

(1993) 09 GAU CK 0031
In the Gauhati High Court
Case No : Civil Rule No. 438 of 1993

Bhupender Singh

APPELLANT

Vs

Director of Public Instruction (Higher Education), Govt. of
Assam, Governing Body Pragjyotish College and A.C. Deka
and Bhagaban Moral

RESPONDENT

Date of Decision : 29-09-1993

Acts Referred:

Assam Aided College Management Rules, 1976 — Rule 15, 18, 5, 7
Assam Aided Colleges Employees Rules, 1960 — Rule 4, 4(1)
Constitution of India, 1950 — Article 226

Citation : (1994) 1 GLR 148

Hon'ble Judges : S.N. Phukan, J

Bench : Single Bench

Advocate : A.M. Mazumdar, S. Medhi, J.M. Choudhury, A.C. Dutta, B.K. Sarma, R. Baruah and S. Sarma, for the Appellant; D.N. Choudhury, N. Dutta, M.K.N Choudhury, B.D. Goswami and B. Banerjee, for the Respondent

Judgement

S.N. Phukan, J.—This is the second time the writ Petitioner has approached this Court by filing the present petition under Article 226 of the Constitution. His grievance is regarding the appointment of Respondent No. 4 to the post of the Principal of Pragjyotish College, Guwahati. The Petitioner claims the said post on the basis of the selection made by the Selection Boards constituted by the State Government under the relevant rules and also by the Governing Body.

2. The writ Petitioner is working in the College as Lecturer since 6-11-62 and at present he is the Head of the Department of Geology, The claim is that he has acquired sufficient administrative experience regarding management of the College affairs. Due to retirement of Shri B.N. Deka on 4-7-92 the charge of the post of the Principal was taken over by Shri Jagadish Choudhury who was also subsequently appointed as Vice Principal of the College by the Governing Body. As at the relevant he was the Principal in-charge and also Secretary of we Governing Body he was impleaded as Respondent No. 2 and has also filed a

counter affidavit.

3. Under the provisions of the Assam Aided College Management Rules, 1976 (Management Rules, 1976) as the Governing Body of the College is the Appointing Authority of the Principal an advertisement was issued calling for application in for the post on 29.3.92 vide Annexure-1. It may be stated that a Selection Committee, was constituted for selection of Principal of various Colleges under Assam Aided College Employees Rules 1960 which was amended in 1973. Regarding method of recruitment of Principals, Professors and Lecturers provision have been made in Rule 4 of the above rules and the members of the State Selection Board have been indicated in Clause (1) of Sub-rule (1) of Rule 4. The Selection Board prepared a select list and forwarded the same to all Governing Bodies of the Aided College in the State and the list was also published in the Gazette. In the said list the names of the Petitioner and the Respondent No. 4 appeared at SI. Nos. 24 and 37 respectively. The said list is at Annexure-2 to the present petition.

4. As per advertisement issued by the Governing Body of the College on 29-3-92, as stated above the Selection Committee was constituted by the Governing Body and a select list was prepared in which the name of the Petitioner appears at SI. No. 1 and the name of Respondent No. 4 at SI. No. 2. In fact only two names were selected by the said Committee. Though the Director of the Public Instruction, according to the Petitioner directed the Governing Body by letter dated 23-7-92 to select person for the post in order of preference the Governing Body on 6-9-92 decided to re-advertise for the post. The letter of the Director is at Annexure-5 and the resolution at Annexure-6. The advertisement which was published in newspaper on 3-10-92 is at Annexure-7. Thereafter the Joint Director was of the opinion that considering the seniority and merit the Respondent No. 4 was superior to the present Petitioner and requested the Governing Body to look into the matter and take action for his appointment as Principal. Being aggrieved by the above letter of the Joint Director dated 7-10-92 (Annexure-8 to the present petition) the Petitioner approached this Court by filing a writ petition which was registered as Civil Rule No. 2221/92 and the petition was disposed of by this Court with the direction to the Governing Body to ignore the above letter dated 7-10-92 and to select a candidate on merit-cum-seniority basis from the list prepared by the Selection Committee within the period of one month. It was also directed that the approval may be obtained from the authority as required under the rules. The Governing Body could not decide and a decision was taken to approach this Court for extension of time vide resolution at Annexure-9. On 31-12-92 the Governing Body again considered the matter and as the members failed to come to any decision the entire Governing Body resigned vide resolution at Annexure-10. Thereafter by order dated 19-1-93 the Director of Public Instruction Respondent No. 1 constituted a new Managing Committee and the said notification is at Annexure-11. According to the writ Petitioner though in the notification it was shown that 7 (seven) members were nominated in fact only 6 (six) members were nominated to the

