

**(1973) 03 PAT CK 0009**

**In the Patna High Court**

**Case No :** Civil Writ Jurdn. Case No. 1410 of 1972

Jay Narayan Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 08-03-1973

**Acts Referred:**

Bihar High Schools (Constitution, Powers and Functions of Managing Committee)  
Rules, 1964 — Rule 3, 34  
Constitution of India, 1950 — Article 226

**Citation :** AIR 1973 Patna 377 : (1974) 7 PLJR 305

**Hon'ble Judges :** Madan Mohan Prasad, J

**Bench :** Single Bench

**Advocate :** Basudeo Prasad, Narendra Prasad and Radha Mohan Prasad, for the Appellant; J.N.P. Verma, T.K. Jha, S.C. II, Janardan Pd. Singh, Ashok Kumar Sinha, Vijayeshwar Prasad, Renu Sharma and Hari Krishna Kumar, for the Respondent

**Final Decision :** Allowed

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## Judgement

Madan Mohan Prasad, J.—This is an application under Article 226 of the Constitution of India for the issue of an appropriate writ quashing an order passed by the District Education Officer of Monghyr appointing respondent No. 11 as the Headmaster of a school and an order passed by the Secretary of the Managing Committee directing the petitioner to hand over charge of the post to him.

2. The case of the petitioner is that he was appointed an Assistant Teacher in a Government aided school called the S.A.S. Higher Secondary School in village Ballia in the district of Begusarai, on the 2nd of August. 1949. Even before this he had worked in the same school as an Assistant Teacher from the 11th July, 1945 to the 29th May. 1946 and thereafter as Headmaster of a Middle School for more than a year. On the 21st of June. 1971 he was promoted to officiate as the acting Headmaster of the school and he has been serving since then in that capacity. On the 29th of June. 1971 an advertisement was pub--lished in the

Searchlight inviting applications for the post of Headmaster of the said school. The petitioner applied for the aforesaid post. For some reason or the other the interview could not be held for some time and the petitioner along with others was interviewed on the 5th of September. 1972. The petitioner was found to be the most suitable candidate and, therefore, the Managing Committee passed a resolution on the 18th of September. 1972 giving him the first place amongst the candidates and selecting him for appointment to the said post. On the 20th of September, 1972 the Secretary of the Managing Committee forwarded the resolution to the District Education Officer for the purpose of his approval to the appointment as required by the rules along with a tabular statement prepared by him of the qualifications etc. of the candidates. In this tabular statement, however, respondent No. 4, the Secretary, had wrongly mentioned that the teaching experience of the petitioner and that of respondent No. 11 were the same. In fact, the teaching experience of the petitioner was more than that of respondent No. 11 including the period during which he had worked prior to 1949, Further it is said that respondent No. 4 had intentionally omitted to mention in the said tabular statement about the petitioner's passing the short training course examination in the year 1954. The District Education Officer received the aforesaid resolution of the Managing Committee on the 23rd of September. 1972 but passed no orders for some time. The petitioner then made a representation to him in this connection on the 4th of November, 1972. Thereafter on the 6th of November. 1972 the District Education Officer passed the impugned order of appointment of respondent No. 11 (Annexure 8). After receipt of this order the Secretary of the School without even consulting the Managing Committee issued a letter of appointment to respondent No. 11 and also a letter to the petitioner asking him to hand over charge of the post to the aforesaid respondent (Annexure 10), The petitioner received the letter on the 20th of November, 1972 but did not hand over charge to respondent No. 11. He filed the present application on the 21st of November, 1972.

