

THE ASSAM ELEMETARY EDUCATION (PROVINCIALISATION) RULES, 1977*

1. Short title and application.

- (i) These rules may be called the Assam Elementary Education (Provincialisation) Rules, 1977.
- (ii) These rules shall come into force from such date or dates as may be appointed by the Government; provided that the Government may, if it thinks necessary, appoint different dates for different rules.

COMMENTS

Enforceability.

These rules were made in exercise of the powers conferred by S. 27 of the Assam Elementary Education (Provincialisation) Act, 1974, by the Governor of the Assam providing for the method of recruitment, payment of liabilities of the Board and management of elementary schools etc., *vide* Notification No. EPS 15/76, dated the 7th March, 1977, published in the Assam Gazette, Part II – A, dated 16-3-1977, pp. 953 958.

* Published in the Assam Gazette, Part II-A, dated 16-3-1977, p. 953 – 958.

2. Definition.

In these rules unless there is anything repugnant to the subject or context-

- (i) “Act” means the Assam Elementary Education (Provincialisation) Act, 1974.
- (ii) “Government” means the Government of Assam.
- (iii) “Board” means the Sub-Divisional Level Advisory Board for Elementary Education constituted by the Government.
- (iv) “D. E. E.” means the Director of Elementary Education, Assam.
- (v) “D. I.” means the Sub-Inspector of Schools.
- (vi) “S.I.” means the Sub-Inspector of Schools.
- (vii) “Managing Committee” means the Managing Committee of the School building.
- (viii) All other words and expressions shall have the same meaning assigned to them in the Act.

COMMENTS

Clauses (iii) and (iv) have been substituted vide Notification No. EPS 15/76, dated 23-6-79, published in the Assam Gazette, Part II-A, dated 1-7-1981, pages 663-665.

PART I

3. (i) *Method of recruitment.*

In the month of January every year the D.I. shall invite applications in prescribed form for vacancies of elementary school teachers which are likely to occur in the year in his establishment.

(ii) *Age.*

(a) A candidate shall be within the age limit on 1st January of the year of recruitment as prescribed by the Government.

(b) The upper age limit shall be relaxed in favour of Scheduled Castes and Scheduled Tribes as per Rules made by Government.

(iii) *Qualification.*

- (a) Matriculation/High School/School Leaving Certificate Examination or any other examination of equivalent standard shall be the minimum qualification for the post of teacher in Lower Primary and Junior Basic Schools preference being given to candidates trained in Senior basic, Normal and Junior Basic Training Courses.
- (b) For M.V. and Senior Basic Schools qualification shall be Matric, Normal or P.U. or intermediate or its equivalent.

(iv) *Character.*

A candidate shall furnish the certificates of character from (a) the Principal, Academic Officer of the School/College last attended by the candidate and (b) a respectable person who is well acquainted with (but not related to) the candidate.

(v) *Selection Committee.*

There shall be a selection Committee in each Educational Sub-Division to be constituted by the Sub-Divisional Level Advisory Board for Elementary Education. The Chairman of the Sub-Divisional Level

Advisory Board for Elementary Education and the D.I. of Schools shall be the Chairman and Secretary of the Selection Committee respectively.

- (vi) On receipt of applications, the Selection Committee shall scrutinize the mark sheets and other necessary testimonials of the candidates and prepare a list of candidates for interview by the Selection Committee.

The selection Committee shall then finalise the list of successful candidates in order of merit after interview and shall put up the list before the Board for approval. While approving the list, the Board shall be guided by the declared policies of the Government and instructions issued by the Government from time to time. After approval of the list by the Board the same shall be sent to the Director of Elementary Rules and Government instruction for the time being in force.

The Deputy Inspector of Schools will appoint the selected candidates in order of merit from the list approved by the Director of Elementary Education as and when required as per Government Rules and Government instructions for the time being in force.

The list shall be valid for one year unless its validity is extended by Government.

