, it will be clear that all these Regulations talk of re-admission to an examination in Order to enable the failed Candidate to undergo supplementary and subsequent examinations. On completion of subject in any one of those examinations within the four chances, he is declared to have passed the whole examination. On this count, it is incorrect to hold that passing in the supplementary examination relates back to the original examination. A careful reading of Regulation 9 requires the satisfaction of the following conditions for appearing in the Second Year D.H.M.S. examination:

i) The candidate had passed the First D.H.M.S. examination at the end of one year previously. This means, there must be a gap of one year between the passing of First year examination and appearing in the Second year examination;

ii) Subsequent to the passing of the examination, must have attended the courses of instruction for a period of at least one year. Therefore, a candidate who fails in the first year examination in a subject or subjects, if he passes any supplementary examination cannot take the Second year examination at the next academic year. This is because, one year duration had not elapsed between the passing of First year examination in the supplementary examination and taking the Second year examination. Worse is a case where a candidate passes the First Year examination at the third or fourth attempt. The High Court has gone wrong in its construction on Regulation 11 that if a candidate passes a supplementary examination, the insistence of one year would require the candidate to wait for one more year. Therefore, he would inevitably have to study for the next year course from the next academic session. No doubt, the candidate who passes the supplementary examination will have to sit

idle till the next academic session. That is his own making. On that score, the attempted harmonious construction by the High Court cannot be supported.

The learned Solicitor General finally submits that none of the Regulations indicate 'a carry forward scheme' of the subjects. On the contrary, it is a case of detention every year. Accordingly, he submits that the Civil Appeals deserve to be allowed.

Mr. Ranjit Kumar, learned counsel in opposition to this, would urge that the interpretation placed by the High Court on Regulations 8 to 10 is correct. Otherwise, no useful purpose would be served by conducting a supplementary examination. Equally, four chances afforded to the candidate could be rendered nugatory if the interpretation as stated by the learned solicitor General is accepted.

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Regulation 11 has to be read along with Regulations 8 to 10. It is not correct to argue that Regulation 11 has nothing to do with admission to an examination. As a matter of fact, declaration of result of supplementary examination of First D.H.M.S. examination was made on 31.10.1989. The next annual examination was held in January, 1990 within 2 1/2 months. The respondents passed the course of First and Second D.H.M.S. examinations. The result of Second Year D.H.M.S. supplementary examination was declared in January, 1991. In view of such an inordinate delay in the conduct of examinations, the appellant cannot contend that one year period must elapse between First and Second D.H.M.S. examinations and that the Regulations should have been strictly obeyed. The Regulations do not say that after First D.H.M.S. examination, a student cannot study for Second D.H.M.S. course and sit for examination provisionally. The declaration of result for the Second D.H.M.S. course takes place only after he had cleared the First D.H.M.S. examination.

As rightly held by the High Court, the word 'supplementary' denotes supplementing to or in continuation of the annual examination. Where-, therefore, provisional admission is given for the Second Year D.H.M.S. course, the failure to complete the First D.H.M.S. examination should not be put against the respondent-;. If the Regulations are so literally interpreted, that will lead to absurdity. It will run counter to the object of providing a supplementary examination. This interpretation is holding the field for a long time. This was the reason why in *Jaininder Mohan and Others v. The Council of Homeopathic System of Medicine, Punjab* (1992) 1 I.L.R. Punjab 159, the court took a view that passing in the supplementary examination will relate back to the date of annual examination. Otherwise, as rightly pointed out by the High Court, anomalous results would follow.

In so far as the respondents have completed the examination, equities must weigh in their favour as laid down by this Court in *A. Sudha v. University, of Mysore* and another AIR 1987 SC 2305, *Chandigarh Administration & Ors. v. Manpreet Singh & Ors.* [1992] 1 SCC 380, *Shirish Govind Prabhudesai v. State of Maharashtra* [1993] 1 SCC 211. The learned counsel also relies on Orissa Homeopathic Regulations and contends that carry forward is permitted in similar Homeopathic Regulations.

In order to appreciate the respective contentions, we have to analyse the relevant Regulations relating to the Diploma Course in Homeopathy as contained Homeopathy (Diploma course) DHMS Regulations, 1983. These Regulations are

statutory in character in so far as they have come to be framed in exercise of powers conferred under Clauses (i) , (j) & (k) of Section 33 and sub-section (1) of Section 316

20 of Homeopathy Central Council Act. Under Section 20, the Central Council may prescribe the minimum standards of education in Homeopathy required for granting recognised medical qualifications by Universities, Boards and Medical Institutions in India. Section 33 speaks of powers to make Regulations. The relevant clauses are (i), (j) & (k). They are to the following effect.