3. The grounds on which the present application is based mainly are the following. Firstly it is said that the appointment to a teaching post has to be made by the Managing Committee of the School under Rule 31 of the Bihar High Schools (Constitution. Powers and Functions of Managing Committee) Rules, 1964 (hereinafter referred to as "the Managing Committee Rules"). The District Education Officer has merely to give his approval to the appointment made by the Managing Committee within a period of 15 days in accordance with Rule 5 of the Rules regarding Appointment and Service Conditions of Teachers in Non-Government High Schools contained in Notification No. II/R4-01/55-E-5172. dated the 7th September, 1955 (hereinafter referred to as the "Appointment Rules"). In the present case approval or non-approval not having been sent within 15 days the appointment by the Managing Committee will be deemed to have been approved. Secondly, it is said that in view of Rule 3 of the Appointment Rules in matters of appointment of teachers due weight has to be given to "qualifications, teaching experience and efficiency of the candidates". In

the present case the petitioner having larger teaching experience ought to have been appointed but the District Education Officer acted in contravention of the aforesaid rule by directing the appointment of respondent No. 11, because the tabular statement itself contained a wrong entry in this behalf on account of the malicious act of the Secretary, Thirdly, it is said that the Secretary of the school acted in contravention of Rule 34 of the Managing Committee Rules and he acted mala fide in by-passing the Managing Committee and issuing the letter of appointment to respondent No. 11 and directing the petitioner to hand over charge. There is one more ground mentioned in the application which has been given up at the time of hearing. It was said that in view of a Government Notification dated the 16th of March, 1972 if the approval of the District Education Officer is not received within one month the appointment made by the Managing Committee will be deemed to have been approved. It was found that this notification was not to come into effect at the relevant date of appointment in the present case and it was the result of oversight that this ground was taken.

4. A counter-affidavit has been filed on behalf of respondent No. 11. The main points which have been mentioned therein and deserve notice are the following :--

(i) That the petitioner had been appointed as an Assistant Teacher and allowed to join the post on the 2nd August, 1949 without any advertisement and interview by the Headmaster and the Managing Committee appointed him on the same date, namely, the 24th of September, 1949 along with respondent No. 11.

(ii) That the tabular statement given by the Secretary correctly shows the length of teaching experience of the petitioner and respondent No. 11.

(iii) That both of them were confirmed on the same date, the 22nd of July, 1950.

(iv) That he had also made a representation to the District Education Officer against the recommendations of the Managing Committee and prayed for justice to be done to him.

(v) That the petitioner became a trained graduate in the year 1958 whereas respondent No. 11 got a diploma in education in the year 1956 and as such he is senior to the petitioner in view of Education Department's Circular. Respondent No. 11 further asserts that he had taken over charge of the post on the 14th of November, 1972 and the statement to the contrary is not true. An affidavit has also been filed by respondent No. 4, the Secretary of the School, to the effect that in view of the Managing Committee's resolution to appoint the approved candidate, this respondent had issued the letter in good faith and that the matter did not require further consultation with the Managing Committee.

5. Learned counsel for the petitioner has limited his arguments to the following three points. Firstly, that the order passed by the District Education Officer suffers from an error apparent on the face of the record and is arbitrary. Secondly, that in the absence of any order of the District Education Officer in

respect of the approval the petitioner's appointment must be deemed to have been approved and the District Education Officer had no jurisdiction to direct the appointment of respondent No. 11. Thirdly, that the Secretary acted ultra vires Rule 34 of the Managing Committee Rules in issuing the letter of appointment to respondent No. 11.

6. With regard to the first point learned counsel has drawn attention to the contents of the order (Annexure 8). It appears therefrom that the District Education Officer understood the resolution of the Managing Committee to mean that both the petitioner and respondent No. 11 had been put at par with each other and on this assumption he applied the principle of seniority as trained graduate and approved the appointment of respondent No. 11 on the ground of his seniority as such. Learned counsel has assailed this assumption by reference to the resolution of the Managing Committee which is contained in Annexure 3. Reading the resolution as a whole it is quite clear and it has been categorically stated therein that in view of the consideration of "efficiency teaching experience, sacrifice and seniority, the Committee has given the first place to Jay Narayan Mishra". In the next sentence, however, it is said :

nksuksa f'k{kdkdks dks leku LFkku nsrs gq;s ;g fu.kZ; fy;k x;k fd Jh t;ukjk;.k feJ dks lcls ;ksX; iz/kkuk/;kid in ds fy;s pquk A f}rh; LFkku Jh ckyds"oj flag dks fn;k x;k A