(vii) *Reservation.*

There shall be reservation of posts for Scheduled Castes and Scheduled Tribes as per rules made by Government from time to time.

(viii) *Physical fitness.*

(a) A candidate shall be of sound health both physically and mentally and free from organic defects or bodily infirmity likely to interfere with his/her duties.

(b) A candidate shall be required to undergo medical examination and to produce a medical certificate of fitness.

(ix) An appointed candidate may be required to undergo such in-service training as Government may decide from time to time.

COMMENTS

Clause (iii) has been substituted vide Notification No. ESP 15/76, dated 23rd June, 1979, published in the Assam Gazette, Part II-A, dated 1-7-1981, pp. 663-665.

Clauses (viii), (ix) and (x) were re-numbered as Cls. (vii), (viii) and (x) by *ibid.*

Where initial appointment is illegal and irregular it cannot be cured by appointment letter. As held in the case of *Ishaque Uddin Mazumdar v. State of Assam* [(1994) 2 GLR 386] that when the initial appointment is irregular and illegal it cannot give legality of appointment in spite of issuance of appointment letter. So also held in *Nanjundappa v. T. Thimmajah* [AIR 1972 SC 1767] that where the appointment itself is in infraction of the rules or if it is in violation of the Constitution, illegality cannot be regularized. The decision in *Director of Technical Education v. K Sitadevi*, AIR 1991 SC 308 was distinguished on facts.

Percentage of marks whether can be insisted for appointment of a teacher. As held in the case of *Debeswar Bora v. State of Assam* [(1990) 2 GLJ 489] R. 3 (iii) (a), (b) does not provide that a candidate should have the qualifying examination with certain percentage of marks and this cannot be insisted either for appointment or if a teacher is appointed he should be terminated.

Appointment of teachers- Qualification- Minimum of 40 % marks in Pre-University whether a statutory requirement. The question that arose in the case of *Debeswar Bora v. State of Assam* [1991 (1) GLR 1] as to whether there is any legal or statutory requirement for a candidate for appointment to secure 40% of marks, be it for the post of Primary School or be it for the post of Middle School, R. 3 (iii) (a) and (b) does not indicate so. Hence it cannot be insisted that a candidate should have passed the qualifying examination with certain

percentage of marks. Any such insistence would be inconsistent with 1977 Rules. The requirement of such minimum of marks has not been incorporated in the Rules.

4. Other provisions relating to candidates for services.

Except as provided otherwise in the Act and in these rules all matters relating to pay, allowances, leave, pension, discipline and other conditions of service shall be regulated by the general rules framed by the Government from time to time.

5. Conditions for taking over Elementary Schools.

- (i) Every inhabited village shall have at least one elementary school. In a village where there are more than one schools the minimum distance from one to the other should be [1.1 km. Provided there are more than two hundred population] ; and in the case of L.P. School and Junior Basic School [3 k. m. provided there are more than five hundred population].
- (ii) Enrolment in each [School] shall not be less than [40] in case of Lower Primary school and junior Basic Schools and 90 in the case of M.E., M.V. and Senior Basic schools [provided that the enrolment may be relaxed by the Government in suitable cases].

- (iii) The teachers in venture school may be retained at the time of taking over if they possess minimum qualification and age for recruitment; provided that such teachers have put in at least two years' continuous service immediately preceding the taking over of the school; and provided further that the prescribed ratio of students and teachers maintained in the school.
- (iv) A venture school should possess at least 2 bighas of land in rural areas and ½ bigha of land in the urban area. This condition may, however, be relaxed by Government in suitable cases. [D.I. shall take the advice of the Board in selecting the school fulfilling the above conditions for taking over and forward the list for approval of the D.E.E.] in suitable cases.

COMMENTS

The words, figures and letters in crotchets were substituted *vide* Notification No. ESP 15/76, dated 23-6-1979, published in the Assam Gazette, Part II-A, dated 1st July, 1981 at pp. 663-665.

