

ASSAM AIDED COLLEGES EMPLOYEES RULES, 1960

[The 9th March, 1961]

Notification No. ESS-140/59.

The Governor of Assam is pleased to approve the following set of rules governing the conditions of service, leave, etc., of the employees of the Government aided educational institutions in the State, *viz.*, Assam Aided Colleges Employees Rules, 1960; Assam Aided High and Higher Secondary Schools Employees Rules, 1960; and Assam Aided Middle English School Teachers Rules, 1960. These rules will come into force with effect from 15th February, 1961.

The Governor of Assam is pleased to make the following rules regarding recruitment and the conditions of service of persons employed in Aided Colleges in Assam:

COMMENTS

These rules have been framed for the employees of a College receiving maintenance grant from the State Government.

In *Ajit Kumar Sharma v. The State of Assam* [AIR 1963 Assam 46], the question arose as to whether these rules have any statutory

force and as to whether these rules can be considered to have been framed under the proviso to S. 21(g) of the Gauhati University Act, 1947. Under S. 21(g) of the Gauhati University Act, 1947 and in exercise of the powers conferred on the University under this section, the University framed certain statutes, which provide that the affiliated institutions must have a governing body and thus the Gauhati University provided in these statutes the method of management of these affiliated institutions. There were some Leave Rules framed by the University. But it is clear that the statutes were framed in the exercise of the powers on the University under S. 21(g) and thus the statutes framed by the University have got statutory force and the Governing Body which was created under the statutes is a Statutory Body. The proviso added to S. 21(g) of the parent Act (Assam Act II of 1961), consists of two parts. It may be argued that the effect of the first part of this proviso is that the statutes which were framed by the University will no longer apply to Government Colleges and the Government Aided Colleges; and further it confers power on the State Government to frame necessary rules in consultation with the University. On the light of these discussions the Hon'ble Gauhati High Court held that it cannot be said that the rule relied upon by the Director of Public Instruction was a rule which had statutory force and was framed under the proviso to S. 21(g) of the Gauhati University Act. The Hon'ble High Court ultimately held that the said rules have no statutory force. Now the question arises if such rules have no statutory force, then in case an employee of such a College is dismissed from services whether he has got any remedy by way of civil action?

The Supreme Court in the case of *Bank of Baroda v. Jeevan Lal Mehrotra* [1971 (3) SCC 677] held that no declaration to enforce a contract of personal service will be normally granted but where a Statutory Body has acted in breach of a mandatory obligation imposed by Statutes, then the case is fallen under one of the recognised exceptions to this rule. Now if the rules framed for the College employees have no statutory force, then in the light of the above Supreme Court's decision, a College employee cannot enforce a civil right for reinstatement of his services on his being dismissed from such services.

In the case of *State of Assam and others v. Ajit Kumar Sharma* [AIR 1965 SC 1196], the Supreme Court considered these Rules and the Rules regarding Conduct and Discipline of Employees of Aided Educational Institutions, and held: "the Rules are mere administrative instructions and have not the force of law as statutory rules". The Court therefore held that these Rules "confer no right on the teachers of the private Colleges to entitle them to maintain a writ petition under Art. 226 of the Constitution, for the enforcement or non-enforcement of any provisions of the Rules". The Supreme Court further held: "then we come to the question whether a writ could have been issued against the Government Body of the College" and their Lordships also held that such writ could not be issued and even a writ of certiorari will not be available against administrative orders or against orders of non-statutory bodies. In the instant case the governing body is a non-statutory body and it had no duty to act judicially.

In *Bangshidhar Sharma v. Director of Public Instruction* [AIR 1965 Assam 52], and also in *Jammaram Sharma v. The State of Assam* [Unreported Civil Rule No. 80 of 1972 decided on 16-11-1973], it was similarly held with reference to the Assam Aided High and Higher Secondary Schools Employees Rules, 1965.

1. Short title and commencement.

These rules may be called the Assam Aided Colleges Employees Rules, 1960.

These rules shall come into force on such date as the State Government may, by notification in the official Gazette, direct.

2. Extent of application.

These rules shall apply to all persons recruited to the service and also to persons already in service in a Government Aided College coming under these rules on the date of the commencement of these rules.