It appears that the District Education Officer has been misled by the use of the words ^leku LFkku nsrs gq;s\*- Some effort was made to argue before me that it appears from the use of these words that both the teachers were given the same place. This argument is untenable because whatever it might mean, and it is by no means very clear, it is, however, quite clear that in spite of the said statement the decision taken by the Managing Committee was that the petitioner was the most suitable candidate for the post of the Headmaster. The conclusion is reinforced by the subsequent sentence which clearly assigns the second place to respondent No. 11. There cannot be the least doubt that the Managing Committee had selected the petitioner giving him the first place and the aforesaid respondent only the second place. In spite of the categorical statements in the resolution of the Managing Committee the District Education Officer treated the resolution of the Managing Committee as if it had put both the petitioner and the respondent No. 11 bracketed together so far as the order in which their names had been placed for the purpose of the appointment. The assumption of the District Education Officer was absolutely unjustified. The error is quite apparent on the face of the record.

7. It is also obvious that the District Education Officer acted on this assumption and applied another test, namely, as to who was senior having become a trained graduate earlier. In this connection reliance has been placed on behalf of the respondents on Government Circular No. 3512 dated the 26th of November, 1969. The aforesaid circular is a Letter from the Director of Public Instruction to the Secretary of the Secondary Board of Education, Bihar. It has first to be noted

that this circular gives directions regarding the appointments of Assistant Headmasters and Vice Principals. It does not relate to appointments of Headmasters or Principals. Secondly, it is merely a letter from the Government making clarifications. Apart from these, this circular cannot have the force of a statutory rule and cannot be deemed to supersede any of the statutory rules, for instance Rule 3 in the present case. Reliance has next been placed by the learned counsel for respondents on Rules 2 and 5 of the Rules for sanction of pay scales in selection grade which are as follows :

"2. Only trained teachers shall be eligible for selection grade, untrained teachers who are allowed ad hoc increase leading to pay scales of trained teachers of the next lower qualification shall not be eligible for selection grade."

"5. The following are the guidelines for determining the inter se seniority of teachers :--

(a) Among the teachers with similar qualification, the one with longer period of service in a school or schools (in the State) will be deemed to be senior. Break of service and leave without pay will not count towards calculation of the period of service.

(b) A teacher who has acquired the qualification entitling him to the selection grade earlier will be deemed senior to a teacher with similar qualification but with longer period of service in a school or schools.

(c) Among teachers having similar qualification and period of service, the one older in age will be deemed to be senior."

The rules aforesaid provide sanction of pay scales in Selection Grade and have no application to the question of appointment. Besides Rule 5 provides guidelines for determining inter se seniority of teachers for the aforesaid purpose because Rule 4 of these Rules provides as follows :--

"4. Selection of teachers for these pay scales will be made on the basis of seniority in the respective cadre and efficiency of the teachers to be judged on the basis of supervision report of the heads of institution and inspection reports of the Inspecting Officers. The claim of a senior teacher may be superseded on account of adverse remarks in the Confidential Character Rolls supervision Book or in the Inspection Notes."

Obviously, therefore. Rule 5 had to lay down guidelines for the purpose of finding out the seniority of teachers inter se. There is nothing to suggest that these rules would be applicable to cases of appointments or that in cases where the Managing Committee finds one person to be more qualified than the others the principle of seniority on account of having become a trained graduate earlier will apply. In this respect it is relevant to mention that in view of Rule 3 of the Managing Committee Rules, qualifications, teaching experience and efficiency alone are to be given weight. In the matter of qualification the petitioner and respondent No. 11 are equal. In the matter of teaching experience it is obvious