- "(i) The courses and period of study of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in any University, Board or Medical institution for grant of recognised medical qualification;
- (j) the standards of staff, equipment, accommodation, training and other facilities for education in Homeopathy;
- (k) The conduct of professional examinations, qualifications of examiners and the conditions of admissions to such examinations;"

Therefore, the Central council constituted under Section 3 of the Act has power to make Regulations under Section 33 (k) regarding the conditions of admission to the examination. The very object of this Act is to prescribe minimum standards for admission, duration of course of training, details of curriculum and syllabus of study and the title of degree or diploma. Since they vary from State to State and even from Institute to Institute within a same State, it had become necessary to constitute a Central Council.

The Advisory Committee prescribed a course of four years. Accordingly, in Regulation 3(i), it is provided that a Diploma Course in Homeopathy shall comprise a course of study, spread over a period of four years. This includes the compulsory internship of six months duration after passing the final Diploma examination. The Regulations contain eligibility to admission, the curriculum, the syllabus etc. in the various parts.

Part VI deals with examination. Regulation 8 talks of First D.H.M.S. examination. It is stated in clause (i) :

"A candidate may be admitted to the First D.H.M.S. examination provided that he has regularly attended the following course of instruction, theoretical and practical for a period of not less than 12 months at a Homeopathy College to the satisfaction of the head of the college".

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From the above, it is clear for admission to the First D.H.M.S. examination:

- i) a student must have regularly attended the courses of instruction, theoretical and practical;
- ii) for a period of not less than 12 months;
- iii) to the satisfaction of the head of the College.

As regards the Second D.H.M.S. examination, Regulation 9 takes care. That states in Clause (i) :

"No candidate shall be admitted to the Second D.H.M.S. examination unless:

- a) he has passed First D.H.M.S. examination at the end of one year previously, and
- b) he has regularly attended the following courses of instruction both theoretical and practical in the subjects of examination for a period of at least one year subsequent to his passing First D.H.M.S. examination from a recognised

Homeopathic College to the satisfaction of the head of the college."

Here again, eligibility for admission to Second D.H.M.S. examination is based on two conditions:

i) A student has passed his First D.H.M.S. examination at the end of one year previously-. This means one year must elapse between the passing of the First year examination and taking of Second Year Examination.

ii) Subsequent to the passing the First year

a) he must have regularly attended the courses both theoretical and practical;

(b) for a period of at least one year;

(c) to the satisfaction of the head of the College. Thus, unless and until, these two conditions are satisfied, a student is

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ineligible for admission to the Second D.H.M.S. examination. Clause (iii) states that the Second D.H.M.S. examination shall be held at the end of two years of D.H.M.S. course.

The Third D.H.M.S. course is provided for under Regulation 10. That reads as follows:

"No candidate shall be admitted to the Third D.H.M.S. examination unless:-

(a) he has passed the second D.H.M.S. examination at the end of 1 1/2 years previously, and

(b) has regularly attended the following courses of instructions both theoretical and practical in subjects of examination for a period of at least 11/2 years subsequent to his passing the Second D.H.M.S examination in a recognised Homeopathic College to the satisfaction of the head of the College."

Here again, the conditions for eligibility for admission to Third D.H.M.S examination are:

i) After passing the Second D.H.M.S. examination, one and a half years must have elapsed before taking the Third D.H.M.S examination.

ii) Subsequent to the passing of the Second D.H.M.S. examination:

a) he must have regularly attended the courses both theoretical and practical"

b) for a period of 11/2 years;

c) to the satisfaction of the college.

Thus, it will be clear that the pattern of the examination is as rightly urged by the learned Solicitor General : 12 months for First D.H.M.S. examination, 12 months for Second D.H.M.S. examination and 18 months for Third D.H.M.S examination. These put together with six months of compulsory internship, make up the four years prescribed for the Course in Regulation 3.

One thing that carefully requires to be noticed is that all the three Regulations

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8 to 10 speak of admission to an examination, First, Second and Third year respectively. This is entirely different from admission to a course we find great force in this submission of the learned Solicitor General. The course of study may consist of four years, but that has nothing to do with the scheme of examination. Now, we come to Regulation 11. That requires to be reproduced in full:

"(i) Every candidate for admission to an examination shall send to the authority concerned his application in the prescribed form with the examination fee at least 21 days before the date fixed for the commencement of the examination.

