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(1987) 09 GAU CK 0006

In the Gauhati High Court

Case No : Civil Rules No. 390 of 1987

Sri Bhaven Chandra Pegu and — APPELLANT

Vs

The State of Assam and Others — RESPONDENT

Date of Decision : 21-09-1987

Acts Referred:

Assam Aided College Management Rules, 1976 — Rule 15, 22, 3, 5
Dibrugarh Univresity Act, 1965 — Section 20, 21, 32
Gauhati University (Amendment) Act, 1961 — Section 21
Gauhati University Act, 1947 — Section 21, 21(3)

Citation : (1988) 1 GLR 389

Hon'ble Judges : T.C. Das, J;J.M. Srivastava, J

Bench : Division Bench

Advocate : A.R. Barthakur, A.M. Majumdar, A.K. Thakur, C.C. Deka and N.C. Phukuu, for the Appellant; Govt. Advocate, T.C. Khetri and K.K. Bhatra, for the Respondent

Final Decision : Allowed

Judgement

T.C. Das, J.—By this common judgment, we propose to dispose e two Civil Rules as the parties are same and they stem common orders having similar consequences. In Civil Rule 390 of 1987 the writ Petitioner Shri Bhaven Chandra Pegu challenged the order dated 26.3.87 passed by the Director of Public Instruction, the Respondent No. 2 and communicated vido Memo No. G(A) Misc-17/82/162 dated 26.3.87 removing the Petitioner from the Secretaryship of the Dheimaji College with immediate effect and in nominating the seniormost lecturer of the Dhemaji College as Secretary of the College Governing Body with immediate effect. In Civil Rule No. 527 of 1987 the writ Petitioner has impugned the Resolution No. 2 dated 21.5.87 (Annexure ''E to the petition) adopted by the Managing Committee of the Dhemaji College removing the Petitioner from Secretaryship of the Institution and in his place appointing Shri Padadhar Dewri, Vice Principal of the College and allowing to do all financial transaction in the Dhemaji Mahkuma Treasury in respect of the College. Therefore, the substance

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of both the petitions are almost same and similar. To get the grip of rival contentions of the parties it is necessary to state in a nutshell the common facts leading to the filing of these two writ petitions. The Principal of the Dhemaji College a leading Educational Institution of Dhemaji is the writ Petitioner in both the Civil Rules. As a Principal of the College, he was also holding the charge as ex-officio Secretary of the Governing Body of the college by virtue of the provision of Sub-rule (c) of Rule 3 of the Assam Aided College Management Rules, 1976, The Petitioner has been holding a permanent post and was discharging his duties as a Principal and also as Secretary of the Governing Body of the College, The Respondents No. 2 the Director of Public Instruction in exercise of the power conferred on him under Rule of the Assam Aided College Management Rules, 1976, as amended and being duly authorised by his order dated 26.3.87 removed the Petitioner from Secretaryship of the College. Thereafter, the Managing Committee of the Dhemaji College on requisitioned notice held an emergent meeting on 21.5.87. In the said meeting the impugned Resolution No. 2 was adopted removing the Petitioner from Secretaryship of the Institution and appointed Shri Padadhar Dewri, Vice Principal of the College as Secretary to conduct all financial transactions for the college. This resolution was adopted on a later date from the date of the order of the Director of Public Instruction which was passed as far back as on 26.3.87. As a consequence thereof, the Petitioner approached the Civil Court and also filed these two writ petitions in this Court. However view of the of these two writ petitions in this Court, the Civil Court disposed of the case on the ground (Sic) the subject matter in both the proceedings was same and remedies sought for in these two writ petition are simillar the Civil Court.

2. In response to the notices on these two writ petitions, affidavit-in-opposition on behalf of the Respondent Nos. 3 to 12 Civil Rule No. 390 of 1987 has been filed. In Civil Rule 527 of 1987, the Respondent No. 3 has also filed affidavit-opposition. A reply to the affidavit-in-opposition has also been (sic)ed by the Petitioner.