that the petitioner has larger experience than respondent No. 11. It has not been controverted that he did not work in the same school for a period of 10 months and 19 days from the 11th July. 1945 to the 29th of May. 1946 or as Headmaster of the Middle School for over a year. The only point raised in the counter-affidavit is that this teaching experience and his experience in the Middle School cannot be counted. Rule 3, however, speaks of teaching experience and not teaching experience in High Schools. Apart from that even if that period be not taken into consideration the fact remains that the petitioner was appointed on the 2nd of August. 1949 whereas respondent No. 11 was appointed on the 24th of September, 1949. It is true that the Managing Committee approved the appointment of the petitioner on the 24th of September. 1949, It is, however, clear from the proceedings of the meeting of the Managing Committee dated the 24th of September. 1949 produced as Annexure P to the rejoinder filed by respondent No. 11 himself, that respondent No. 11 on his appointment was asked to join the school on the 7th of October. 1949 whereas in respect of the petitioner the resolution stated as follows :--

"Further resolved that appointment of B. Jai Narain Mishra. B. A. who has been working in the school since August, 2nd 1949 be approved and be paid his salary for the coming D. P. holidays."

It is quite obvious from this annexure that the petitioner's appointment with effect from the 2nd of August, 1949 was approved and he was already working in the school and that in spite of his appointment respondent No. 11 was to join the school on the 7th of October. 1949. In the matter of actual teaching work, therefore, obviously the petitioner had a greater length of service than respondent No. 11. The circular relating to appointment of Assistant Headmaster and Vice Principal and the rules regarding determination of seniority for the purpose of placing the teachers in the selection grade have thus no application to the facts of the present case. There is nothing in the rules to warrant the proposition that a man having larger teaching experience will be deemed to be junior to a person having lesser teaching experience provided he has become a trained graduate earlier. Nothing has been placed before me in support of such a proposition. Obviously Rule 3 cannot be so interpreted as to admit of this interpretation, The District Education Officer was, therefore, applying an extraneous principle, namely, seniority on account of becoming trained graduate earlier, to the facts of the present case.

8. There is another point raised by learned counsel for the petitioner that the order of the Education Officer does not show that he has considered the requirements of Rule 3 in the matter of approval of the appointment. The Managing Committee by its resolution (Annexure 3) had clearly stated that taking into consideration the efficiency teaching experience, sacrifice and seniority, the Committee had decided to give the first place to the petitioner and considered him more suitable for the post than respondent No. 11. The District Education Officer, however, thought that the Managing Committee had placed

them as equal in all respects and he himself applied only the principle of seniority and did not take into consideration the grounds of efficiency or teaching experience. The order thus appears to be arbitrary and without jurisdiction.

9. In the present case the Secretary supports the case of respondent No. 11 whereas the President and the Members of the Managing Committee who have entered appearance have in their arguments supported the case of the petitioner. The petitioner has brought on record a copy of the proceedings of the Managing Committee (Annexure 16) at which six members of the Managing Committee were present which discussed the question of the Secretary issuing the letter of appointment to respondent No. 11 without consulting the Managing Committee and decided to permit the petitioner to carry on the duties of Headmaster as he was already carrying on such duties. The respondent (No. 11) has denied that any such meeting was held. Be that as it may, the explanation of the Secretary that the Managing Committee did not require to be consulted after the receipt of the approval of the District Education Officer does not appear to be correct. It is said on his behalf as also on behalf of respondent No. 11 that the Managing Committee had appointed the person who would be approved by the District Education Officer and in view of this commitment no further consultation was necessary. This is factually wrong. Paragraph 6 of the resolution in Annexure 3 clearly says that the Managing Committee has selected Jai Narain Mishra whom it has given the first place for appointment on probation as Headmaster. It cannot, therefore, be said that the selection was left into the hands of the District Education Officer and that the Managing Committee would accept anybody approved by him. It appears from Rule 5 of the Appointment Rules that if the Managing Committee does not agree with the orders of the District Education Officer in respect of the approval it is open to the Managing Committee to file an appeal against that order. It cannot, therefore, be said that the Managing Committee's acceptance of the order of approval could be taken for granted. The Secretary had, therefore, no business to issue the letter of appointment to respondent no. 11 without putting the matter before the Managing Committee. The powers of the Secretary are well defined in the Managing Committee Rules and he can act only under the direction and control of the Managing Committee as will appear from Rule 34 (1) (a) of the Managing Committee Rules which is as follows:--

