

ASSAM AIDED COLLEGE MANAGEMENT RULES, 1976

[Text already printed in Volume 1]

COMMENTS

Rules 3 (c). 15 and 22.

Removal of Principal from Secretaryship and nominating the Vice-Principal - Order of D.P.I. and resolution of the Managing Committee – Property. It is provided in R. 3 (c) of the Rules that the Principal is the *ex-officio* Secretary of the Governing Body. The Instruction, he being the only authority to take action under R. 22 of the Rules. Placing a glance on the R. 22, it is apparently clear that the Secretary of the Governing Body of a deficit college can be replaced by the Director of Public Instruction subject to two pre-conditions. He can do so (a) if it is found that the Secretary has committed any serious lapse or will jeopardise the very purpose of nominating him as Secretary. The order of removal must be in terms of R. 22 of the Rules. In case the Principal of the College who is *ex-officio* Secretary of the Governing Body of the deficit College is removed by the Director of Public Instruction, the Vice-Principal shall function as *ex-officio* Secretary and in absence of Vice-Principal, the senior-most lecturer of the College may hold the charge of the Secretary. Under R. 3 (c) the Principal of the College shall be nominated by the Government as *ex-*

officio Secretary of the Governing Body of the College. This power of nomination is delegated to the D.P.I. under R. 22. When it holds the delegated power to nominate the Principal as *ex-officio* Secretary of the Governing Body of the College, he can also exercise the power under R.22 to remove him. But R.22 has specifically mentioned that the Director of Public Instruction may replace him and nominated either the Vice-Principal in his place if there be any, as Secretary of the Governing Body till the charge on which proceeding against the Principal is finalised. In case of there being no Vice-Principal in the College, the D.P.I. can nominate the senior-most lecturer of the said College to hold the charge of the Secretary of the Governing Body of the College.

Rule 15 has given a guideline for holding the meeting of the Governing body. It was submitted in *Bhaven Chandra Pegu v. State of Assam* [(1988) 1 GLR 389] that the order of D.P.I. was conspicuously silent about the objective satisfaction of the D.P.I. that the further continuance of the Principal of the College, as *ex-officio* Secretary of the Governing Body will jeopardise the very purpose of nominating him as Secretary of the College Governing Body. There must be a finding to the effect that the Secretary of the Governing Body of deficit college has committed any serious lapse and his continuance as Secretary was not desirable for the best interest of the College, it was contended and in support reliance was placed on *Mohini Kumar Saikia v. S.D.O.* [ALIR 1985 Gau 53].

In *Bhaven Chandra Pegu* [supra], the validity and legality of the order of the Director of Public Instructions and also the authority of the managing committee to adopt the resolution thereby removing the Principal from the Secretaryship and also nominating the Vice-Principal to conduct all financial transactions for the College, were in question. It was held that the order of the D.P.I. did not disclose any reason of his being satisfied about the necessity of the removal of the Principal from Secretaryship and what were those compelling circumstances which completed him to exercise the jurisdiction under R. 22. The order did not fulfill the conditions as contained in R. 22. There were no convincing material before the D.P.I. to justify his action to remove the Principal from the Secretaryship of the Governing Body and as such his order was held to be not tenable in law. As regards appointment of the senior-most lecturer of the College nominated to take charge of the Secretaryship, It was found that there was no document concerning his seniority. Hence the impugned resolution adopted by the managing committee cannot be treated as a resolution to implement the order of the D.P.I., whereby he nominated the senior-most lecturer in the College to hold the charge of the Secretaryship. Even the meeting held where such a resolution was adopted was not held in conformity with the provision of R. 15.

Mere allegations against the Principal.

In *Dugdha Sarma v. Sarada Bezbarua* [1987 (2) GLR 286] similar interpretation of Rr. 3 and 22 was made and it was held that unless the Principal is proceeded with mere allegation not amounting to charge will not be enough. In other words the pre-condition for nomination of the Vice-Principal as *ex-officio* Secretary is the existence of a disciplinary proceeding on charges against the Principal wherein he has been proceeded with and the duration shall continue unless the proceeding is finalised and the Principal is acquitted of all charges honourably. In the instant case there was no such proceeding. Hence the impugned order was quashed. In *Dr. Mohini Kumar Saikia v. The S.D.O. (Civil) Governing Body, D.R.. College, Golaghat* [AIR 1985 Gau 53], the impugned order was set aside when the existence of grounds for replacement of the Principal, could not be satisfied.