3. Before we deal with the respective rival contentiens of the Parties as advanced by their learned Counsel, it would be appropriate to deal with the relevant provisions of the Assam Aided college Management Rules, 1976, in short "the Rules". It is provided in Rule 3(c) of the Rules that the Principal is the ex-officio Secretary of the Governing Body. The Secretary can be replaced and or removed only by the Director of Public Instruction he being the only authority to take action under Rule 22 of the Rules. In this context we extract Rule 22 which reads as follows:

22. If it is found that the Principal of the college who is the ex-officio Secretary of a Governing Body of deficit college has committed any serious lapse and his continuance as Secretary of the Governing Body of the College will jeopardise the very purpose of nominating him as Secretary of the College Governing Body, the Director of Public Instruction may replace him and nominate the Vice-Principal of

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the college to act as ex-officio Secretary of the Goserning Body till the charges on which the Principal of which the Principal of the Colleges is proceeded with are finalised and he is acquitted of all charges honourably. If there is no Vice-Principal, the senior most lecturer may hold charge of the Secretary of the Governirg Body. The Secretary will be subject to disciplinary action against him under the relevant provision of the Assam Services (Discipline and Appeal) Rules, 1964 and any other rules framed from time to time on this behalf.

4. Placing a glance on the above Rule, it is apparently clear that the Secretary of the Governing Body of a deficit college can bo replaced by the Director of Public Instruction subject to two conditions, He can do so (a) if it is found that the Secretary bus committed any serious lapse or (b) his continuance us Secretary of the Governing Body of the College will jeopardise the very purpose of nominating him as Secretary. The order of removal must be in terms of Rule 22 of the Rules. In case tbe Principal of the College who is the 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 seniormost lecturer of the college may hold the charge of tbe secretary. Under Rule 3(c) the Principal of the college shall be nominated by the Governnent as ex-officio Secretary of the Governing Body of the college. This power of nomination is delegated to the Director of Public Instruction, Assam under this aforesaid Rule. When the Director of Public Instruction holds the delegated power to nominate the Principal as ex-officio Secretary of tbe Governing Body of the college, he can aiso exercise the power under Rule 22 to remove him. But Rule 22 has specifically mentioned that the Director of Public Instruction may replace him and nominate either the Vice-Principal in his place if there be any, as Secretary of the Governing Body till the charge on which the proceeding against the Principal is finalised. In case of there being no Vice-Principal in the college, the Director of Public Instruction (in short, ''D.P.I.'') can nominate the seniormost lecturer of the said college to hold the charge of the Secretary of the Governing Body of the college.

5. The controversy, as it appears in these two writ petitions, is common and within a narrow compass. Now the question arises that under what cicumstances the D.P.I. could remove the Principal from Secretaryship and in the instant case whether the provision of Rule 22 was complied with? The next question would be as to whether the emergent meeting of the Managing Committee was properly held on 21.5.87 and as to whether the Managing Committee was empowered to take resolution for removal of the Principal from Secretaryship and to appoint the Vice-Principal to hold the charge as Secretary to carry out the function including the function of conducting the financial transaction of the college. To deal with the above questions, it would be (Sic)vant to consider as to whether the Managing Committee of Governing Body was properly held to adopt the impugned Solution. In this context we would like to refer Rule 15 of rules which is extracted below:

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15. A meeting of the Governing body will be called for by the Secretary with the consent of the President if it is not requisitioned meeting by the two-third members of the Governing Body. Not less than seven days'' notice should be given of the meeting. The notice will setforth the business to be transacted at the meeting and no business other than that so stated will be transacted, except with the consent of three-fourth of the members present. Except any emergency meeting which should be so notified, all meetings of the Governing Body shall be held in the college premises. The proceedings of the meeting should be recorded in the proceeding Book by the Secretary and signed by all members present. If any notice of dissent given by any member, it should also be recorded in the proceeding Book. All records of the Governing Body of a College must be kept in the college office and the principal of the college shall be responsible to preserve these records properly.

6. This Rule 15 has given a guideline for holding the meeting the Governing Body. The meeting of the Governing Body be called normally by the Secretary with the consent of President in case it is not a requisition meeting. But in of holding a requisitioned meeting, the requisitioned must made by two-third members of the Governing Body. In either the case, seven days'' notice to hold such meeting is necessary. The notice must setforth the agenda of the business to be (sic)sacted at the meeting and no business other than those (Sic)ed in the notice would be transacted except with the con(Sic) of the three-fourth of the members present in the meeting, has also been prescribed that the meeting of the Governing (Sic) should be held in the college premires except in case of emergency meeting which should be accordingly so notified but the venue of the meeting.