- 6.** Immediately after the Assam elementary Education (Provincialisation) Act, 1974, comes into force, all liabilities of the Regional Boards and State Board for Elementary

Education including liabilities incurred by various authorities constituted under the provisions of the Assam Elementary education Act, 1968 shall vest in the State.

7. Power of Government to dispense with or relax any rule.

Where the Government is satisfied that the question of any of these rules may cause undue hardship in any particular case it may dispense with or relax the requirement of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that the case of any person shall not be dealt with in any manner less favourable to him than provided in the Act.

Part II

CONSTITUTION OF THE MANAGING COMMITTEE

1. There shall be a Managing Committee constituted in the manner provided hereunder for each elementary school.
 - (1) Head Teacher will be secretary or Joint secretary.
He may also be treasurer.

- (2) Two representatives from the guardians (one preferably lady) to be selected by the Board.
- (3) Two members from the donors (at least Rs. 250 annually).
- (4) Two local persons interested in education to be selected by the Board.

From among the members, D.I. will nominate the President and the Vice- President on the advice of the Board.

2. The Managing Committee shall be deemed to be recognized if its constitution is duly approved by the D.I. and appointment letter is issued by him.
3. The term of the Managing Committee shall be 3 years from the date of constitution, after which it shall be reconstituted.
4. *Rules of business.*

- (1) A notice of at least 7 days shall be necessary to call a meeting of the Managing committee. The Secretary shall call the meeting. (2) five members shall form the quorum. (3) The meeting shall be presided over by the President or in his absence by the Vice-president and in the absence of both, by any member elected by the members present. (4) The meeting shall be held as frequently as the exigencies of the situation demand

but at least once in every three months. The President may call a meeting when the Joint Secretary makes a requisition for it or in all emergent situations, or in all such cases. (5) The D.I. or the Additional D.I. or a Sub-Inspector of Schools or Assistant Sub-Inspector of Schools may be present in the meeting either on invitation of the secretary, Managing Committee or at his own initiative. (6) Proceedings of meetings shall be forwarded to the Sub-Inspector of the Circle who shall transmit it to the D.I. of Schools, inviting the attention of the latter to important matters.

COMMENTS

Clauses (2) and (4) were substituted vide Notification No. EPS. 15/76, dated 23.6-1979.

The words “by the Vice-President and in the absence of” were inserted in between the words “absence” and “of” vide Notification No. EPS. 15/76, dated 23-6-1979.

5. School Fund.

- (1) A fund shall be created and opened by the Managing Committee for maintenance of the School buildings, supply of furniture, equipment and teaching aid and maintenance of school garden.

- (2) All sums of money shall be deposited to this fund realized from donations and subscriptions and grants received from the Government : Provided that the Government money shall be received by the treasurer on the authority to be obtained from M.C. by a resolution and all donations and subscriptions shall be received by the Secretary.

- (3) All money shall be deposited in Saving Bank Accounts in the nearest Post Office or Bank and shall be operated jointly in the name of the Secretary and Treasurer:

Provided that the Treasurer can keep an amount not exceeding Rs. 20 in his own hand.

- (4) The fund shall be utilized for the purposes for which it is created.

- (5) The Secretary of the M.C. will pass necessary sanctioning and payment order. The Secretary shall be responsible for any wrong payment.

- (6) The Treasurer shall be responsible for keeping proper account of the fund and such accounts shall be opened for inspection by an officer or auditor appointed for the purpose by the D.I.

