AIR 1985 Guw 53

Gauhati High Court

Case No: Civil Rule No. 121 of 1984

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

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 welt 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.