7. Now let us examine whether the aforesaid Rule has any (Sic)tcry force. Mr. A.R. Barthakur the learned Counsel appearing on behalf of the writ Pettioner has submitted that the above Rules are statutory Rules. Our attention has been drawn to the preamble of the Rules contained in the Notification. It runs as follows:

No. ECL.11/76/20.-In exercise of the powers conferred by the proviso to Clause (g) of Section 21 of the Gauhati University Act, 1947, (Assam Act XVI of 1947) as amended upto date and proviso to Clause (f) of Section 32 of the Dibrugarh Univresity Act, 1955 (Assam Act VIII of 1965) as amended upto date, the Governor of Assam is pleased to make the following Rules.

8. Mr. Barthakur, the learned Counsel bas submitted that there Rule are framed by virtue of the power conferred by the provisions of the Gauhati University Act, 1947 as amended up-to-date and also under the proviso to Clause (f) of Section 32 of the Dibrugarh University Act, 1965, as amended up to date. A proviso is added to Clause (f) of Section 32 of the Dibrugarh University Act, 1965. By virtue of the first proviso, the State Government was empowered to make necessary Rules in consultation with the University for the management of the Government Aided College. Therefore, these Rules are the statutory Rules

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framed under the provisions of the Statute empowerd to frame the Rules. Referring to the decision of this Court as reported in Dr. Mohini Kumar Saikia Vs. The President, S.D.O. (Civil) Governing Body D.R. College, Golaghat and Another, Dr. Mohini Kumar Saikia v. The President, S.D.O. (Civil) Governing Body D.R. College, Golagbat. Mr. Borthakur the learned Counsel has submitted that this Court while dealing with the cause of a similar nature held that the Assam Aided College Management Rules, 1976 are statutory Rules. Therefore, as submitted by the learned Counsel, any commission of act in violation of the Rules in passing the order or interfering in the management of the affairs of the college must be held to be void, unlawful and illegal and is liable to be set aside and/or quashed.

9. Mr. A.R. Bortbakur, learned Counsel for the Petitioner has submitted:

That Annexure-A containing the order or Director of Public Instructions dated 26th March, 1987 issued in purported exercise of jurisdiction under Rule 22 of the Assam Aided College Management Rules, 1976 is liable to be struck down on the ground that the order is conspicuously silent about the objective satisfaction of the D.P.I, that the further continuance of Petitioner (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 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. This finding and the required reasons thereof do not find place in the impugned order. In support of his contention Mr. Barthakur has referred to us the decision of this Court as reported in AIR 1935 Gau 53 (Mohlni : Kumar Salkia v. S.D.O.), Mr. Barthakur, the learned Counsel for the Petitioner submits that the Director of Public Instruction is a party Respondent in this case, but be has not filed any affidavit-in-opposition to controvert the averments made by the Petitioners nor the records on the basis of which tbe Annexure-I was issued have been produced before this Court.

10. The next submission of Mr. Barthakur relates to second part of Annexure-I whereby the D.P.I. in exercise of Rule 22 nominated the senior-most lecturer of the College as Secretary of the college Governing Body with immediate effect. The learned Counsel submits that the direction of the D.P.I. is very clear whereby the seniormost lecturer was nominated as the Secretary of the College Governing Body. Referring to the copy of the seniority list annexed as Annexure-E at page 23 in Civil Rule No. 351/87, the learned Counsel submits that the name of Padmadbar Deuri who was subsequently appointed as Vice-Principal of the College and the Secretary by so called resolution does not appear to be the senior-most lecturer in the institution as his name has been shown at Srl. No. 5 of the seniority list. It is further submitted that at any event Shri Ranjit Bhatta-charyya whose name appears at Srl. No. 1 in the seniority list having expressed his desire not to act as Secretary, the next seniorman, namely, Shri Harendra Kumar Borgohain, the Petitioner in Civil Rule No. 351 of 1987 ought to have nominated as the Secretary of the college Governing Body. There are two other