(ii) As soon as possible after the examination the examining

body shall publish a list of successful candidates arranged in the following manner:-

(a) the names and roll numbers of the first ten candidates in order of merit, and

(b) the roll number of others arranged serially.

(iii) Every candidate shall on passing the examination receive a certificate in the form prescribed by the examining body concerned.

(iv) A candidate who appears at the examination but fails to pass in a subject or subjects may be admitted to supplementary examination in the subject or subjects of that part of the examination in which he has failed to be held ordinarily after six weeks from the publication of result of the first examination on payment of the prescribed fee along with an application in the prescribed form.

(v) If a candidate obtains pass marks in the subject or subjects at the supplementary examination or the subsequent examination, he shall be declared to have passed at the examination as a whole,

(vi) If such a candidate fails to pass in the subject or subjects at the supplementary examination in the subject or subjects concerned, he may appear in that subject or subjects at the next annual examination on production of a certification in addition to the certificate required under the regulations, to the effect that he had attended to the satisfaction of the Principle, a further course of study for a period

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of next academic year in the subject or subjects in which he had failed, provided that all the parts of the examination shall be completed within four chances including the supplementary one, to be counted from the date when the complete examination becomes due for the first time.

(vii) If a candidate fails to pass in all the subjects within the prescribed four chances, he shall be required to prosecute a further course of study in all the subjects of all parts for one year to the satisfaction of the head of the college and appear for examination in all the subjects. Provided that if a student appearing for the Third D.H.M.S. Hom. examination has only one subject to pass at the end or prescribed chances, he shall be allowed to appear at the next examination in that particular subject and shall complete the examination with this special chance.

(viii) All examinations shall be held on such dates, time and places as the examining body may determine.

(ix) The examining body may under exceptional circumstances partially or wholly cancel any examination conducted by it under intimation to the Central Council of Homeopathy and arrange for conducting reexamination in those subjects within a period of thirty days from the date of such cancellation."

This Regulation deals with results and readmission to an examination. A close reading of the above brings out the following:

In clause (iv) as to what is to happen in the event of a candidate failing to pass in a subject or subjects is spoken to. He may be admitted to the supplementary examination. Such a supplementary examination is to ordinarily take place after six weeks from the publication of result of First Examination.

Supposing he passes in that subject or 'subjects in the supplementary examination he is declared to have passed at the examination as a whole. This should obviously be so; because once he completes all the subjects, he has to necessarily be declared to have passed. Merely on this

language, "declared to have passed at the examination as a whole", we are unable to understand as to how the

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"doctrine of relation back" could ever be invoked. The invocation of such a doctrine leads to strange results. When a candidate completes the subjects only in the supplementary examination, then alone, he passes the examination. It is that pass which is declared. If the "doctrine of relation back" is applied, it would have the effect of deeming to have passed in the annual examination, held at the end of 12 months, which on the face of it is untrue.

With this, we pass on to clause (vi) which deals with the stage where the candidate had failed in the First Annual Examination in a subject or subjects and he had not passed in that subject or subjects in the supplementary examination also. The next annual examination arrives. The appearance in that examination is conditioned upon production of two certificates:

i) A certificate required under the Regulations to the effect that he had attended to the satisfaction of the Principle;

ii) A certificate to the effect that he had undergone a further course of study for a period of next academic year in subject or subjects in which he had failed.

Whatever it is, a candidate has to complete all the subjects within four chances. Should he fail to do so, he will have to undergo the course in all subjects for one year, unless of course, he gets the exemption as stated in proviso to Clause (vii). Nowhere do we find in Regulation 11 system of 'carry forward'. On the contrary, it is detention every year. The High Court was moved by the fact that if a candidate were to pass in supplementary examination after passing the examination, he will have to remain at home till the next annual examination. So, he is allowed to undergo a course for next academic year provisionally. On this line of reasoning, clause (iv) & (vi) of Regulation II are sought to be "harmoniously construed". We are unable to accept this line of reasoning or the so called harmonious construction because it does violence to the language of the Regulation. It clearly violates the mandatory requirements of Regulation 9. It has already been noted as to what those requirements are. To repeat:

i) The lapse of one year period between the passing of First D.H.M.S. examination and taking the Second D.H.M.S. examination.

ii) Subsequent to the passing of the First D.H.M.S. examination to undergo the course of study for one year. Therefore, if a candidate passes in the supplementary examination, the requirement of one year cannot be enforced. Worse still is

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a case of a student who passes only at the next annual examination. Could he be allowed to take the Second D.H.M.S. examination without even completing the First? Should he by chance pass the Second D.H.M.S. and not complete the First, since he is still one more chance to take this examination, what is to happen? The situation is absurd. The same principle should apply to Regulation 10 where the lapse is one and half years.