"34. Powers and duties of the Secretary-- (1) (a) The Secretary shall subject to the control and direction of the Committee, be responsible for the proper administration of the affairs of the Committee, and the school. He shall carry on correspondence with proper authorities on behalf of the Committee and shall perform such functions and exercise such powers as may be prescribed by these rules or may be delegated or assigned to him by the Committee."

The letter of appointment issued by him, contained in Annexure 10, was also, therefore, without jurisdiction.

10. It is further necessary to consider the second point raised by learned counsel

because his contention is that in the absence of any order of approval passed within 15 days, such an approval must be deemed to have been given and the petitioner must, therefore, be deemed to have been appointed. If this argument were to be accepted it would mean that this Court must declare that the petitioner had been appointed and pass necessary orders on that basis. If, however, this argument is not accepted the order passed in this case will have to be different.

11. Learned counsel for the petitioner has urged that Rule 5 of the Appointment Rules must be deemed to be mandatory. Firstly because it uses the word "shall" in respect of sending the approval and secondly because it provides a time limit of a fortnight from the receipt of the proposal sent by the Managing Committee. It is urged that it is mandatory on the part of the District or the Sub-divisional Education Officer to send the approval within the time prescribed. It is further urged that it must be taken that the intention of the rule making authority is to make it a mandatory duty on the part of the officer to give the approval within the time allotted and in the absence of such approval it must be deemed to have been given.

12. The aforesaid Rule 5 of the Appointment Rules which requires interpretation in the present case is as follows :--

"The Managing Committee shall submit a copy of the advertisement, the applications received with a tabular statement and its recommendations to the Sub-Divisional Education Officer in the case of appointments of Assistant Teachers and to the D. E. O. in case of appointments of Headmaster, for approval. The D. E. O. or the S. D. E. O. as the case may be shall send his approval within a fortnight of the receipt of the proposal. If he differs from the recommendations of the Managing Committee, he shall record in writing the reasons for his difference. While recommending the Managing Committee shall submit three names for each post in order of preference recording reasons for the preference. The Managing Committee may appeal to the D. E. O. in case of difference of opinion with S. D. E. O. in matters of appointment of Assistant Teachers and to the President, Board of Secondary Education in the case of difference of opinion with D. E. O. for the appointment of Headmaster. The decision of the D. E. O. or the President, as the case may be, shall be final. A copy of the joining report of the teacher or the Headmaster is to be submitted to the approving authority within a month."

13. Learned counsel has urged that in cases where the Legislature provides a time limit for the doing of a thing the provision must be held to be mandatory. In support of this proposition he has placed reliance on the decision in the case of *Barker v. Palmer* (1881) 8 QBD 9. In this case their Lordships were considering the question of interpretation of the terms of Rule 7 of Order VIII of the County Court Rules, 1875 which required that "the summons in an action brought to recover lands shall be delivered to the bailiff forty clear days at least before the returned day and shall be served thirtyfive clear days before the

returned day thereof". Grove. J. observed :--

"The rule is, that provisions with respect to time are always obligatory unless a power of extending the time is given to the Court, and there is no such power here".

The learned Judge held that the words of the rule were peremptory and in this Lopes. J. agreed with him.

14. His next argument is that 15 days having elapsed in the present case the condition became impossible of fulfilment and in that view of the matter the condition must be deemed to have been complied with. In other words the approval not having been sent within 15 days it must be deemed to have been given. For this proposition learned counsel has placed reliance on Maxwell who in his Interpretation of Statutes. 12th Edition, page 326, has stated the law as follows :--

"Enactments which impose duties upon conditions are, when these are not construed as conditions precedent to the exercise of a jurisdiction, subject to the maxim, *lex non cogit ad impossibilia*. They are understood as dispensing with the performance of what is prescribed when performance of it is impossible."