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senior lecturers whose names are shown below the names of the Petitioners in the seniority list were superseded by Sri Padmadbar Deuri who was appointed as Vice-Principal of the College by so-called resolution and consequently got nominated as Secretary of the College Governing Body. Referring to the resolution No. 2 of the Managing Committee dated 22.5.87 as per Aonexure-E to the petition of Civil Rule No. 527/87, Mr. Barthakur submits that this resolution was passed in a meeting which was held on 21.5.87. This meeting was held on a requisition issued by 7 members of the Managing Committee addressed to the President of the Governing Body of Dhemaji College on 20.5.87 as it appears from Annexure-I to the alfidavit-in-opposition filed by the Respondent in Civil Rule No. 527/87. The notice speaks about convening of an emergent meeting of Dhemaji College Governing Body within 21.5.87 with the agenda as shown in the notice. On the basis of the aforesaid requisitioned notice the President, Governing Body Dhemaji College natified all the members of the Governing Body on 20.5.87 to the effect that the meeting would be held in the premises of the Dhemaji College at 1.30 P.M. to discuss the subject matter noted in the agenda and as such tbe presence of all the members in tbe aforesaid meeting was solicited. The notice is annexed us Annexure-2 to the affidavit-in-opposition, It appears that though the names of the total members are shown as 11, but the notice was not served on Shri Arun Bordoloi and on the Petitioner Shri Bhaven Pegu. At least their signatures were not taken as a taken of service of notice. However, the Petitioner has sent an information to the President, Governing Body Dhemaji College with reference to the notice of meeting dated 20.5.87 and informing that no room for holding the meeting would be available on 21.5.87 in the college building due to B.A. final examination. Copy of this information letter is annexed as Annexure-3 to the affidavit-in-opposition. However, the meeting was held and in pursuance of the discussions in the aforesaid meeting, the resolution No. 2 was adopted. Referring to resolution No. 2 Mr. Barthakur, learaed Counsel for the Petitioner has submitted that the Managing Committee was not empowered by any provision of law or by Rule 22 of the Rules either to remove the Secretary or to appoint the Vice-Principal of the College as the Secretary of the College Governing Body. Rule 22, as submitted by the learned Counsel, confers the powers to the Government and that authority has been delegated to the D.P.I. to nominate the Secretary of the Governing Body and also to remove the Secretary, if the condition to exercise that power is satisfied as (Sic) Rule 22 of the Rules. In the present case the order of removal of the Secretary (the present Petitioner) was passed by D.P.I. in the month of March, 1987. It is therefore absolutely without jurisdiction for the members of the Managing Comm(Sic) to pass any resolution to remove the Secretary of the institution and to appoint Vice-Principal as its Secretary on the face of the order issued by the D.P.I. appointing the (sic)eior most lecturer of the college as Secretary of the College Governing Body.

11. The next submission of Mr. Barthakur is as regards the (Sic)lding of meeting. It is submitted by the learned Counsel that holding of the meeting on 21.5.87

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was not in accordance with Rule and therefore any resolution adopted in the said illegal meeting cannot be accepted as valid and acceptable in the eye of law. Referring to Rule 15 of the Rules, it is submitted by learned Counsel, that 7 days'' notice was necessary even to hold an emergent meeting, and that except in emergent meeting which should be so notified, all meeting of the Governing Body must be held in the college premises except the holding of emergent meeting which can be held even outside the college premises. But in any event prior notice of 7 days must be issued before holding such emergent meeting. As regards the holding of a requisitioned meeting, it is submitted by Mr. Barthakur that an ordinary meeting can be held if it is convened by the Secretary with the consent of the President, But in case of holding of emergent meeting, it must be requisitioned by 2/3rd meembers of the Governing Body. The constitution of the Governing Body is prescribed under Rule 3. Referring to the requisitioned notice, the learned Counsel submits that only 7 members requisitioned the emergent meeting in violation of Rule 15 of the Rules. If that be the position, as contended by the learned Counsel, any resolution adopted in that illegal meeting, Which was held in violation of Rule 15 of the Rules cannot be accepted as valid and must be set aside. That apart according to the learned Counsel, the meeting as held on 21.5.87 suffers from infirmity as because no notice was served at least upon members as it could be gathered from the notice Annexure-2 and in complete violation of tbe provisions of Rule 15 of the Rules. Mr. Barthakur, learned Counsel has also drawn our attention to the decision of this Court rendered on 2nd April, 1987 in Civil Rule No. 1203 of 1986 (Buddha Nath Sarma v. Sarada Bezbaruah).

12. Mr. T.C. Khetri, learned Counsel for the Respondent has raised a preliminary point that the Rules namely, Assam Aided College Management Rules, 1976 has no statutory force and therefore, the earlier decision cited by the learned Counsel for the Petitioner has no application in this case, Referring to the decision in the case of Mohini Kr. Saikia AIR 1985 Gauhati 53, Mr. Khetri has submitted that the Court started with ths assumption that the Rules are "the statutory rules and, therefore, has statutory force". According to the learned Counsel, the said rules are only administrative instructions to have a grant-in-aid so that the teachers and staff of the college may be benefitted and there might not be any hindrance for the college authority for its management. Pointing out the case of Dipak Kumar Biswas v. Director of Public Instruction and Ors. as reported in Dipak Kumar Biswas Vs. Director of Public Instruction and Others, Mr. Khetri submits that tbe case of Dipak Kumar has some bearing in the present case as in the case of Dipak Kumar tbe rules, namely, Assam Aided College Employees'' Rules, 1960 and the Assam Aided College Mangement Ruls, 1965 were placed before their Lordships for consideration. Their Lordships held-