The word 'supplement' is defined in Oxford Dictionary, Seventh Edition, page 1072:

"think added to remedy deficiencies; part added to book etc, with further information, or to periodical for treatment of particular matter(s) of an angle, (Math.) its deficiency from 180 (of COMPLEMENT); hence AL, ARY, (mem) adjs.

(supplementay benefit). [ME, f.L. sup
(plementum f -plere fill; see-ment)]"
Therefore, the adjective 'supplementary' means and
examination to makeup the deficiencies. Thus. it stands to
reason only when deficiencies are made up, the whole becomes
complete.

On this score to say that passing the supplementary
examination would relate back to the annual examination will
be totally incorrect. What counts is when the whole is made
up. From that time of making up one year or one and half
years must elapse for second or Third D.H.M.S. examinations
as the case may be. The stand of the appellants counsel as
seen from letter dated 12.12.1989 is as follows:

"From:

Dr. P.L. Verma, Secretary,
Central Council of Homeopathy, 10, Community
Centre,
Basant Lok,
Vasant Vihar,
New Delhi - 110037.

TO

The Chairman,
The Council, Homoeopathic Systems of
Medicine,
3027-28, Sector 22-D,
Chandigarh.

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Sub: Enforcement of D.H.M.S (Diploma Course) Regulation 1983
w.e.f. 1983-84 Academic Sessions students demand for grant
of provisional promotion with reappearance in only one
subject to the next higher class even beyond supplementary
examination even prior to his passing the lower class
examination as a whole.

With reference to your letter No. CHSM-PV- 134 /89/1253
dated 29/ 30 November, 1989 on the subject noted above. I
am to say that the question of permitting to appear
simultaneously for two examinations i.e. lower reappear
subjects and complete subjects of the next higher class does
not arise as no candidate has to be admitted to the Second
D.H.M.S. examination unless he had passed the first D.H.M.S.
examination at the end of one year previously and has
regularly, attended the course for one year.
Similarly, no candidate shall be admitted to
the Third D.H.M. S. examination unless he has
passed the second D.H.M.S. examination 1 1/2
years previously and has also attended the
course for a period of 1 - 1/2 years
subsequent to his passing of the Second
D.H.M.S. Examination.

COUNCIL OF HOMOEOPATHIC SYSTEM OF MEDICINE
3027-28, Sector 22-D
CHANDIGARH (UT)

No. CHCH-PV 9134/89/AT-198-200 Dated 5.2.90

Copy forwarded to the Principal, Lord Mahaveera Homeopathic
Medical College, Ludhiana/Abohar/Chandigarh for information
and necessary action. This may please be notified for
information of all the students under intimation to the
undersigned. The above guidelines/directions of the Central
Council may please be strictly followed and observed in
respect of matters indicated therein.

sd/-
(R.K. Sharma)
Registrar,
Dated 5.2.90."

No. CHMS/PV/134/89/AI-201-210

This stand in our opinion is correct.

If a student were to sit idle at home after passing the supplementary examination that is his own making. To avoid such a situation, the Regulation cannot be construed causing violence to the language.

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examination that is his own making. To avoid such a situation, the Regulation cannot be construed causing violence to the language.

These Regulations are plain enough and are susceptible only to literary interpretation. In 'Maxwell on the Interpretation of Statutes' 12th Edition, it is stated at page 29 as under:

"Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. "The decision in this case," said Lord Morris of Borth-y-Gest in a revenue case, "calls for a full and fair application of particular statutory language to particular facts as found. The desirability or the undesirability of one conclusion as compared with another cannot furnish a guide in reaching a decision." (Shop and Store Developments Ltd. v. I.R.C. (1967) 1 A.C. 472). Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. (Cartledge v. E. Jopling & Sons, Ltd. [1963] A.C. 758) The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient: (Gwynne v. Burnell [1840] 7 Cl. & F. 572). Words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. (Whitehead v. James Stott Ltd. [1949] 1 K.B. 358). The duty of the court is to expound the law as it stands, and to "leave the remedy (if one be resolved upon) to others." (Sutters v. Briggs [1922] 1 A.C. 1).

