

GAHC010111382023



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3079/2023

KHALED AHMED CHOWDHURY
SON OF LATE MOINUL ISLAM CHOWDHURY,
R/O- VILLAGE AND P.O.- KANAKPUR PT-II,
SILCHAR-05,
DIST. CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
COOPERATION DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE STATE LEVEL COMMITTEE (SLC)
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM

DISPUR
GHY-06.

3:THE REGISTRAR OF COOPERATIVE DEPARTMENT
ASSAM
KHANAPARA
GHY-22.

4:THE DISTRICT LEVEL COMMITTEE (DLC)
REPRESENTED BY ITS CHAIRMAN

THE DEPUTY COMMISSIONER
KARIMGANJ

P.O. AND DIST.- KARIMGANJ

ASSAM

PIN- 788166.

5:THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES
KARIMGANJ
P.O.- KARIMGANJ
DIST.- KARIMGANJ

ASSAM
PIN -788710

Advocate for the Petitioner : MR. M KHAN, MS J AKTAR,MR A K DAS

Advocate for the Respondent : SC, CO OP, GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 22.01.2026

- 1.** Heard Mr. M Khan, learned counsel for the petitioner. Also heard Mr. J.K Goswami, learned Addl. Senior Government advocate appearing for the State respondents.
- 2.** The petitioner, by way of instituting the present proceedings, has assailed the decision of the jurisdictional District Level Committee, arrived at in its meeting held on 11.06.2021, towards rejecting the claim of the petitioner for appointment on compassionate grounds by assigning the reason that the petitioner's father, at the time of his death in harness, had only a balance period of service of 5/6 months at his credit.
- 3.** The father of the petitioner, Moinul Islam Choudhury, while working as a Senior Inspector of Cooperative Societies, died in harness on 11.11.2014. The petitioner, pursuant to the death of his father, proximate to the time of death of

his father, submitted applications for consideration of his case for appointment on compassionate grounds. The claim made by the petitioner not being placed before the jurisdictional District Level Committee for consideration, the petitioner approached this Court by way of filing a writ petition being WP(C) No. 1083 of 2020.

4. A Coordinate Bench of this Court vide order dated 11.11.2020, proceeded to dispose of the said writ petition by directing the petitioner to approach the Office of the Deputy Registrar, Cooperative Societies, Karimganj and to submit the requisite documents for consideration of his case for appointment on compassionate grounds. The respondent authorities were directed that upon submission of the requisite documents by the petitioner, his application for appointment on compassionate grounds be placed before the jurisdictional District Level Committee in its next meeting. Accordingly, the petitioner's application came to be placed before the jurisdictional District Level Committee in its meeting held on 11.06.2021. The said committee upon considering the application of the petitioner, proceeded to reject the claim of the petitioner by holding that the father of the petitioner, at the time of his death having had only a residuary service of 5-6 months left at his credit, the claim of the petitioner was not permissible to be considered in terms of the provisions of Clause 1 of the OM dated 01.06.2015.

5. Being aggrieved, the petitioner has instituted the present proceedings.

6. I have heard the learned counsel for the parties and perused the materials available on record.

7. The claim of the petitioner was rejected by the jurisdictional District Level Committee in its meeting held on 11.06.2021 on the ground that his claim was

barred by the provisions of Clause 1 of the said OM dated 01.06.2015. The provisions of Clause 1 of the OM dated 01.06.2015 was assailed before this Court in the proceedings of WP(C) No. 1646 of 2021 and other analogous matters.

8. A Coordinate Bench of this Court vide order dated 30.01.2023 proceeded to allow the said Writ petitions by interfering with the provisions of Clause 1 of the OM dated 01.06.2015.

9. The decision of the Co-ordinate Bench of this Court in WP(C) No. 1646/2021 and other analogous matters was carried up on appeal by the State Government, by way of instituting writ appeals, one of them being WA No. 287/2023.