...This is a case where the first Respondent had proceeded on the erroneous assumption that the Assam Aided College Employees Rules, 1960 and the Assam Aided College Management Rules, 1965 had been adopted by the State of Meghalaya and therefore, the Appellant''s appointment was in contravention of

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the Rules and consequently he should decline to approve the appointment of the Appellant. No doubt his action has been held to be wrongful but even so it is not in contravention of any statutory provisions or regulations of procedural rules...

13. According to tbe learned Counsel there is no rule making power of the Government to frame Rules u/s 21(g) of the Gauhati University Act, 1947 as amended nor under Clause (f) of Section 32 of the Dibrugarh University Act, 1965 ts amended up-to-date. The learned Counsel further refers to the case of Sri Ajit Sharma as reported, in State of Assam and Another Vs. Ajit Kumar Sharma and Others, was a case which dealt with the provisions of Assam College Employees'' Rules, 1960. The learned Counsel has our attention to paragraphs 5, 6 and 9 and submits that the Supreme Court also considered the subsequent amendment of the where proviso was added to Clause (g) to Section 21 of Act by the Amendment Act 1961. While the case was pen(sic) before the High Court, the High Court first concidered as whether the Rules of 1960 has any statutory force and came he conclusion that the aforesaid rules were not framed unproviso to Section 21(g) of the Act and as such, it had (Sic)tatutory force.

14. It may be mentioned here that in the Gaubati University 1947, Section 20, 21(g) and also 32(f) of Dibrugarh University the proviso was not there. Subsequently by amendment the proviso was inserted under 1961 Act, which was further amen in 1947, 1976 by Amendment Act, 19 (sic) and also in 1978.

15. The learned Counsel submits that this rule is merely an inistrative instruction without having any statutory force and if that be the position, any allegation as to the violation provisions of rule cannot be questioned in the Court of law. The Petitioner as submitted by Mr. Khetri, has no right to (Sic)roach this Court against any alleged violation of the provions of ihe rules which has no statutory force and as such writ lies to this Court.

16. The next contention of the counsel is the Civil Rule No. 90/87 and Civil Rule No. 527/87 are both barred by the principle of res judicata as because a civil suit was instituted by the Petitioner and when the matter relating to ad interim injuc(Sic) was heard, the Civil Court vacated the temporary injunc(Sic) upon hearing tbe same on merits, It was felt by the Court that, no injunction could be issued to stall the implementation the impugned orders. The suit was dismissed on the ground pendency of these two writ petitions under the aforesaid two Civil Rules of this Court relating to the same subject matter and, as such, it must be deemed to have been decided on merits. such a situation as submitted by Mr. Khetri, in view of dismissal of the Civil suit both the writ petitions must be dismissed on the sole ground that both the writ petitions, are barred principle of res Judicata. It is further submitted by Mr. Khetri that the seniority list was prepared after adopting the resolution of the managing committee in November, 1936 and the Respondent was appointed as Vice Principal of the college. If the seniority list is disputed, this Court will not determine the disputed question of fact in exercise of its writ jurisdiction.

