
(2003) 10 GAU CK 0002
In the Gauhati High Court
Case No : Writ Appeal No. 263 of 2003

Governing Body, K.C. Das Commerce College and Another	APPELLANT
Vs	
Gautam Choudhury and Others	RESPONDENT

Date of Decision : 29-10-2003

Acts Referred:

Non Government Colleges Management Rules, 2001 — Rule 18

Citation : (2004) 2 GLR 310

Hon'ble Judges : P.P. Naolekar, C.J.; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : H.N. Sarma, B.N. Sarma and D. Choudhary, for the Appellant; G.A. Assam, S. Sarma and N. Mitra, for the Respondent

Judgement

P.P. Naolekar, C.J.—Heard learned counsel for the appellant Mr. D. Choudhury.

2. The petitioner respondent has been appointed on the post of Accountant by order dated 21.2.1997. The K.C. Das Commerce College was brought under deficit grant-in-aid scheme with effect from March, 1998. The Governing Body of the College has passed a resolution on 19.4.2002 whereby it has decided to release the Grade III and Grade IV employees of the College with effect from 1.6.2002 who are said to have been appointed without selection process. As per the Resolution taken by the Governing Body of the College the petitioner was released by order dated 31.5.2002. After release of the petitioner the Governing Body has issued an advertisement on 27.7.2002 for filling up the post of Accountant. Aggrieved by the order of release whereby the post of Accountant fell vacant and the resultant issuance of advertisement for filling up of that post has been challenged by filing the writ petition. The learned Single Judge has allowed the writ petition on the ground that there was a non-compliance of Rule 18 of the Assam Non-Government Colleges Management Rules, 2001 (hereinafter referred to as "the Rules of 2001") before removal of the service of the petitioner. The Resolution, order of termination and the advertisement issued by the Governing Body of the College has been quashed by learned Single Judge.

Aggrieved by the order passed by the learned Single Judge, the present appeal has been filed by the Governing Body of the K.C. Das Commerce College.

3. The real question for consideration of this Court is whether after the Rule of 2001 has been brought into force, the Governing Body has the authority and jurisdiction to remove or dismiss a teaching or non-teaching staff without prior approval of the Director of Higher Education. Admittedly, before removal of the petitioner from the post of Accountant the Governing Body did not take the approval of the Director of Higher Education. Rule 18 of the Rules of 2001 reads :

"18. Governing Body to obtain prior approval of the Director in certain matters,. The minutes of the proceeding of the Governing Body meeting shall be sent to the Director and the concerned affiliating University. No final decision regarding appointment, promotion, suspension, termination, removal or dismissal of teaching or non-teaching staff including that of the principal or any construction works involving Rs. 50,000 (fifty thousand) or more shall be undertaken by the Governing Body without the prior approval of the Director :

Provided that so far as non-Government College are concerned, the Governing Bodies are require to send the proceedings of the meeting to the Director but it will be open for the Director to call for the proceedings, if any complaint is received against the Governing Body and any direction given by the Director on it shall be final and binding on the Governing Body of the College."

4. It is manifest from this Rule that the minutes of the proceedings of the Governing Body meeting are required to be sent to the Director and also to the concerned affiliating University. Rule 18 prohibits finality of the decision of the Governing Body regarding appointment, promotion, suspension, termination, removal or dismissal of teaching and non-teaching employees without prior approval of the Director. Thus, any decision taken by the Governing Body regarding appointment, promotion, suspension, termination, removal or dismissal would attain finality with the approval of the Director. Unless and until there is approval of the Director on the decision taken by the Governing Body it will not come into existence nor it can be executed. For a decision to become final and operative the Governing Body is to seek and obtain approval of the Director. This is the simple reading of Rule 18 of the Rules of 2001. In the present case, the petitioner who was appointed as Accountant has been removed from service on the basis of the decision taken by the Governing Body, but that resolution has got no sanction from the Director of Higher Education. By virtue of Rule 18 of the Rules of 2001 any decision taken by the Governing Body without approval of the Director will not come into force nor can it be made effective. Under the circumstance, the decision taken by the Governing Body for removal of the petitioner from service without approval of the Director is illegal and cannot be enforced. Consequently as the post does not become vacant the same cannot be filled in by issuance of advertisement.

5. In the aforesaid facts and circumstances of the case, we do not find any

infirmity or illegality in the order passed by the learned Single. The appeal is dismissed. However, it shall be open for the Governing Body to take proper recourse to Rule 18 of the Rules of 2001 and to take decision in regard to the petitioner respondent, if it still feels fit and proper, in the facts and circumstances of the case.