3. Definition.

In these rules unless there is anything repugnant in the subject or context—

(a) “Appointing Authority” means the appointing authority under these rules:

(b) “Government” means Government of Assam in the Education Department:

- (c) “Governing Body” means the Body constituted under the Assam Education Department Rules and Orders:
- (d) “Selection Board” means the Selection Board constituted under the provisions of R. 4(I);
- (e) “Year” means the calendar year;
- (f) “Government Aided College” means a college receiving maintenance grant from the State Government.

4. Method of recruitment.

(1) Principals.

- (i) There shall be a State Selection Board consisting of the following, viz:
 - (a) A member of the Assam Public Service Commission-Chairman;
 - (b) Director of Public Instruction-Secretary;
 - (c) Deans of the Faculties of Arts and Science, Gauhati University- Members;
 - (d) One Educationist nominated by Government- Member.
 - (e) One Principal nominated by Government- Member.

- (ii) The Director of Public Instruction shall ascertain from various institutions concerned well ahead of each academic year probable vacancies that are likely to arise during the year and advertise such vacancies in at least two newspapers and also in the Assam Gazette.
- (iii) The Selection Board after scrutiny of particulars and after interview, if necessary, shall prepare a list of candidates in order of preference and shall forward the list so prepared to the Governing Bodies concerned.

Appointment of Principals already in service shall be regularised in accordance with the conditions as in R. 5. Principals not having the requisite qualifications and experience as set forth in R. 5, if retained or taken on for non-availability of duly qualified persons and shall get their grade pay and a special pay.

- (iv) The Governing Body shall make appointments after necessary verification and with prior approval of the Director of Public Instruction, Assam.
- (v) The list of candidates shall ordinarily remain valid for one year from the date of selection.

(2) *Professors and Lectures.*

The Governing Body shall advertise all vacancies for a period not exceeding six months in at least two newspapers and shall, on scrutiny of the records, and after interview, if necessary, make appointments subject to the approval of the Director of Public Instruction, Assam.

(3) *Office Assistants.*

The Governing Body concerned shall after due advertisement in at least two newspapers make the appointment of Office Assistants subject to the approval of the Director of Public Instruction, Assam.

(4) *Power to fill up temporary vacancies.*

Except where it is otherwise provided in these rules the Governing Body, shall have powers to fill up any temporary vacancy without advertisement which may not extend beyond six months subject to necessary approval of the Director of Public Instruction, Assam.

COMMENTS

Manner of regular selection to the post of Principals in aided colleges. The procedure for the regular appointment of the Principals is that the Governing Body may invite applications from the candidates whose names appear in the select list in order to

know as to who are willing to join the concerned college as Principal. From the material placed before the court it is not clear as to whether such procedure has been followed. In the instant case the services of one of the Principals of the college have been regularised by the State Government even though his name did not appear in the select list. There seems to be no rule for regularisation of the services of the principals who may be working in colleges after these colleges came into existence out of 1960 and 1981 Rules.

Therefore, the question of regularisation of the petitioner appellant as Principal cannot arise and no relief to him can be granted on the basis that he has been working for sometime as Principal in the College. [*Shri Narayan Chandra Mazumdar v. Director of Higher Education, Assam*, **1995 (I) GLT 232**].

This rule provides the method of recruitment of Principals, Professors and Lectures and office assistants. Whenever there occurs a vacancy for the post of Principal the applications would be received by the Director of Public Instruction, Assam, which would be forwarded to the Selection Board and the Selection Board after taking the necessary interview shall prepare a list of candidates in order of preference which would be forwarded to the Governing Bodies concerned and then the Governing Bodies shall make appointments after due verification and with prior approval of the Director of Public Instruction concerned. Similarly, the appointments of Professors and Lecturers would be made by the Governing Body subject to the approval of the Director of Public Instruction.

The Office Assistants would also be appointed by the Governing Body subject to the approval of the Director of Public Instruction. Hence it follows that for all such appointments, the Governing Body is required to take prior approval of the Director of Public Instruction and also follow certain procedures as prescribed under the Rules herein.

5. Academic and other qualifications.

(i) *Principals.*

A candidate shall have at least ten years' experience as a teacher in a College or University or as an Educational Administrator. In special cases of outstanding scholarship and administrative ability the length of experience may be relaxed up to five years.

(ii) *Professors and Lecturers.*

A candidate shall hold at least a Second Class Master's Degree in the subject concerned.

(iii) *Demonstrators, librarians and office assistants.*

A candidate shall possess such qualifications as may be prescribed in this behalf.

