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**(2014) 09 GAU CK 0008**  
**In the Gauhati High Court**  
**Case No : W.A. No. 258/2014**

The State of Assam

APPELLANT

Vs

Tafjul Ali

RESPONDENT

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**Date of Decision :** 03-09-2014

**Acts Referred:**

**Citation :** (2014) 09 GAU CK 0008

**Hon'ble Judges :** K. Sreedhar Rao, Acting C.J.; Arup Kumar Goswami, J

**Bench :** Division Bench

**Advocate :** D. Choudhury, Sr. Advocate, A.K. Choudhury and K. Choudhury, Advocate for the Appellant; U.K. Nair and B. Chetri, Advocate for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K. Sreedhar Rao, Actg. C.J.

1. Heard Mr. D. Choudhury, learned Sr. counsel, for the appellants, and Mr. U.K. Nair, learned counsel, for the respondents.

2. Respondent Nos. 1 and 2 are sponsored by Employment Exchange, Kamrup, for the post of attendants in the office of Superintendent of Fisheries, Training-Cum-Production Centre, Guwahati. Similarly, the Employment Exchange sponsored candidates for various other 42 posts. The Selection Authority completed the selection process. The other 42 posts have been filled up as per the select list. At the time when applicants' selection is to be given effect to, elections were declared. Because of the Code of Conduct, the selections were not approved and appointment orders were not given.

3. With the change in the establishment, an objection was raised that in view of the ruling of the Supreme Court in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, , it is held that paper publication was also required to be given. Since paper publication was not issued, selection of respondent Nos. 1 and 2 are set aside. The said respondents filed a writ petition. The learned Single Judge has found that as per the rules,

only sponsorship from Employment Exchange and publication of notice in the office premises are the only permissible mode for advertisement and held that there is no illegality in the method of selection process. Hence, allowed the writ petition. Being aggrieved, the State has filed this appeal.

4. The Supreme Court in para 3 of its decision in *The Chief Executive Officer, Pondicherry Khadi and Village Industries Board and Another Vs. K. Aroquia Radja and Others*, has made the following observations:

"3. The Government of India had issued Office Memorandum dated 18.5.1998, wherein after referring to the principles laid down by this Court in *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, (which recognises the recruitment through the employment exchanges as the principle mode of recruitment), it was directed that all vacancies arising under the Central Government Offices/establishments (including quasi-government institutions and statutory organizations) irrespective of the nature and duration (other than those filled through UPSC), are not only to be notified, but also to be filled through the Employment Exchange alone. Other permissible sources of recruitment were to be tapped only if the Employment Exchange concerned issued a Non-availability Certificate. There can be no departure from this recruitment procedure unless a different arrangement in this regard has been previously agreed to in consultation with the Department and the Ministry of Labour (Directorate General, employment & Training). Similar instructions are also in force requiring vacancies against posts carrying a basic salary of less than Rs. 500/- per month in Central Public Sector undertaking to be filled only through Employment Exchange."

5. The ratio laid down clearly discloses that the rules provided that vacancies be filled up only from the sponsorship of the names from Employment Exchange alone. In the said context, the Supreme Court held that if Employment Exchange concerned issues a non-availability certificate, then only the question of paper publication would arise and it is not necessary that in all cases, there should be simultaneous paper publication.

6. The stand of the State Government appears to be bizarre. The other 42 persons, who have been selected only from the sponsorship of the Employment Exchange, have been appointed and to deny the benefit to respondent Nos. 1 and 2 goes against the spirit of equity and law.

7. In view of the decision of the Supreme Court and in the context of the existing State Rules, the selection process is not vitiated by any illegality. Therefore, there is no merit in the appeal. Accordingly, the appeal is dismissed.