Governing Body inasmuch as one person was holding the post of Principal in-charge-cum-Secretary and the post of Vice Principal, It has also been stated that the persons nominated by the teachers of the College had resigned from Governing Body along with other members. Therefore, the teachers which were selected by the Teacher Council cannot be recognized as their representatives in the new Governing Body. It has also been stated that one teacher representative issued a letter not to treat him as a representative of the teachers and the said letter dated 5-2-93 has been annexed as Annexure-13.

5. The President of the new Managing Committee requesting the Principal-in-charge and Secretary to convene a meeting of the Governing Body at the Circuit House on 4-2-93 put the principal expressed his inability to do so vide letter dated 3-1-93 (Annexure 14.) Thereafter the President of the newly constituted Governing Body obtained signatures of 5 (five) nominated members and convened an emergent meeting and the notices were issued and the date was fixed on 20-2-93. But on that date the meeting could not be held in the College premises, but at some other place i.e. at Circuit House and the Governing Body co-opted 2 (two) members from the guardians. According to the Principal the meeting was illegal and by letter dated 22-2-93 informed the Director of Public Instruction vide Annexure-16. On 24-2-93 the new Governing Body met with the newly co-opted member and according to the Petitioner meeting was held hurriedly and in absence of Principal in-charge and Secretary the proceedings were recorded not in the original proceeding book but in the new book. In the said meeting Respondent No. 4 was appointed as Principal of the College and on the same date the approval from the Respondent No. 1, the Director of Public Instruction was also obtained. Respondent No. 4 has already been taken charge and hence the present petition.

6. Except Respondent Nos. 2 and 3 other Respondents have not filed any counter. Respondent No. 2 and 3 have filed the counter in the individual capacity and he has categorically stated that he was not involved in the post of Principal of the college and the affidavit has been filed as at the relevant time he was Principal in-charge and Secretary of the Governing Body. He has denied that he received the Memorandum and the letter dated 25-1-93 and 5-2-93 from D.K. Nandi requesting not to treat him as a teacher's representative. He has admitted that he received the letter from the newly appointed President of the Governing Body, Respondent No. 3, to convene a meeting of the Governing Body and by letter dated 19-1-93 he informed the Governing Body that the newly re-constituted Governing Body was in fact composed of six members only and therefore there would be no quorum for holding a valid meeting and accordingly sought for clarification. By letter dated 2-2-93 Respondent No. 3 again directed him to convene a meeting of the Governing Body on 4-2-93 at Gauhati Circuit House for the purpose of appointing permanent Principal and to include two representatives from teachers. The Director of Public Instruction Respondent No. 1 by letter dated 2-2-93 also asked him to convene a Governing Body meeting within 7 (seven) days to implement the order of this Court. He informed the

Respondent No. 1 by letter dated 2-3-93 about the difficulties in holding the meeting at the Circuit House and requested Respondent No. 3 to allow him to hold the meeting at the College premises as per rules., According to the Respondent No. 2 subsequently he came to know that Respondent No. 3 held a meeting of the newly constituted Governing Body in the Circuit House on 20-2-93 but he was not aware what was discussed and accordingly he informed the Respondent No. 1. He has further stated that he got the information that on 24.2.93 a meeting of the Governing Body was held but he did not know what resolutions were passed, The said meeting was not held in the College premises and the proceeding books and other records relating to the appointment of Principal were with him. He came to know from the appointment letter dated 24-2-93 issued by the Respondent No. 3 that Respondent No. 4 was appointed as Principal subject to the approval of the Respondent No. 1 and accordingly on the same day i.e. 24-2-93 Respondent No. 4 joined his duties at 11 A.M. and his appointment was also approved by Respondent No. 1 on the same day, Due to the death of his brother-in-law on 23-2-93 he could not attend the College on 24-2-93.