Rules, - Whether having statutory force.

It was held in *Dr. Mohini Kumari Saikia v. The S.D.O.* [AIR 1985 Gau 53] that the Rules are statutory having statutory force, as because under the Act the State Government was empowered to frame such Rules and accordingly framed. This decision was followed in *Bhaven Chandra Pegu v. State of Assam* [(1988) 1 GLR 389]. Similarly was held in *Juthika Barman v. State of Assam* [(1994) 2 GLR 469].

Governing Body whether a Statutory Body. Held, Yes, in Juthika Barman v. State of Assam [(1994) 2 GLR 469].

Centre and orbit of the minorities' right to administer the educational institutions.

The Centre and orbit of the minorities' right to administer the educational institutions have been outlined in the decisions of the Supreme Court like in *In re, Kerela Educational Bill* [AIR 1958 SC 956]; *Sidhrajibhai v. State of Gujarat* [1963 SCR 8341]; *Rev. Father v. State of Bihar* [AIR 1969 SC 465]; *State of Kerela v. Mother Provincial* [AIR 1970 SC 2079]; *D.A.V. College v. State of Punjab* [AIR 1971 Sc 1 37]; *St. Xavier's College v. State of Gujarat* [AIR 1974 SC 1389]; *G.F. College v. University of Agra* [AIR 1975 Sc 1821]; *Mark Netto v. Government of Kerela* [AIR 1979 SC 85]; *All Saints High School v. Government of A.P.* [AIR 1980 Sc 1042] and *The managing Board of the Milli Talimi Mission v. The State of Bihar* [AIR 1984 Sc 1757] and summarised in para 65 of the last mentioned decision. The law as such was also discussed in *Dr. Paul Petta v. D.P.I., Meghalaya* [(1987) 1 GLR 55] and *Jagalkishore Kedla v. State of Assam* [(1987) 2 GLR 1].

Applicability to the State of Meghalaya.

In *Fr. Paul Petta v. D.P.I., Meghalaya* [(1987) 1 GLR 55] there arose the question of applicability of the Assam Aided College Management Rules, 1965 in the State of Meghalaya. It was held, after detailed discussions that the provisions of the 1965 Rules are applicable to the colleges subject of course to the instructions in relation to the procedure of appointment of Principal, Vice-Principal, Lecturers and other

staff in religions vested in the minority body as conferred by Art. 30 of the Constitution of India.

Rule 4, *Select list prepared for Principals - Functions of the Governing Body.*

As held in *Bhupender Singh v. D.P.I* [(1994) 1 GLR 148] in view of the decision in *State of Assam v. Ajit Kumar Sharma* [AIR 1969 SC 1196] that the Employees Rules, 1960 are not statutory rules, the contention that after the select list is prepared for Principals under R. 4 the function of the Governing Body is limited in as much as it has only to verify character and antecedents of the proposed appointee cannot be held to be mandatory was not tenable, more so as in the given case where the Director of Public Instruction whose approval is required for appointment of Principals has also directed the Governing Body to select Principal as per guidelines.

Further held that only because in the select list prepared under the R. 4 of the Employees Rules, 1960, the name of the writ petitioner cannot be virtue of his above position claim the post of Principal as a matter of right. He has to go through the selection to be conducted by the Governing Body as per the recent guidelines of the Director of Public Instruction.

Rule 5. *Whether mandatory.*

This rule was held to be mandatory in nature, in the case of *Bhupender Singh v. D.P.I* [(1994) 1 GLR 148]. To held contrary may give rise to serious consequences in as much as two or three members of the Governing Body may meet an pass any resolution detrimental to the management of the college.

