

**(2011) 09 CAL CK 0054**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 1261 of 2010**

Dr. Anisur Rahaman

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

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**Date of Decision :** 30-09-2011

**Acts Referred:**

**Citation :** (2012) 1 CHN 395

**Hon'ble Judges :** Jyotirmay Bhattacharya, J

**Bench :** Single Bench

**Advocate :** S. Panja, Saktipada Jana and Pranab Chatterjee, for the Appellant; Ekramul Bari S.M. Ali, for School and S. Ganguly, for W.B.B.S.E., for the Respondent

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## Judgement

Jyotirmay Bhattacharya, J.—The Petitioner is the Headmaster of a Government Aided Institution, namely Mitra Institution (Main). He was placed under suspension with effect from 30th April, 2010. The suspension order was communicated to him by a notice issued by the Secretary of the said school on 6th May, 2010. Such suspension order was issued by the school authority on the basis of a resolution adopted by the Managing Committee of the said school on 29th April, 2010. The legality and/or validity of such suspension order is under challenge in this writ petition at the instance of the said suspended Headmaster.

2. It is alleged by the Petitioner that the order of suspension was illegal as the said suspension order was issued on the basis of an invalid resolution adopted by the school authority on 29th April, 2010. The Petitioner challenged the validity of the said resolution as the meeting, in which such resolution was adopted, had No. quorum.

3. Admittedly, there were 13 members in the Managing Committee of the said school. Out of those 13 members 7 members were present at the meeting. Thus, more than 50% members were present at the meeting. Apparently there was quorum in the meeting in which such resolution was adopted.

4. It is, however, alleged by the Petitioner that one of those 7 members namely the Departmental Nominee ceased to be a member of the said Managing Committee with effect from 1st September, 2009 as he retired from service on superannuation on 31st August, 2009.

5. Mr. Panja, learned Advocate, appearing for the Petitioner, submitted that once the departmental nominee ceased to be a member of the Managing Committee on his retirement, he cannot participate in the meeting as a member of the said Managing Committee. Thus, Mr. Panja contended that if the presence of the Departmental nominee is ignored then only 6 members were present in the said meeting. According to Mr. Panja, the meeting which was held on 29th April, 2010 was illegal and invalid as there was No. quorum in the said meeting and the resolution which was adopted in the said meeting, according to Mr. Panja, was also invalid and illegal for want of quorum in the said meeting. In support of such submission on the point of quorum Mr. Panja cited a decision of this Hon'ble Court in the case of Amarendra Nath Chatterjee Vs. Dwijendra Nath Halder and Others, , wherein it was held that for constituting quorum in a meeting 50% of the total members with which the Committee was initially constituted must be present in the meeting.

6. Mr. Bari, learned Advocate, appearing for the school authority, disputed such contention of Mr. Panja by contending that Rule 28(9)(viiia) of the Management Rules does not provide that at least 50% members must be present in the meeting in which an agenda regarding suspension of a teaching and/or non-teaching staff of an institution is transacted. According to him, statute is silent on the point as to requirement for formation of quorum in a meeting in which such an agenda regarding suspension of a teaching and/or non-teaching staff is transacted. He further contended that the provision regarding quorum in the meeting as contained in Rule 10(3) of the Management Rules refers to a meeting in which office bearer election is held. He, thus, contended that the provision contained in Rule 10(3) of the Management Rules has No. application to a meeting in which an agenda regarding suspension of a teaching and/or non-teaching staff is transacted.

7. this Court cannot accept this part of the submission of Mr. Bari as Rule 10(3) of the Management Rule is the only provision which deals with quorum of a meeting of the Managing Committee irrespective of an agenda to be transacted in such a meeting. There is No. other provision dealing with quorum of a meeting in the Management Rules. As such this Court holds that for constituting quorum in any meeting, at least 50% of the total number of members with which the Committee was initially constituted must be present.

8. That apart Rule 28(9)(viiia) of the Management Rules provides that a decision for suspension of a teaching and/or non-teaching staff can be taken by the Managing Committee of the school. The said provision of course, does not specify as to how many members are required to be present in such a meeting to form quorum. But when it is provided in the said Rule that the Committee may take

such a decision, this Court is of the view that Committee means the majority of the members of such Committee may take such a decision. Thus, if a decision is taken by less than 50% members of the Managing Committee, it cannot be held that such resolution is valid and legal.

9. For ascertaining the validity of the meeting held on 29th April, 2010, this Court is required to consider the effect of participation of the Departmental nominee in such a meeting. If it is found that the Departmental nominee was competent to participate in the meeting even after his retirement then, of course, this Court will have No. other alternative but to hold that there was quorum in the meeting held on 29th April, 2010 as 7 out of 13 members were present in the said meeting.

10. If on the contrary it is found that the Departmental nominee ceased to be member of the said Committee as on 29th April, 2010 because of his retirement on 31st August, 2009 then, of course, his participation in the said meeting was practically meaningless. Thus, if his participation in the said meeting is ignored then only 6 members out of 13 members were present in the said meeting. Under such circumstances, this Court will have No. other alternative but to hold that there was No. quorum in the said meeting.

11. Mr. Bari, learned Advocate, contended that Clause 22 of the procedure for holding election does not provide that a departmental nominee must be a person associated with the Department. He contended that anybody who is not even remotely connected with the Department can be placed as a departmental nominee in the Managing Committee of an aided Institution. He further pointed out that here of course the person who was appointed as a departmental nominee was No. doubt, at the time of his nomination, an officer attached to the concerned Department under the establishment of the concerned District Inspector of Schools.