15. In order to find out the principles which would govern the interpretation of the rules such as the present one. it would be necessary to refer to some cases where the law has been laid down. It is well established that it is impossible to lay down any general rule for determining whether a provision is imperative or directory. In this connection Maxwell has himself quoted the observations of Lord Campbell. Lord Chancellor, (at page 314) which say-

"It is the duty of the Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed."

and the observation of Lord Penzance to the effect-

"that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called Imperative or only directory."

In the case of State of U.P. Vs. Manbodhan Lal Srivastava, their Lordships were considering the interpretation of Article 320 of the Constitution of India and referred with approval to the following observations of the Judicial Committee of the Privy Council in the case of Montreal Street Rly. Co. v. Normandin 1917 AC 170 : AIR 1917 P.C. 142 :--

"..... The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked

at. The cases on the subject will be found collected in Maxwell on Statutes 5th ed., P. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

The principle aforesaid was adopted by the Federal Court in the case of AIR 1945 67 (Federal Court) in which their Lordships of the Federal Court were construing the provision of Section 256 of the Government of India Act. In the case before their Lordships of the Supreme Court they held that despite the use of the word "shall" the provision in Article 320(3)(c) of the Constitution is directory.

16. In the case of Mahesh Prasad Sinha Vs. Manjay Lal and Others, a Division Bench of this Court was considering the question whether the requirements under the proviso to Sub-Section (1) of Section 83 of the Representation of the People Act is mandatory or directory and in this connection quoted extensively the principles laid down in Maxwell's Interpretation of Statutes, Halsbury's Laws of England and Sutherland Statutory Construction. The following passage in Article 656 of the Halsbury's Laws of England. 3rd Edition, volume 36. at page 435 which has been quoted there may be usefully reproduced here :--

"Although no universal rule can be laid down, provisions relating to the steps to be taken by the parties to legal proceedings in the widest sense have been construed with some regularity as mandatory; and it has been observed that the practice has been to construe provisions as no more than directory, if they relate to the performance of a public duty, and the case is such, that to hold null and void acts done in neglect of them would work serious general inconvenience, or injustice, to persons who have no control over those entrusted with the duty, without at the same time promoting the main object of the legislature."

It is also worthwhile to quote a passage from Crawford's Statutory Construction at page 515. quoted there, which is as follows :--

".....if the provision involved relates to some immaterial matter where compliance is a matter of convenience rather than substance, or directs certain actions with a view to the proper, orderly, and prompt conduct of public business, the provision may be regarded as directory, but where it directs acts or proceedings to be done in a certain way and indicates that a compliance with such provisions is essential to the validity of the act or proceedings, or requires some antecedent and pre-requisite conditions to exist to the exercise of the power, or be performed before certain other powers can be exercised, the statute may be regarded as mandatory."

17. I am tempted to quote from Maxwell, 11th edition, page 369. the statement of the law under the heading "Performance of Public Duty". It is said :--

"On the other hand, where the prescription of a statute relates to the performance of a public duty, and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty yet not promote the essential aims of the legislature, such prescription seems to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them. It has often been held, for instance, when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time."

18. In Maxwell (12th Edition, page 318) there are a large number of cases mentioned in which statutory requirements have been held to be directory. Reference is made to the principle laid down in *R. v. Ingram*. (1697) 2 Salk 593 in which the Riot Act of 1411 which required justices to try rioters "within a month" after the riot, was held not to limit the authority of the justices to that space of time, but only to render them liable to a penalty for neglect. The regulations for the conduct of elections under the Ballot Act. 1872 were held to be so far directory only that an election was not invalidated by the non-observance of them. Reference is made to the case of *Foot v. Truro*. (1725) 1 Stra 625. The provision regarding the annual election of aldermen was held to be merely directory.