Rule 15. *Holding of Governing Body – whether seven days’ notice a condition precedent.*

Reading the entire R. 15, the Court in *Bhupender Singh v. D.P.I* [(1994) I GLR 148] was of the opinion that the whole object of giving seven days’ notice to allow the members of the Governing Body to come prepared for the meeting and in the said rule it is specifically provided that no business not mentioned in the notice shall not be transacted except with the consent of three-fourth of the members present. For discussing any other matter support of majority of the members present is not sufficient and it is necessary to have the consent of three-fourth members. Even in case of emergency meeting it has to be notified by giving seven days’ notice and so held that seven days’ notice is a condition precedent for holding any meeting of the Governing Body. Where such a notice was not given, subsequent action of the Governing Body cannot be sustained.

Venue of the meeting.

As stated in *Bhupinder Singh v. D.P.I.* [(1994) 1 GLR 148] except any emergency meeting, all other meeting of the Governing Body shall be held in college premises. However, for compelling reasons any meeting can be held outside.

Rule 18. *Appointment terminable on expiry of period of lien – Termination not for violation of the rule – Whether fresh approval of D.P.I. required in Juthika Barman v. State of Assam [(1994) 2 GLR 469]*

It was found that the power of appointment of lecturer was that of the Governing Body of the College both under the 1960 Rules and the 1976 Rules and in exercise of the said power the Governing Body had appointed the petitioner as lecturer in Economics in the leave vacancy of Dr. B.K. Nath and the appointment was made expressly terminable on the expiry of the leave period of Dr. Nath. Even though the leave period of Dr. Nath expired, no resolution of the Governing Body was passed appointing the petitioner a fresh as lecturer in Economics on fresh terms and conditions or on *ad hoc* basis or regularising the service of the petitioner after the contract period expired and in the circumstances, the continuance of the petitioner was not by virtue of any fresh appointment made by the Governing Body and hence no fresh prior approval of the Director of Public

Instruction was required for the termination of the service of the petitioner.

Certain decision requiring prior approval of D.P.I.

As stated in *Bhupender Singh v. D.P.I.* [(1994) 1 GLR 148] R. 18 requires that the proceedings of the meeting of the Governing Body shall be sent to the D.P.I. and to the Gauhait University or Dibrugarh University and no final decision regarding appointment, promotion, suspension, termination, Principal or construction involving Rs. 5,000 or more shall be taken without prior approval of Director of Public Instruction.

Withdrawal of suspension after the disciplinary proceeding against the Principal –Approval of D.P.I.

The language of this R. 18 make sit clear that no final decision regarding suspension of teaching or non-teaching staff including the Principal of the College shall be taken by the Governing Body without the prior approval of the D.P.I. The language of this rule does not say that prior approval of D.P.I. is required only when suspension is made by way of punishment. Hence it was stated in *Hironmoy Paul v. State of Assam* [(1995) 1 GLR 456] that it is difficult to accept that no approval of D.P.I. is required for interim suspension pending or in contemplation of disciplinary proceeding against the staff of the College. Further that the language of this rule would show that no final decision regarding suspension of the staff can be taken without prior approval of the D.P.I. Therefore, where prior approval has been taken from the

D.P.I. for suspension of teaching or non-teaching staff or the Principal of the College, in contemplation of disciplinary proceeding, prior approval of the D.P.I. will also be required when after the disciplinary proceeding is over, the suspension order relating to teaching or non-teaching staff is sought to be withdrawn. This is because the words “regarding suspension” are wide enough to include not only suspension but also withdrawal of suspension.

Withdrawal of suspension after the disciplinary proceeding is over - Resolution of the special body of the College to withdraw suspension and drop proceeding-Without prior approval of D.P.I. whether binding.

In *Hironmoy Paul v. State of Assam* [(1995) 1 GLR 456] the petitioner was put under suspension in contemplation of disciplinary proceeding against him with the prior approval of the D.P.I. The suspension order could not be withdrawn after the disciplinary proceeding was over without the prior approval of the D.P.I. Hence the order of the Special Body of the College withdrawing the suspension of the petitioner and dropping the disciplinary proceeding against the petitioner could not be considered as final and binding on the petitioner. In this case the decision of the Special Body of the College rejecting the enquiry report, dropping the disciplinary proceeding against the petitioner and drawing the suspension against the petitioner was to be approved by D.P.I. and as such no finality could be attached thereto.

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