COMMENTS

This rule prescribes the academic and other qualifications for appointments of Principals, Professors, Lecturers, Demonstrators, Librarians and Office Assistants.

6. Disqualifications for appointment.

No person shall ordinarily be eligible for appointment unless he is a citizen of India.

7. Probation.

All persons appointed in an Aided College shall be on probation for a period of two years subject to the production of medical certificate as may be prescribed:

Provided that in the event of unsatisfactory work or conduct during the period of probation for which written warning was given to the probationer, in the event of failure to pass an examination or training or test if so prescribed, the period may be extended by another year.

8. Discharge of a probationer.

A probationer will be liable to discharge from the service –

- (f) if he/she fails to give satisfaction during or at the end of the period of probation;
- (g) if on any information received relating to his/her nationality, age, health, character and antecedents, the Appointing Authority is satisfied that the probationer is ineligible or otherwise unfit for holding the appointment.

9. Confirmation.

- (1) Where a probationer has completed his/her period of probation to the satisfaction of the Appointing Authority, he/she shall be confirmed in the service on completion of 2 years' probation.
- (2) The inter-seniority of persons shall be determined in accordance with the date of substantive appointment.

COMMENTS

Rules 7, 8 & 9. Under R. 7, all persons appointed in the College shall be on a probation for a period of two years subject to the production of Medical Certificates as may be provided; and under R. 8, such probationer will be liable to discharge from the service –
(a) if such person fails to give satisfaction during or at end of the

period of probation; (b) if the appointing authority is satisfied that the probationer is ineligible or otherwise unfit for holding the appointment, on the basis of any information received relating to his or her nationality, age, health, character and antecedents.

Under R. 9, a probationer would be confirmed on completion of two years.

10. Character Rolls.

Character Rolls in respect of Principals and Vice-Principals of Colleges shall be initiated by Presidents of the Governing Bodies and countersigned by the Director of Public Instruction; in respect of Heads of Departments initiated by the Principals and countersigned by the Presidents of the Governing Bodies; and in respect of other teachers initiated by the Heads of the Departments and countersigned by the Principals.

11. Superannuation.

An employee of an aided College shall retire on attaining the age of 60 years:

Provided that the Governing Body may, for any special reasons, recommend to the Director of Public Instruction for extension of service to an employee beyond 60 years and the Director of Public Instruction may, on the merits of the case and subject to the employee being certified by a Medical Officer duly authorised for the purpose as physically and mentally fit, grant extension for a

period not exceeding one year at a time. No member shall, however, be retained in service beyond the age of 63 years.

12. Appeal by the Governing Body.

- (1) A Governing Body aggrieved by an order passed by the Director of Public Instruction under these rules may, within 30 days of the receipt of such orders, prefer an appeal to the Government against the orders passed by the Director of Public Instruction. A copy of the order appealed against must invariably accompany such application. The order of the Government on appeal shall be final.
- (2) An employee aggrieved by any orders of the Governing Body concerned may, within 15 days of receipt of such orders, prefer an appeal to the Director of Public Instruction and to the Government against the orders of the Director of Public Instruction within 30 days of the receipt of Director of Public Instruction's order through proper channel.

13. Contributory Provident Fund.

Every teacher who has been confirmed, shall subscribe to the Contributory Provident Fund and according to the rules prescribed in the Education Department Rules and Orders.

14. Savings.

- (1) Except appointments not confirmed prior to 1st October, 1956, all things done or action taken before the

commencement of these rules shall be construed as validity done or taken under corresponding provisions of these rules.

(2) All appeals and other matters pending before the authority on the date of the commencement of these rules shall be transferred to and be treated as pending before the appropriate authority under these rules.

(3) Notwithstanding anything contained in the foregoing rules in respect of appointments, Government may at any time call for the records and pass necessary orders after examination thereof.

15. On the basis of reports or inspection the Director of Public Instruction may direct the Governing Body of a College to enquire into the conduct of any employee and also to take such action as considered appropriate by it.

Applicability of the Rules to the State of Meghalaya.

As held in Fr. Paul Petta v. D.P.I., Meghalaya [(1987)] GLR 55] the Assam Aided College Employees Rules, 1960 is applicable to the colleges in the State of Meghalaya, subject however to the instructions relating thereto as per Government Notification and the rights of administration vested in the minority body as conferred by Art. 30 of the Constitution.