19. It is not necessary to multiply illustrative cases on the point. As laid down in several cases one has really to address himself to the enactment which one has to construe and find out the intention of the Legislature as expressed by the language employed in the statute. The scope and the object of the Act or the Rules have to be kept in view. It has also to be seen as to what would be the result of one construction or the other with a view to find out the intention of the Legislature. Keeping these principles in mind, I proceed to examine the rule aforesaid.

20. Rule 31 of the Managing Committee Rules gives power to the Managing Committee "to appoint teaching and other staff in vacancies in the existing posts, to grant extension of service and to impose penalties on such members of the staff in accordance with the rules prescribed in that regard". It is thus obvious that the Managing Committee has the right to appoint the teaching staff but this has to be done in accordance with the rules prescribed in that regard. Rule 5 of the Appointment Rules prescribes the manner in which such appointment has to be made. It is quite clear from the rule aforesaid that the Managing Committee has to send its "recommendations" to the District Education Officer in the case of appointment of Headmaster "for approval". It again appears from the same rule that "while recommending the Managing Committee shall submit three names for each posts". The rule making authority thus make their intention quite clear by

saying that what the Managing Committee sends is merely their recommendations. It further appears that the District Education Officer has been given a final say in the matter subject to an appeal before the President of the Board of Secondary Education. It must also be noticed that even the joining report of the Headmaster is to be submitted to the approving authority. There is thus no doubt in my mind that the Managing Committee being bound by the decision of the President in the matter of appointment does not have the absolute right in respect of appointment. Reading Rule 31 of the Managing Committee Rules and Rule 5 of the Appointment Rules it is quite clear that the right of the Managing Committee to appoint a Headmaster or a teacher is qualified and limited. Therefore, it cannot be said that any absolute right of the Managing Committee is violated by the provisions of Rule 5. In fact this rule qualifies and restricts the right given to the Managing Committee under Rule 31 aforesaid.

21. The next question is whether the time limit given by the authority in respect of different steps to be taken must be deemed to be mandatory. It appears firstly that the District Education Officer is to send within a fortnight of the receipt of the proposal of the Managing Committee his approval. Next it appears that the copy of the joining report of the teacher is to be submitted to the approving authority within a month. The question is whether the time limit provided is the essence of the matter or merely an instruction for the guidance of the officers concerned.

22. The question is as to what could be the intention of the rule making authority in prescribing the time limit aforesaid. Was it merely to provide for a prompt disposal of business or to lay down that the officer concerned shall have no jurisdiction to send his approval after the expiry of the period of 15 days or that the appointment of the Headmaster would not be legal if his joining report is not submitted to the approving authority within a month. It is quite clear to me that the intention of the rule making authority in framing the appointment Rules is to ensure that appointments are made in accordance with the procedure prescribed in respect of the doing of a thing and not in respect of the time within which the thing is required to be done. The essence of the matter contained in Rule 5 seems to me to be that the Managing Committee cannot make an appointment on its own without referring the matter to the District Education Officer. In the same way the Managing Committee cannot make an appointment of a teacher against the wishes of the approving authority. If there be a difference of opinion between the two a right of appeal has been given to the Managing Committee. The rule making authority has further made it clear that the decision of the President of the Board shall be final. Obviously, therefore, appointment cannot be made by the Managing Committee except after obtaining the approval of the District Education Officer or of the President of the Board on appeal against the decision of that officer. It is obvious that these provisions are mandatory. If they were to be held to be directory, a violation of them would nullify the effect of the safeguarding provisions made by the rule making authority in respect of teachers

