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**(2000) 02 GAU CK 0012**  
**In the Gauhati High Court**  
**Case No : Civil Rule No. 2576 of 1997**

Bhabani Mohan Goswami

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision :** 25-02-2000

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2000) 2 GLT 112

**Hon'ble Judges :** B. Biswas, J

**Bench :** Single Bench

**Advocate :** A.K. Phukan and R.M. Chowdhury, for the Appellant; G.A. and H. Das, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D. Biswas, J.—The appointment of Respondent No. 3 as Deputy Secretary, Board of Secondary Education, Assam, is in challenge in this writ petition.

2. The Petitioner joined the Board as a Lower Division Assistant (L.D.A.) in the year 1962. During the year 1992, he was working as Registrar (1), now redesignated as Administrative Officer. On 6.12.96, the Board published advertisement inviting application for filling up the post of Deputy Registrar. The writ Petitioner along with Ors. offered his candidature. The Board, on completion of selection process, appointed Respondent No. 3 to the said post. The decision to appoint Respondent No. 3 as Deputy Secretary has been challenged on the ground that there was difference of opinion amongst the members of the Administrative Committee and that the interview was held without the assistance of experts. It has been further pleaded that Respondent No. 3 being junior to the writ Petitioner, ought not to have been appointed. Integrity of Respondent No. 3 has also been questioned in this petition.

3. The above contentions have, however, been denied in the affidavit filed on behalf of Respondent No. 2 According to the Respondents, the decision of the

Selection Committee was approved by the Administrative Committee. According to them, there is no deficiency in the selection process.

4. I have heard Mr. R.M. Chowdhury, learned Counsel for the writ Petitioner and Dr. H Das, learned senior counsel for the Respondent No. 2 Mr. TC Chutia, the learned State counsel also made his submission on behalf of the Respondent No. 2.

5. Annexure-I is the advertisement dated 6.12.96. It is clear from the advertisement that the post was advertised for selection on open competition. Annexure-III shows that there were four applicants for the post and eventually, Respondent No. 3 was appointed as he had secured the first position. The appointment letter (Annexure IV) reads as follows:

BOARD OF SECONDARY EDUCATION; ASSAM: GHY 781021

ORDER

As per the Board's decision under Resolution No. B10/18/6 dated 15.5.97, Shri Dharendra Choudhury, Registrar, Board of Secondary Education, Assam, is hereby appointed Deputy Secretary, Board of Secondary Education, Assam in the post lying vacant due to the retirement of Shri Tarun Chandra Lahkar, with effect from the date of taking over charge.

The post carries the Scale of pay Rs. 2975-100-3575-125-2825-EB-125-4450-150-4750/- per month plus other allowances as admissible under Board of Secondary Education, Assam Rules. The appointment is purely temporary and is terminable at any time without assigning any reason therefor.

Sd/- (B.K. Das) Secretary, Board of Secondary Education, Assam, Guwahati 781 021 Memo No. SEBA/EST/S/95/23/4112-141 Dated Guwahati the 30.5.97.

6. That appointment letter quoted above shows that the Board duly considered the recommendation of the Selection Committee and the Administrative Committee and by the resolution dated 15.5.97, approved the appointment of Respondent No. 3. The documents available on record and the Office file do not show any infirmity in the procedure adopted in the selection process. The jurisdiction of this Court is limited and, therefore, the question relating to the suitability of the candidates is not required to be examined by this Court. The decision making process, however, does not show any infirmity so as to enable this Court to interfere with the impugned order.

7. The Petitioner also submitted an application (Annexure-II) for consideration of his case for promotion on the basis of seniority. According to the learned counsel, as per convention prevailing in the organisation, the post of Deputy Secretary ought to have been filled up by the seniormost candidate. But no statutory rule or administrative instruction, if any, has been produced to show that the selection has to be on the basis of seniority also. Since the post was advertised inviting applications for open selection, it would be wrong to say that the post

was meant to be filled up by the seniormost candidate only.

8. I have examined the relevant office file produce by Dr. H. Das, the learned senior counsel. It appears that the Respondent No. 3 was recommended by the Selection Committee as the first nominee. The Administrative Committee also approved it, subject to the clearance with regard to some observations made by the Lokayukta, Assam. I have perused the report (Annexure-V). This report nowhere prohibits consideration of the case of Respondent No. 3 for promotion to the next higher grade. The Lokayukta by the said order dated 20.7.90 imposed some restrictions on the duties allocated to Respondent No. 3. The departmental authorities have duly taken note of this and, eventually, decided to promote Respondent No. 3. The decision to promote Respondent No. 3 was taken in the year 1997 i.e. after six years from the date of order of the Lokayukta. There is nothing on record to show that the conduct of Respondent No. 3 during the last preceding five years was tainted in any manner so as to render his candidature unacceptable. Therefore, the challenge to the order of appointment on the ground of questionable integrity does not help the writ Petitioner.

9. In my considered opinion, this is not a fit case for invoking the jurisdiction of this Court under Article 226 of the Constitution.

In the result, the writ petition is dismissed. No order as to costs.