- (7) The Managing Committee shall appoint internal auditor numbering two from amongst the members of M.C. All expenditures shall have to be approved by the M.C. otherwise the expenditure shall not be treated as valid.
- (8) Save and except otherwise provided by the Government, the D.I. of Schools will prepare a list of deserving schools for non-recurring grants in consultation with the Board and submit the list to the D.E.E. not later than 30th September. While submitting the proposal for sanction of non-recurring grant the purpose of each grant should be clearly specified accompanied by concrete estimates of each grant. Failing to get an approval list within 30th September the Director of Elementary Education may extend the date of submission of the list up to 30th October if he is satisfied that the Board is unable to forward the proposal by the 30th September for genuine reasons. If the list is not received within the date fixed in this rule, the D.I. of Schools shall prepare a list of deserving schools and send the same to the D.E.E. for sanction which Government may issue on receipt of specific proposal from the D.E.E. The Government, however, may sanction such non-recurring grants to any deserving schools even though the Board has not forwarded their case. Accounts for the grant whether for construction, repair or any other purpose shall be subject to audit by auditors from the

office of the D.E.E. or by any auditor as the Government may decide.

COMMENTS

Sub-clause (8) of Cl. 5, has been substituted vide Notification No. EPS 15/76, dated 23-6-1979.

6. The Managing Committee shall maintain the following Registers:
 - (1) Proceedings Book (Secretary of the M.C. will record and the President will sign).
 - (2) Account Book (Cash Book). The treasurer will enter the Cash Book which is to be countersigned by the Secretary of Managing Committee.
 - (3) Register of Land Specification of building and equipments.
 - (4) Any other register considered necessary.
 - (5) Head Teacher (Treasurer) will be the custodian of all records.

7. *Powers and functions of the M.C.*

- (1) The Managing Committee shall look after proper management of the school building and to provide fencing around the school compound.
- (2) It shall take necessary steps to repair, improve or reconstruct the school building and to provide fencing around the school compound.
- (3) It shall take steps to develop the school compound, growing flower garden, fruit trees and such crop which will beautify the surroundings of the school besides augmenting the income of the school from the sale proceeds of fruits and cash crops.
- (4) It shall take steps to supply proper furniture and equipment for the school.
- (5) It shall take all possible steps to ensure satisfactory enrolment and attendance of pupils in the school.
- (6) It shall offer such help and co-operation, cordiality and good will between the school and the community.

8. No member of Managing Committee shall inspect a school in the manner of an Inspecting Officer and he shall not record his remarks in the official inspection book of the school. If a teacher happens to be habitually irregular or unmindful of

his duties, the President, at first instance, shall draw the attention of the teacher to seriousness of his delinquency, and if the teacher does not mind his ways, the matter shall be reported to the Sub-Inspector of the Circle, who shall take suitable action with the approval of D.I. In all cases action shall be taken promptly.

9. *Dissolution of the Managing Committee .*

The D.I. may, on the recommendation of the S.I., dissolve a Managing Committee, if judging from the facts stated by the S.I., or from the facts found by him during enquiry, he is convinced that the continuance of the existing Managing Committee in office shall be detrimental to the interest of the school and shall constitute a new Managing Committee.

COMMENTS

Dissolution of Managing Committee without disclosing the allegations against it and without hearing. As observed in *Dhires Barman v. District Elementary Education Officer* [1988 (1) GLR 474] the Rule itself does not expressly provide for giving an opportunity. However, it is not settled that where there is no mention of natural justice in a statutory provision, the same should be interpreted in consonance with the principles of natural justice unless it is specifically excluded. There is no specific exclusion in this Rule. Besides, in none of the impugned orders, as observed by the Court, one can get any idea as to what were the allegations and

what were their nature and gravity and how the management of the school would be affected thereby.

10. An appeal against the decision of the D.I. shall lie to the Joint D.P.I. (E.E.) or D.P.I. for Elementary Education whose decision shall be final and binding on all concerned.
11. *Type- Plan of the school building.* The school building of elementary schools shall be constructed as per Type-Plan and specification and in such manner as Government may decide from time to time.
12. It shall be within the discretion of the Government to relax or modify any of the rules.
13. In case of doubt regarding interpretation of the Rules the decision of the Government shall be final.