or headmasters. The very object of the rule would be frustrated. Obviously, therefore, they are mandatory. On the other hand, the provision relating to the time within which the District Education Officer or the Sub-Divisional Education Officer is to send his approval is not a matter which can be said to be the essence of the rule. Nor can the time limit provided regarding the submission of the joining report be held to be the essence of the rule. Could it be the intention of the rule making authority that an approval sent on the 16th day would be of no consequence ? Could it be the intention of the rule making authority that a joining report submitted after a month to the approving authority itself would be of no consequence ? The only answer which occurs to me as the correct one is in the negative. If it were to be held that the time limit is mandatory, it could mean that the rule making authority intended that an approval sent after a fortnight would be useless and, therefore, the Managing Committee will have in such cases an unbridled authority to make an appointment without such approval having been obtained. If the time limit of 15 days were to be held to be mandatory it would have the effect of nullifying the provision relating to approval. The final word which under the rule rests with the District Education Officer or the President of the Board will have disappeared and the provision will have become infructuous if it were to be held that the approval shall be sent within time and not beyond. The same argument applies with regard to the submission of the joining report. To my mind, therefore, the provision of the time is nothing more than a direction to the officers concerned to send their approval within a certain period as it is in the case of submission of the joining report of the appointed Headmaster.

23. It is well settled that where the time limit is not the essence of the law it is not to be held to be mandatory. In the case of *Barker v. Palmer* aforesaid the question related to the procedure in Court and it is well settled that provisions relating to such procedure are generally considered to be imperative. The same principles do not, however, apply to duties to be performed by public officers. It is well settled that where duties are to be performed by public officers the time limit prescribed for such performance are generally directory rather than mandatory.

24. I am, therefore, led to the irresistible conclusion that the time limit of a fortnight prescribed by Rule 5 is not mandatory and, therefore, in the circumstances of the present case it cannot be accepted that the approval not having been sent within a fortnight it must be deemed that the recommendation of the Managing Committee to appoint the petitioner as Headmaster had been approved by the District Education Officer. In my view, it may be a dereliction of duty on the part of the District Education Officer not to send the approval within a fortnight. That does not, however, have the effect of invalidating the approval sent by him after the aforesaid period. In the present case the District Education Officer did send his approval with regard to respondent No. 11. On the ground of delay alone it cannot be said that the aforesaid approval was illegal and the petitioner must be deemed to have been appointed. This argument of learned

counsel must, therefore, be rejected.

25. There is a point raised by learned counsel for respondent no. 11 to the effect that the present application is not maintainable because the Managing Committee as such has not been impleaded to the present petition. This argument is of no avail because all the members of the Managing Committee have been impleaded individually.

26. The second point raised by learned counsel for the respondents is that the petitioner has no locus standi to challenge the order for the reason that he had merely been selected by the Managing Committee for appointment. Learned counsel has placed reliance in this connection on the observation of the Supreme Court in the case of Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, which is as follows :--

"In order that mandamus may issue to compel the respondents to do something it must be shown that the Statutes impose a legal duty and the appellant has a legal right under the Statutes to enforce its performance."

The facts of that case were entirely different from those of the instant case. The appellant of that case had been appointed the Principal of the College for some time. Subsequently he had been removed and another person was appointed after proper advertisement and he challenged the appointment of the new Principal. It was held by the High Court that his own appointment was not valid and the appointment of the other person was valid. In such circumstances their Lordships held that the appellant of that case did not have any legal right entitling him to get an order for appointment or reinstatement. In the present case the facts are entirely different and the law laid down there has no application. In the present case the petitioner has the right to be considered by the District Education Officer for appointment. Under certain wrong assumptions the District Education Officer did not consider the question of approval of the recommendation of the Managing Committee for the appointment of the petitioner. In the case of Dr C. M. Srivastava v. State of Bihar 1972 Lab IC 1325 . I had an occasion to consider this question and I have expressed similar views.

27. In the result. I find that the order of the District Education Officer contained in Annexure 8 and the letter of appointment issued by the Secretary of the school (Annexure 10) both cannot be sustained. Accordingly they are quashed. The District Education Officer is now directed to consider the proposal of the Managing Committee afresh and come to his conclusions in the light of the observations made above. This application is accordingly allowed. In the circumstances of this case, however, there would be no order for costs.