Whether rules have statutory force.

As held in *State of Assam v. Ajit Kumar Sharma* [AIR 1969 SC 1196], the Rules have no statutory force and were framed in order to give grants to private colleges to enable them to give higher scales of pay to their teachers in accordance with the recommendation of University Grants Commission.

Employees Rules of 1960 and Education Department Selection Rules of 1981 – Applicability – Selection made by the Governing Body for appointment of Principal.

For appointment of a Principal in an aided college under 1981 Rules, the selection made by the Governing Body has to be limited under R. 10 of the aforesaid Rules. The Governing Body may invite applications from the candidates whose names appear in the select list in order to know as to who are willing to join the concerned college as Principal. However, once consent is taken of the candidate appearing in the list, the court in *N.C. Mazumdar v. Director of Higher Education* [(1995) 1 GLR 417] held that the selection has to be made in accordance with the merit of the candidate in the select list and the Governing Body will thereafter send by means of a resolution the name of that person for being approved by the Director of Public Instruction has also to proceed before granting only thereafter it has to grant approval. The appointment has to be made procedure is followed, it will be absolutely arbitrary and in contravention of the 1960 and 1981 Rules.

Minority institution – Rules relating to tenure and security of service.

The stand of the Government in *Fr. Paul Petta v. D.P.I., Meghalaya* [(1987) 1 GLR 55] that the governing body of the college is not a statutory body, in as much as it is constituted under the Government institutions, was held to be reasonable. However, it was stated, a minority institution need not be a lawless islet. The rules relating to the tenure and security of the service which are applicable to similar non-Government Colleges, may be applicable to similar non-Government Colleges, may be applicable to minority colleges in so far as, and to the extent, they do not infringe the right conferred under Art. 30 of the Constitution of India.

Principal of Minority Institution.

In this case the Principal when appointed, there was no mention that his appointment was subject to the rules of the minority body and not subject to the rules applicable to the teachers or principals of similar Government aided colleges. Hence it could not be reasonably held that the petitioner had the expectation of continuing as Principal till his age of superannuation until and unless he was removed therefrom in accordance with law. True, he was a member of minority body himself being a priest. But by virtue of his appointment as Principal of the college has he not earned same right over and above what he already had as priest, and has he not subjected himself to certain additional duties and obligations. His appointment was approved by D.P.I. on recommendation of the Governing Body in accordance with the Government recommendation of the Governing Body in accordance with the Government

institutions. But from these facts can it be held that his rights and obligations as Principal were thus governed by the rules of his organization only and by nothing more ? The question arose, if he had earned certain rights over and above those he had as a priest after the appointment as Principal of the college: can he be allowed to be deprived of all or some of those rights without allowing him to render any explanation.

Right to explain.

It was held that there was violation of the principles of natural justice in dislodging the petitioner from his post or Principal without hearing him. It was also held that the minority institutions are equally bound by the principles of natural justice. Denial of an opportunity to the petitioner to explain his case had resulted in injustice to him. Also held that if by virtue of the petitioner's appointment as Principal of the college he had acquired any right over and above those already acquired before he was appointed natural justice would demand that he should have been heard before he is deprived of by those rights and privileges.

Minority institution receiving aid from Government – Whether to be deprived from being characterized as minority school.

It was observed in *Jugal Kishore v. State of Assam* [AIR 1988 Gau 8] that no educational institution can in modern times afford to function efficiently without some State aid and therefore to continue their institutions they will have to seek aid. If administrative conditions or regulations are attached to the aid they shall virtually have to surrender their choice. In determining the constitutional validity of such a measure or a provision regard

must be had to the real effect and impact thereof on the fundamental rights under Art. 30 (1). It was held that the fact that the Gandhi Vidyapith has been receiving aid by itself will not deprive it from being characterized as a minority school.

Rule 3. *Meaning of “elect”.*

The expression “elect” means to elect for an office or employment by a majority of votes. Therefore, the word “elected” used in this rule carries the idea of a vote, and cannot be held synonym of any other mode of filling a position, as held in Bizoy Bhusan Das v. The Governing Body, G.C. College, Silchar [(1993) 1 GLR 73].

Right-duty relationship between Teaching Staff and Governing Body,

[See decision in Bizoy Bhusan Das v. The Governing Body, G.C. College, Silchar, (1993) 1 GLR 73].