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17. We now consider the respective contritions of the learned Counsel in both the cases relating to the question of 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 Secretaryship and also nominating the Vice Principal to conduct all financial transactions for the College. According to Mr. Khetri, the learned Counsel for the Respondent, the impugned resolution was adopted by the managing committee only to implement the order of the Director of Public Instructions (Respondent No. 4) and not in contemplation of exercising the jurisdiction under Rule 22 of the Rules superseding the power and jurisdiction of D.P.I. We have already discussed the provisions of Rule 22 of the Rules under what circumstances and in what manner the DPI could exercise the power for removal of the Principal from Secretaryship of the Governing Body of the college. The impugned order of the D.P.I. (Respondent No. 4) does not disclose any reason of his being satisfied about tbe necessity of the removal of the Principal from the Secretaryship and what wore those compelling circumstauces which compelled him to exercise the jurisdiction under the aforesaid Rules. Though Mr. Khetri, the learned Counsel for the Respondent tried to conviace us that the Respondent No. 4 acted on some evidence found in the letters submitted to him by the college authority, we are not convinced by this argument in absence of further materials before us. It may be noted that no document was made available before us regarding the preparation of the seniority list by the concerned Respondent or regarding the resolution of the meeting of the Governing Body. There is no material to support the contention of Mr. Khetri that the first part of the order of D.P.I. is based on consideration of certain materials placed before him and the resolution as mentioned in items 1 aad 2 in the order. Curiously enough no affidavit has been filed by the D.P. I. to explain the circumstances under which it was necessary to exercise his jurisdiction under Rules 22 of the Rules for removal of the Principal from Secretaryship of the Governing Body of the College. It is true that the provisions of Rule 22 of the Rules precribe temporary suspension of a Secretary of the Governing body of the college but the order must fulfil the conditions laid down under the said Rules. In the present case we not find any material in support of the order of the P.I. as regards the removal of the Principal from the Secretaryship of the Governing Body of the college. In absence materials on record we are unable to agree with the (Sic)ssion of Mr. Khetri, the learned Counsel for be Respondent there was any convincing material before the D.P.I. for consideration to justify his action to remote the Principal Secretaryship of the Governing Body under the cover of provision of Rule 22 of the Rules. Therefore, we are unable to (Sic) that the impugned order of the D.P.I. removing the petitioner from Secretaryship of the Governing Body of the college is (Sic)fisd and tenable in law. As regards tbe next part of the order, the D.P.I. nominated the senior most lecturer of the (Sic)llege to take charge of the Secretaryship of the Governing body. No document is produced before us to show the seniority and the documents as referred and annexed to the writ petition in Civil Rule No. 351/87 do not support the contentions of the learned Counsel for the

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Respondent. Therefore, the question would arise how far the impugned resolution adopted by the managing committee can be treated as a resolution to implement e aforesaid order of the D.P.I. If we refer back tbe provisions of Rule 15 of the Rules it becomes apparently clear that 7 days'' notice to bold even an emergent meeting is a must, However, there may not be any fixed venue for holding the mergent meeting. In the present case the provisions of Rule 15 have not been followed inasmuch as the requisite 7 days'' advance notice was not issued nor all the members were served with the notice to attend the meeting. The requisition notice was also not signed by the requisite number of members. If that be the Position, the holding of meeting itself was not valid under the Provisions of Rules. As regards adoption of resolution in the said meeting the managing committee is not empowered either to remove the Principal from the Secretaryship of the Governing Body of the college or to nominate the Vice Principal of the college to take the charge of Secretaryship and conduct the fincial transaction of the college. This power and authority exclusively lies with the D.P.I. There is no necessity to implement the order of the D.P.I. by adopting resolution by the managing committee of the college. On that score also the impugned resolution cannot stand. At any rate on both the counts the impugned resolution is liable to bo quashed being not in accordance with the provisions of law. The question as regards the Rules having statutory force, the contentions raised by Mr. Khetri that the Rules are only the administrative instructions cannot be accepted at all. A Division Bench of this Court in the case of Mohini Kumar Saikia (Supra) had held that the Rules are statutory having statutory force as because by the proviso added to the provisions of the Act referred to above the State Government is empowered to frame rules and the rules are accordingly framed. We are, therefore, constrained to hold that there is no force in the contentions of Mr. Khetri to the effect that the aforesaid Rules have no statutory force. The cases cited by Mr. Khetri as referred to above are not applicable to the present case. On giving our anxious consideration to all aspects of the matter including the rival contentions of the learned Counsel of the parties we hold that the order of the D.P.I. dated 26.3.87 as per Aannxure I which has been impugned in Civil Rule No. 390 of 1987 and the Resolution No. 2 dated 21.5.87 (Annexure-E) impugned in Civil Rule No. 527 of 1987 are not tenable and are liable to be quashed which we accordingly hereby do.

18. In the result, the impugned orders are set aside and the Petitioner shall be deemed to be holding the office of the Secretaryship of the Governing Body of the College as ex-offico Secretary till he is legally and validly removed from the Secretaryship. The Petitioner shall perform all the duties as ex-offico Secretary of the Governing Body of the college till he is legally and validly removed from the said office. However, it would be open for the Director of Public Instruction either to allow the Petitioner to continue as ex-offico Secretary of the Governing Body of the college for further period or to reconstitute the Governing Body of the college only in respect of nominating the ex-offico Secretary as per Rules. Both the petitions are allowed. However we leave the parties to bear their own costs.

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