

## **Dr. Mohini Kumar Saikia Vs The President, S.D.O. (Civil) Governing Body D.R. College, Golaghat and Another**

**Court:** Gauhati High Court

**Date of Decision:** July 4, 1984

**Acts Referred:** Assam Aided College Management Rules, 1976 " Rule 22

**Citation:** AIR 1985 Guw 53

**Hon'ble Judges:** T. Nandakumar Singh, J; K.M. Lahiri, J

**Bench:** Division Bench

**Advocate:** R.K. Manisena Singh, N.N. Saikia, C.C. Deka and B.N. Sarma, for the Appellant; A.S. Bhattacharjee, Additional Government Advocate, Assam, for the Respondent

**Final Decision:** Allowed

### **Judgement**

Lahiri, J.

This is an application under Art. 226 of the Constitution directed against a telegraphic order dt. June 7, 1983 removing the

petitioner Dr. M K. Saikia, Principal, Deb Raj College from the Secretaryship of the governing body of the College and nominating the Vice-

Principal of the College ex-officio Secretary. The order was rendered by the Director of Public Instruction, Assam, respondents 11 and 12

purporting to act under Rule 22 of the Assam Aided College Management Rules, 1976. It may be stated that respondent No. 11 is Shri S.

Bharati, Director of Public Instruction, Assam and respondent No. 12 is none but the said Director. We shall therefore refer respondent 11/12

while referring to the Director of Public Instruction, Assam.

2. The petitioner is a qualified and responsible person. He was appointed Principal of Debraj Roy College, Golaghat. By virtue of his office he was

the ex-officio Secretary of the Governing Body of the College. He was holding a permanent post and discharging his duties as the Principal and

Secretary of the Governing Body of the College under Rule 3(c) of the "Rules". By Rule 3(c) the Principal is the ex-officio Secretary of the

Governing Body. "The Rules" are statutory Rules. The Secretary can be replaced by the Director of Public Instruction. He is the only authority to

take action under Rule 22 of "the Rules". We extract Rule 22 of "the Rules" hereinbelow : -

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 the College to act as ex-officio

Secretary of the Governing Body till the charges on which the Principal of the College is proceeded with, are and he is acquitted of all charges

honourably. If there is no Vice-Principal, the Senior most lecturer of the college may hold charge of the Secretary of the Governing Body. The

Secretary will be subject to disciplinary action against him under the relevant provision of the Assam Services (Discipline and Appeal) Rules, 1961

and any other rules framed from time to time in this behalf".

It is seen from the Rules that the ex-officio Secretary of the Governing Body of a deficit college can be replaced by the Director of Public

Instruction. However, he can be so provided : (1) it is found that he has committed any serious lapse and/or (2) his continuance as Secretary of the

Governing Body of the College will jeopardise the very purpose of nominating him as Secretary of the Governing Body. The impugned order is

extracted below :

State Telegram Express S.D.O. Civil.

Repeat

Principal

D.R. College, Golaghat

PRINCIPAL D. R. COLLEGE IS REMOVED FROM THE SECRETARYSHIP OF THE COLLEGE AND VICE PRINCIPAL OF THE

COLLEGE IS NOMINATED AS EX-OFFICIO SECRETARY OF GOVERNING BODY UNDER RULE 22 OF ASSAM AIDED

COLLEGE MANAGEMENT RULES 1976

INSTRUCTION

The impugned order of replacement allegedly made in exercise of the power conferred on the Director of Public Instruction, ""Instruction"" for short,

in exercise of the power under Rule 22 of ""the Rules"" could be exercised provided the condition precedent was present. The act of replacement

stigmatises and lowers the holder of the office as the replacement can be made only when the Secretary has committed serious lapse or his

continuance in office jeopardises the very purpose of nominating him as Secretary of the Governing Body, The order of replacement carries with it

some stigma, some charge or allegation and indicates his inefficiency. The petitioner made several representations to the Director of Public

Instruction, Assam, asserting that there was no cause for replacing him. He sent a telegram, apart from the representations, but to no avail it

appears that force was sought to be used against him as the respondent asked the Sub-divisional Officer of Golaghat to take over charges of

Secretaryship from the petitioner and to hand over it to the then Vice-Principal -- vide Annexure-"6". The impugned order does not show that the

petitioner was replaced for any lapse committed by him or on the ground that his continuance as Secretary of the Governing body would

jeopardise the very purpose of nominating him as Secretary, Under these circumstances to support the impugned order the respondents were

required to produce the records and file counter to show that the condition precedent for such replacement was present. Nothing has been so

done by the respondents. No counter has been filed nor any record produced by the respondents.

3. Mr. R. K. Manisena Singh, learned Advocate General Manipar, appearing on behalf of the petitioner has contended that there was no material

at the disposal of the respondents to show the existence of any lapse of the petitioner and/or that his continuance in office jeopardised the very

purpose of nominating him as Secretary. We find that the impugned order does not spell out any such allegations against the petitioner. The

petitioner had asserted and has asserted in the petition that there was no reason for his replacement, it was arbitrary act of the Director of Public

Instruction, Assam. Indeed, it was for the respondents to show and satisfy that there existed ground for his replacement. In spite of the receipt of

due notices served on the Director of Public Instruction by name as well as his designation, he has chosen not to represent the case. He has not

filed any return nor has he produced any records. Under these circumstances we are constrained to hold that the impugned order is illegal, void

and violative of rule 22 of "the Rules". The act of respondents is arbitrary and made in contravention of Rule 22 of "the Rules". Accordingly we

quash the impugned order.

4. Before parting we would observe that the Director of Public Instruction is a responsible public servant. Before making any order under Rule 22

of "the Rules" he should be careful, cautious and circumspect as the effect of such an order is penal and lethal in nature and character and

prejudicially affects a responsible person. Under such circumstances rash action should not be taken as has been done in the instant case. We say

this far and no further.

5. There is another facet which we cannot overlook. The writ petition is moved after serving notices on the Government Advocate, Assam, who

represented the Director of Public Instruction and the State of Assam. Further, we have ensured as to whether due and proper notices were

served on the Director of Public Instruction and State of Assam. We find that notices were served on all the respondents including respondents

11/12 and 13, Before the commencement of the proceeding we requested learned Additional Sr. Government Advocate to explain why in this

important matter no counter had been filed and why no records produced in spite of due service of notice on the respondents. We have shown him

the service reports. We would observe this far and no further that no adjournment and postponement was sought for by learned Additional Senior

Government Advocate nor could he support the impugned order on any ground whatsoever. We express this far and no further that we are very

unhappy.

6. Mr. R. K. Manisena Singh, learned Advocate General, Manipur appearing for the petitioner submits that on the facts and circumstances of the

case respondents 11/12 and 13 should be burdened with the costs as it was highly inappropriate, arbitrary and illegal order rendered against a

responsible Principal. The contention of learned Advocate General has strong force. A public servant cannot put in jeopardy, honour, dignity and

status of a respectable person like the petitioner and lower him in the estimation of the public and get away "scot free". However, we feel that the

forum to obtain such relief is open to the petitioner and the petitioner can, if so advised, avail the same and obtain the relief.

7. In the result the impugned order is quashed and the petition is allowed. The Rule is made absolute.