7. On behalf of the Governing Body original records have been produced. The State Government has produced the relevant file from the office of the Director of Public Instruction, Respondent No. 1.

8. Heard Mr. A.M. Mazumdar, learned Counsel for the writ Petitioner, Mr. Choudhury, learned Counsel for the Governing Body and Mr. N. Dutta, learned Counsel for the Respondent No. 4 the newly appointed as the Principal of the College.

9. For the purpose of the present case Rules, 5, 7, 15 and 18 of the Assam Aided College Management Rules 1976 framed under the Gauhati University Act and the Dibrugarh University Act by the Government are relevant. Rule 5 provides that 7 (seven) members shall form a quorum. This is in respect of the meeting of the Governing Body. Rule 7 provided that no act of proceedings of the Governing Body shall be invalidated merely because of any vacancy in its membership. Rule 15 provides that the meeting of the Governing Body will be called by the Secretary with the consent of the President if it is not a requisitioned meeting by two third members of the Governing Body and not less than 7 (seven) days notice should be given of the meeting. It also provides that notice will set forth the business to be transacted at the meeting and no business other than so stated will be transacted except with the consent of three fourth of the members present. It further provides that except any emergency meeting which should be so notified all meetings of the Governing Body shall be held in the College premises and the proceedings of the meeting shall be recorded in the proceedings book by the Secretary and signed by all the members present. According to the said rule if any note of dissent is given by any member, it should be recorded in the proceeding book and all records of the Governing Body of the College must be kept in the College. The office of the Principal of the College

shall be responsible to preserve these records properly.

10. Rule 18 inter-alia provides that proceedings of the meeting of the Governing Body shall be sent to the Director of Public Instruction and to the Gauhati University or Dibrugarh University and no final decision regarding appointment, promotion, suspension, termination, removal or dismissal of teaching or non-teaching staff including the Principal or construction involving Rs. 5,000/- or more shall be taken without prior approval of the Director of Public Instruction.

11. The question that hits boon raised at the Bar is whether the above rules or some of the rules are directory or mandatory, This will be discussed at the appropriate place. There is no dispute that these rules are statutory rules.

12. In this case another set of rules is also relevant namely Assam Aided College Employees Rule 1960 (for short employees rules) I may state here that the Apex Court in Patel Bhuder Navji etc. Vs. Jat Mamdaji Kalaji (Deceased) through L. Ks. Jat Saheb Khan Mamdaji etc., held that these rules have no statutory force and were framed in order to give grants to private College to enable them to give higher scales of pay to their teachers in accordance with recommendation of University Grants Commission. Attention of this Court has been drawn to Rule 4 of this rules which inter-alia provides the method of recruitment of Members, Professors and Lecturers by a Selection Board consisting of members as laid down in Sub-rule (1) of the said Rule 4. Clause - (IV) provides that the Governing Body shall appoint any one from the approved list after appropriate verification of the character and antecedents of the proposed appointee and with the prior approval of Director Public Instruction, Clause (V) provides that the list of candidates shall ordinarily remain valid for one year from the date of selection and the Government may by order extend the validity of the list for a further period not exceeding one year.

13. In view of the decision of the Apex Court that the employees rules 1960 are not statutory rules therefore, contention of Mr. Mazumdar that after the select list Is prepared for Principals under the above Rule 4 the function of the Governing Body is limited inasmuch as it has only to verify character and antecedents of the proposed appointee cannot be held to be mandatory more so as in the case in hand the Director of Public Instruction whose approval is required for appointment of Principals has also directed the Governing body to select Principal as per guideline. I may also add here that only because in the select list prepared under the above Rule 4 of the employees rules 1960 the name of the writ Petitioner appears before the name of the Respondent No. 4 the Petitioner cannot by 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.