12. By referring to Clause 31 of the procedure of holding election he submitted that once a Departmental nominee is nominated as a member of the Managing Committee, he acquires a right to act as a member of the Managing Committee of the school during the validity period of the Managing Committee. Clause 31 provides that every member of Committee shall have to vacate on the expiry of its usual term of three years. According to him, three years is the validity period of the Managing Committee and once a Departmental nominee is placed he can continue until the term of the Managing Committee expires notwithstanding his retirement before expiry of the normal term of the Managing Committee. He, thus, contended that since the normal term of the Managing Committee did not expire as on the date of the said meeting his participation on the said meeting, cannot be ignored, notwithstanding his retirement, as retirement does not operate as cessation of his membership.

13. Mr. Bari, learned Advocate, further contended that when there is No. specific provision in the statute and/or rules for cessation of a departmental nominee, the

Court cannot add any word and/or supplement any word to the statute for finding out the legislative intent on the issue of cessation of the membership of the departmental nominee on his retirement from service. In other word, he submitted that where the statue is silent on the subject, it would not be proper for the Court to add any word thereto and evolve some legislative intent not found in this statute. In support of such submission he relied upon a decision of the Hon"ble Supreme Court in the case of Supreme Paper Mills Ltd. Vs. Asst. Commnr. Commercial Taxes Calcutta and Others, .

14. Let me now consider the effect of such submission of Mr. Bari in the light of the statutory provision, in this regard. this Court finds that departmental nominee has not been defined in the said statute. The statutory provision itself does not categorically mention that departmental nominee must be a person employed in the Department. For ascertaining as to whether any person who is not associated with the Department can be placed as a departmental nominee in the Managing Committee or not, the Court is required to find out the object of placement of such departmental nominee in the Managing Committee. On reading the provision of the Management Rules as a whole, this Court is of the view that the departmental nominee is placed in the Managing Committee with the object of keeping constant watch on the affairs and/or management of Government aided Institution through a Government nominee as the school is being run by the fund provided by the Government. In fact, the Government wants to keep constant watch through one of its officers over the utilization of financial grant which it extends to the school, so that the Government fund is not misused. The provision for placement of departmental nominee was introduced in the Management Rules not only for keeping constant watch on the functioning of the school, but also for preventing misuse of the government fund. This object, in my view, can be achieved effectively, if a person who is employed in the concerned Department is nominated as departmental nominee.

15. The expression "departmental nominee" itself indicates that such nominee must belong to the Department. The object of placement of departmental nominee can be achieved only if an employee under the concerned Department of Government is nominated as such nominee will be under the direct control of the departmental head who is the watchdog under the statue on the overall administration of the school affairs. Again, if the departmental nominee is nominated from the Department itself, then he is expected to discharge his duties effectively as he is not only answerable to the Department for any lapses on his part but also is posted with rules, Regulations and Government orders governing the affairs of the school administration.

16. An identical question was considered by a learned Single Judge of this Hon"ble Court in an unreported decision passed on 11th June, 1992 in Netai Chand Manna v. District Inspector of School (SE) wherein it was held that an nomination of an outsider even if he is interested in education is not in accordance with Clause 12 of the Management Rules. It was further held therein

that a departmental nominee ought to have been nominated from the Department concerned to represent the Government of West Bengal on the Managing Committee. Thus, this Court holds that though, in the present case, the departmental nominee, at the time of his nomination, was an employee under the said Department but he ceased to be a member of the Managing Committee when he retired from his service as retirement operates as termination of his service contract with his employer resulting cessation of his contact with the Department.

17. The other provisions which are relevant for the present purpose may also be referred to herein under.

18. Though the procedure for filling up the casual vacancy in the Managing Committee is provided in Rule 11 of the management Rules but the manner in which such casual vacancy occurs has not been specifically mentioned in the Management Rules. Even though the statutory Rules is silent on this point, but still then by following the common practice this Court holds that casual vacancy may occur in general either on death of any member or by his resignation or by his removal by democratic process. Such vacancy may occur in case of a departmental nominee either by his removal from his service or by termination of his service or by retirement or by his removal in democratic process and in case of guardian member, such casual vacancy may arise when his ward passes out or leaves the school or by his removal in democratic process etc.

19. Fact remains that the departmental nominee whose participation in the meeting is under challenge, was subsequently replaced by another departmental nominee and such replacement was made during the validity period of the said Managing Committee. Had his right to continue as member of the said Managing Committee during the life time of the Committee was recognized by the State-Respondents, then the said departmental nominee would not have been replaced by another departmental nominee during the validity period of the said Managing Committee. This was done, only because of the fact that the State-Respondents were also of the view that after retirement his membership ceased.

20. Thus, this Court concludes by holding that after retirement, a departmental nominee gets himself disassociated with his Department and thus, he ceased to be a member of the Managing Committee after his retirement.

21. Since admittedly the departmental nominee retired from service in August, 2009 his participation in the meeting held in April, 2010 cannot be counted. Thus, if he is excluded from the said meeting then only 6 members out of 13 were present in the said meeting. As such, due to want of quorum, the said meeting was invalid. Accordingly, this Court holds that the resolution for suspending the Headmaster which was adopted by the managing Committee of the said school in its meeting held on 29th April, 2010 was invalid and/or illegal and as such the impugned resolution cannot be retained on record.

22. The impugned resolution dated 29th April, 2010 thus, stands quashed.

Consequently, the suspension order which was passed on the basis of such resolution was also illegal and thus such suspension order also stands quashed. The school authority is, thus, directed to permit the Petitioner to resume his duty as Headmaster in the school immediately.

23. The writ petition is, thus disposed of.

24. Urgent xerox certified copy of this judgment, if applied for, be given to the parties as expeditiously as possible.