We construe the Regulations as they stand without introducing any element of ambiguity or absurdity.

The manner in which the respondents have passed the examination is set out in the following tabulated statement:

"C.W.P. No. 13926 of 1991 Miss Kamaljit & eight others of L.M. Homoeopathic Medical College, Ludhiana.

	1st prof. Annual/88	Supp/88	Annual/89
Respondent No.	Re-appear	Re-appear	Pass
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1, Miss Kamaljit d/o Sawam Singh (Admitted in 1987)	in 3 subjects	in 2 subjects	Contd.
Resp.2, Sh. Narinder Kumar s/o Satya Pal Goyal (Admitted in 1987)	Re-appear in 2 subjects	pass	Contd
Resp. No. 3 Shri Mohd Ramzan Thind s/o SH.	Re-appear in 3 subjects	pass	Contd.

Moh. Yousaf
(Admitted in 1987)
Resp No.4 Shri Re appears Re-appears pass "
Naresh Kumar in 3 subjects in 2 subjects
Resp. No.5 Shri Re-appear Re-appear pass "
Jaininder Mohan in 2 in 1
s/o Shri Sham Lal subjects subject
(Admitted in 1987)
Resp. No. 6 Shri Re-appear Re-appear pass "
Kulbir Singh s/o in 3 in 2
Sh. Tattan Singh subjects subjects
(Admitted in 1987)
Res. No. 7 Re-appear pass - "
Narinder Singh in1
s/o Sh. Sant subject
Singh (Admitted in 1987)
Res. No. 8
Inderjit Mehta
d/o Anant Ram
Mehta (Admitted in 1987)
Resp. No. 9 Fail Re-appear pass "
Tejvinder Singh, in1
s/o Jaswant Singh
(Admitted in 1987)
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Continued Part

IInd Prof.	(CWP No. 481 of 1991)	3rd Prof. (CWP No: 13926/91)
Suppl./89	Annual/90	Suppl/91
Re-appear in 3 subjects	Re-appear in 3 subjects	Re-appear in 1 subject
Re-appear in 3 subjects (without court order)	Re-appear in 1 subject	pass
Re-appear in 4 subjects	Re-appear in 1 subject	pass
Re-appear in 3	Re-appear in 1	pass
Fail	Re-appear in 2 subjects	pass
Re-appear in 1 subject	Re-appear pass	pass
Re-appear in 2 subjects	Re-appear in 2 subjects	pass

Allowed to appear as per court order dt.6.9.91 by the Principal of L. Homoeopathic Medical College, As per court order dt. 6.9.91

Not appeared

As per court order dt 6.9.91

As per court order dt. 6.9.91

As per court Order dt. 6.9.91

Allowed to appear as per Court order dt.6.9.91"

Mr. Ranjit Kumar pleads before us that equities must weigh in favour of students, With reference to that plea, we hold that he students who had completed the whole course,

attended all the courses of study for the three sessions of 12 months, 12 months and 18 months respectively and had passed all the examinations in all the subjects, though not in the sequential order required by the

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regulations, it appears to us that the submission of the counsel for the respondents that they being required to go through the courses all over again and take the examinations after attending the courses afresh, might lead to hardship and might require consideration, In the words of Anne Sophie Swetchine:

"The world has no sympathy with any but positive griefs; it will pity you for what you lose, but never for what you lack.

We think that their cases may perhaps have to be examined from the point of these equities by the Council of Homeopathic System of Medicines. The candidates who, as on today, have attended all the courses and have passed all the examinations might make an appropriate representation to the Council of Homeopathic System of Medicines (the appellant) to consider their cases. The representation shall be filed within a period of four weeks from today. The Council of Homeopathic System of Medicines (the appellant) will take appropriate decision within one month thereafter. The Council in doing so shall bear in mind all the relevant circumstances, including, perhaps the spirit of the corresponding regulations under the Bihar Act, in which such sequential purpose is not insisted upon.

Subject to the aforesaid directions, we reverse the impugned judgment of the High Court and 'glow the appeals. However, there shall be no order as to costs.,

VPR.

Appeals allowed.,

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