14. that apart in view of the direction given by this Court by order dated 10-11-92 in Civil Rule No. 2221/92 this point cannot be re-agitated at this stage.

15. Though according to Mr. Dutta Rule 5 of the Management Rules 1976 is net

mandatory I am unable to accept the contention of the learned Counsel, In this connection I may mention that two points have been urged by Mr. Dutta namely positive language of the rule and in the rule it has not been laid down that in absence of quorum the meeting will be deemed to be honest. In this connection Mr. Dutta has referred to Rule 7 of the rules. But in my opinion the same rule is for different purpose.

16. If Rule 5 of the above rules is held only to be contradictory it may give rise to serious consequences inasmuch as two or three members of the Governing Body may meet and pass any resolution detrimental to the Management of the College. I therefore hold that Rule 5 of the Assam Aided College mainly rules 1976 is mandatory in nature.

17. Regarding Rule 7 I have no hesitation to hold that even if any resolution is taken by the Governing Body it shall not be invalid. Therefore, even though in the constitution of the new Managing Committee by the Director of Public Instruction all the vacancies have not been filled up any resolution taken by the new Managing Committee shall be valid provided 7 (seven) members are present which is the requirement for a quorum.

18. Referring the Rule 15 according to Mr. Dutta 7 (seven) days notice is not mandatory as the word used in the said rule is "should". Mr. Dutta has also referred to the word "will" occurring in third line of the said rule in support of his contention that 7 (seven) days notice is not necessary.

19. Reading the entire Rule 15 of the Management rules 1976 I am of the opinion that whole object of giving 7 (seven) days notice is to allow the members of the Governing Body to come prepared for the meeting and I say so as 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. I may also note here that even in case of emergency meeting it has to be notified by giving 7 (seven) days notice. I, therefore, hold that 7 (seven) days notice is a condition precedent for holding any meeting of the Governing Body.

20. Though in the said Rule 15 it is provided that except any emergency meeting all other meetings of the Governing Body shall be held in the College premises. But if for any compelling circumstances it is not possible to hold meeting in the College premises it can be held at any other place and it will not be deemed to be invalid.

21. Coming to the case in hand I find that admittedly 7 (seven) days notice was not given, I also find that the first meeting of the new Governing Body which co-opted two other members, there was no quorum. Therefore I hold that the first meeting of the Governing Body today was not a valid one and I say so only on two grounds namely absence of quorum and notice for 7 (seven) days. Therefore subsequent action of the Governing Body cannot be sustained.

22. Admittedly the appointment has been made on merit-cum-seniority and the Respondent No. 4 was senior to the present Petitioner. I have already stated that only because the name of the writ Petitioner appears in the list prepared under the Employees Rules above Respondent No. 4 he cannot claim the post of Principal as a matter of right. Arguments have been advanced to show that while assessing the merit of the Respondent No. 4 he was given two marks less and even then merit-wise he was above the writ Petitioner. I do not want to express any opinion on this point.

23. In view of what has been stated above, in my opinion the entire matter has, to go back to the new Governing Body who shall re-consider the case of the writ Petitioner and the Respondent No. 4 for the post of Principal. In view of the agitation of the students I further direct that the Respondent No. 4 shall continue as Principal till the matter is decided by the Governing Body and approval of the Director of Public Instruction is obtained. This shall be done within a period of 2 (two) months, There is some dispute regarding representatives of the teachers representative and in my opinion it is for the President of the Governing Body to decide who are the members and accordingly notice shall be issued and the President shall ensure that there is quorum for the meeting in which the present case has to be considered. Any resolution taken by such meeting of the Governing Body cannot be questioned on the ground of any vacancy. In view of Rule 7 of the Management Rules 1976 the entire process shall be completed within a period of 2 (two) months as stated above and therefore it shall be sent to the Director of Public Instruction for approval, who shall give it within a period of 15(fifteen) days.

With the above direction and observation the writ petition is disposed of. No costs.