10. The Division Bench of this Court upon considering the challenge so made proceeded vide judgment and order dated 12.12.2025, passed in WA No. 287/2023 and other analogous matters, to dismiss the said appeals as preferred by the State and thereby, upheld the decision of the Co-ordinate Bench of this Court rendered vide judgment dated 30.01.2023 in WP(C) No. 1646/2021 and other analogous matters.

11. The conclusions drawn by the Division Bench of this Court vide judgment and order dated 12.12.2025 passed in WA No. 287/2023 and other analogous appeals, being relevant, is extracted hereinbelow:-

"12. After having said that, we deem it appropriate to examine the correctness of the decision of the learned Single Judge in declaring Clause 1 of the Office Memorandum dated 01.06.2015 to be unconstitutional.

13. We find that the classification made on the basis of the remaining service period left for the deceased employee is neither intelligible nor has any nexus with the differentia sought to be achieved.

14. The respondents constitute a homogenous class of persons, whose bread-earners have died in harness. They come within exception laid down in D.S. Nakara (supra). It would be inappropriate for the State to contend that the purpose of the classification was to avoid fraud or misuse. Fraud or misuse may occur, irrespective of the length of service remaining. Limiting the benefits to dependants of the deceased employees, who have 3(three) years of service remaining, does not necessarily reduce the risk of fraudulent claims; a would-be fraudster could equally fabricate or collude in cases where a deceased employee had long remaining service. There is no logical causal connection between the duration of remaining service and the likelihood of such misuse.

15. We find force in the reasoning of the learned Single Judge that the claim of the State that the Office Memorandum dated 01.06.2015 is in accordance with the 10(ten) principles enunciated in the case of Achyut Ranjan Das (supra) and the Office Memorandum dated 16.01.2013 issued by the Department of Personnel & Training, Government of India, is factually incorrect. The learned Single Judge did not find any rationale in the draft note preceding the Office Memorandum dated 01.06.2015 was approved by the State Cabinet.

16. The absence of any contemporaneous reasoning diminishes any claim of the State that the choice of 3(three) years was the product of considered administrative evaluation for it not to be interfered with on the ground of such administrative policy being within the domain of executive and the usual restraint of the Courts in treading in such field. The executive must always conform to Article 14 of the Constitution of India. Policy classifications must not be arbitrary, irrational or discriminatory without an intelligible basis. Compassionate appointment may not be an absolute vested right but it is a benefit conferred by the employer subject to policy conditions. The non-vested status of compassionate employment does not immunize arbitrary classifications from constitutional scrutiny.

17. On these grounds, we find the declaration of Clause 1 of the Office Memorandum dated 01.06.2015 to be constitutionally invalid by the learned Single Judge, to be wholly justified."

12. The Division Bench of this Court after having drawn the said conclusions with regard to the declaration of Clause-1 of the Office Memorandum dated 01.06.2015 to be unconstitutional by a Co-ordinate Bench of this Court had proceeded to draw the following further conclusions:-

"20. Though we have taken the argument of the learned Advocate General with some seriousness that the judgment of the Supreme Court

in Debabrata Tiwari (supra) prohibits compassionate appointment after long passage of time, but in the present set of cases, closing the chapter for the private respondents would not be appropriate.

21. We thus affirm the relegating order passed by the learned Single Judge.

22. While making such application before the concerned authorities, the private respondents, we may caution, must not entertain any false hopes and the concerned authorities also shall consider the "passage of time" aspect seriously while assessing the suitability of the private respondents for compassionate appointment, which would be the most important factor in recommending the cases of the private respondents for compassionate appointment, which ultimately may not withstand the judicial scrutiny if such recommendation is made after a long lapse of time since the death of the deceased employees."

13. The case of the petitioner, herein, is squarely covered by the decisions of the Co-ordinate Bench of this Court in WP(C) No. 1646/2021 as well as the decision of the Division Bench of this Court in WA No. 287/2023 and other analogous matters.

14. Accordingly, the respondent authorities are directed to consider the claim of the petitioner for appointment on compassionate grounds strictly in accordance with the observations made by the Division Bench of this Court vide judgment and order dated 12.12.2025 in WA No. 287/2023 and other analogous matters.

15. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant