GAHC010116612026

2026:GAU-AS:16302

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

Case No. : WP(C)/3072/2026

ZAKIR HUSSAIN
S/O LATE SAHAB UDDIN AHMED, RESIDENT OF VILLAGE - AMIN PATTY, THOGISUT ROAD, P.O. AND DISTRICT - NAGAON, ASSAM, PIN -782001.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM, COOPERATION DEPARTMENT, DISPUR, GUWAHATI, PIN 781006

2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
PIN - 781022.

3:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
NAGAON
P.O. AND DISTRICT - NAGAON
ASSAM
PIN -782001

Advocate for the Petitioner : MR. J M A CHOUDHURY, MS. M PAUL,K G CHOWDHURY

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

Linked Case : I.A.(Civil)/2608/2026

THE STATE OF ASSAM AND ORS

REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
COOPERATION DEPTT.
DISPUR
GUWAHATI-781006.

2: THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-22.

3: THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
NAGAON
P.O. NAGAON
DISTRICT- NAGAON
ASSAM-782001.
VERSUS

ZAKIR HUSSAIN
SON OF LATE SAHAB UDDIN AHMED
AGED ABOUT- 57 YEARS
RESIDENT OF VILLAGE- AMIN PATTY
THOGISUT ROAD
P.O. P.S. NAGAON
DISTRICT- NAGAON
ASSAM 782001.

Advocate for : N J DAIMARI
Advocate for : MR. J M A CHOUDHURY appearing for ZAKIR HUSSAIN

Linked Case : I.A.(Civil)/3158/2026

ZAKIR HUSSAIN
SON OF LATE SAHAB UDDIN AHMED
RESIDENT VILLAGE - AMIN PATTY
THOGISUT ROAD
P.O P.S- NAGAON
DISTRICT- NAGAON
ASSAM 782001

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM

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2:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
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GUWAHATI-22

3:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES

NAGAON
P.O. NAGAON
DISTRICT - NAGAON
ASSAM-782001.

4:SMTI SANJUKTA BHUYAN

SR. INSPECTOR / AUDITOR OF COOPERATIVE SOCIETIES
OFFICE OF THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
NAGAON
P.O. DISTRICT NAGAON
ASSAM.

Advocate for : MR. J M A CHOUDHURY
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND ORS

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

06.11.2026

1. Heard Mr. J.M.A. Choudhury, learned counsel appearing for the petitioner. Also heard Mr. G. Bordoloi, learned Standing Counsel, Cooperation Department appearing for the respondents.

2. By this application filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 08.06.2026, passed by the Secretary to the Government of Assam, Cooperation Department whereby the transfer

order dated 15.03.2026 was declared valid and operative with a further direction to the petitioner to join at his new place of posting within a period of 24 hours.

3. The case of the petitioner is that he was serving as a Senior Inspector/Auditor of Cooperative Societies in the office of the Assistant Registrar of Cooperative Societies (ARCS), Nagaon pursuant to his transfer to the said place by order dated 24.10.2024. The petitioner states that he had joined his duties at Nagaon and was discharging his official responsibilities.

4. However, by notification dated 15.03.2026 the petitioner was transferred from the office of the Assistant Registrar of Cooperative Societies, Nagaon to the concerned office at North Lakhimpur, Lakhimpur District. The said transfer was made in view of the General Elections announced by the Election Commission of India pursuant to the mandatory guidelines issued by the Election Commission of India on 09.02.2026.

5. It is the further case of the petitioner that since he had not completed three years of service in Nagaon District, he challenged the transfer order dated 15.03.2026 before this Court by filing a writ petition being WP(C) No. 1953 of 2026. During the pendency of the said writ petition, the Election Commission of India filed an affidavit stating that the guidelines issued by it did not cover the case of the petitioner. Thereafter, by order dated 06.04.2026, this Court in the interim, directed that the transfer order dated 15.03.2026 shall not be given effect to and permitted the petitioner to continue discharging his duties at Nagaon.

6. Thereafter, by order dated 27.05.2026 this Court disposed of the said writ petition with a direction to the Secretary to the Government of Assam to dispose of the representation submitted by the petitioner as expeditiously as possible.

By the said order, the interim direction dated 06.04.2026 restraining the respondents from giving effect to the transfer order was directed to continue until the petitioner's representation was disposed of by the competent authority.

7. It is the further case of the petitioner that pursuant to the aforesaid order, the Secretary to the Government of Assam, Cooperation Department by order dated 08.06.2026 rejected the representation submitted by the petitioner and directed him to join the office of the Assistant Registrar of Cooperative Societies, Lakhimpur within 24 hours of issuance of the said order. The petitioner contends that while passing the order dated 08.06.2026 the concerned authority failed to consider the requirement that an employee should not ordinarily be transferred before completion of three years of service at a particular place of posting. In the said order, the competent authority observed that transfer and posting of Government employees are incidents of service and are effected in the exigencies of public administration. It was further observed that no Government servant can claim retention at a particular place of posting as a matter of right. It is this order dated 08.06.2026 which has been assailed in the present proceedings.

8. This Court, by order dated 10.06.2026 upon detailed consideration of the matter directed that the order dated 08.06.2026 shall not be given effect to insofar as the petitioner is concerned. In view of the said interim order, the petitioner continues to discharge his duties at his present place of posting, i.e., the office of the Assistant Registrar of Cooperative Societies, Nagaon.

9. The learned counsel appearing for the petitioner submits that the exercise undertaken by the authorities in transferring the petitioner from Nagaon to Lakhimpur was in violation of the applicable guidelines. In this regard, he refers to the Office Memorandum dated 12.11.2009 which stipulates that no officer

should ordinarily be transferred before completion of three years of service at a particular place of posting, except in cases of promotion. The learned counsel further submits that the said Office Memorandum also provides that in the event an officer is transferred before completion of three years of service on account of administrative exigencies or other reasons, prior approval of the Hon'ble Chief Minister is required to be obtained. He submits that in the present case no such approval was obtained before transferring the petitioner from Nagaon to Lakhimpur, notwithstanding the fact that the petitioner had not completed three years of service at the office of the Assistant Registrar of Cooperative Societies, Nagaon. The learned counsel further submits that the petitioner has not been paid his salary, despite the fact that pursuant to the interim order passed by this Court, he continues to discharge his duties at his present place of posting at Nagaon.

10. On the other hand, Mr. G. Bordoloi, learned Standing Counsel appearing for the Cooperation Department submits that pursuant to the departmental order dated 08.06.2026 whereby the petitioner was directed to join at Lakhimpur within 24 hours, the officer who had been transferred from Lakhimpur to Nagaon joined at Nagaon on the morning of 10.06.2026. As such, he submits that both the petitioner and the newly transferred incumbent are presently shown against the same post at Nagaon. The learned Standing Counsel further submits that in fact it is the newly transferred incumbent who is discharging the duties attached to the said post and that the petitioner is not actually working in the said post. He therefore submits that the petitioner's salary has not been released as he is not discharging duties against the said post.

11. I have heard the learned counsel appearing for the parties and have carefully perused the records placed before this Court.

12. It is noticed that vide Office Memorandum dated 12.11.2009, it was specifically stipulated that no officer should ordinarily be transferred before completion of three years of service at a particular place of posting except in cases of promotion. The said Office Memorandum further stipulates that if an officer is required to be transferred before completion of the normal tenure of three years at a particular place of posting, prior approval of the Hon'ble Chief Minister must be obtained. It is also observed in the said Office Memorandum that of late officers were being transferred before completion of their normal tenure of three years without obtaining the approval of the Hon'ble Chief Minister contrary to the prescribed procedure.

13. It is incumbent upon the authorities in the Cooperation Department to adhere to the aforesaid Office Memorandum which was issued as far back as 2009. However, without following the mandate contained therein the petitioner was initially transferred from the office of the Assistant Registrar of Cooperative Societies, Nagaon to the office of the Assistant Registrar of Cooperative Societies, Lakhimpur. The reason assigned for such transfer was the enforcement of the Model Code of Conduct in Nagaon District in view of the State Assembly Elections announced by the Election Commission of India and the guidelines issued by it on 09.02.2026.

14. However, during the proceedings in which the transfer order was challenged, the Election Commission of India had clarified before this Court that the guidelines issued by it did not cover the case of the petitioner. The reason subsequently advanced by the learned counsel appearing for the respondents was that the petitioner had at the relevant time been appointed as a Sector Officer for the Nagaon Election District by order dated 15.03.2026.

15. In view of the aforesaid circumstances, particularly the clarification

furnished by the Election Commission of India that its guidelines did not cover the case of the petitioner, the transfer of the petitioner before completion of his normal tenure of three years at Nagaon cannot be said to be in conformity with the applicable Office Memorandum and is therefore found to be not legally sustainable.

16. It is also submitted at the Bar that the petitioner has not completed three years of service at Nagaon even as on date and that his normal tenure of three years at the said place of posting would be completed on 23.10.2027.

17. It is further noticed that the authorities in the Cooperation Department while disposing of the petitioner's representation pursuant to the order dated 27.05.2026 passed by this Court, failed to consider the relevant aspect of completion of the normal tenure of three years by an incumbent at a particular place of posting. It is also evident from the order dated 08.06.2026 that the petitioner had specifically raised the issue that he had not completed his normal tenure of three years at Nagaon. However, while rejecting the petitioner's representation, the competent authority did not deal with the said contention or record any finding thereon. Instead, the representation was rejected merely on the ground that a Government employee cannot claim as a matter of right for retention at a particular place of posting. Thus, the competent authority failed to consider and address a material contention specifically raised by the petitioner in his representation.

18. In view of the above, this Court directs the petitioner who is presently continuing at his place of posting at Nagaon pursuant to the interim order passed by this Court, to submit a fresh representation before the competent authority specifically highlighting therein that he has not completed his normal tenure of three years at his present place of posting. The said representation

shall be duly considered and disposed of by the competent authority in accordance with law.

19. Although the Hon'ble Supreme Court has held that upon issuance of a transfer order, an employee is ordinarily required to join at the new place of posting and thereafter submit a representation before the competent authority for its consideration, but the facts of the present case stand on a different footing. The petitioner is presently continuing at Nagaon pursuant to the interim order passed by this Court. In view of the peculiar circumstances of the case, the petitioner is permitted to submit his representation to the competent authority without being required to first join at his new place of posting.

20. The competent authority shall also consider the issue relating to payment of salary to the petitioner for the period during which he has continued to discharge his duties at Nagaon pursuant to the interim order passed by this Court.

21. The competent authority shall further examine and take an appropriate decision, in accordance with law regarding the circumstances in which both the petitioner and the newly transferred incumbent are stated to be occupying the same post at Nagaon, particularly in view of the fact that the latter has already joined at the said place of posting.

22. It is further directed that the interim order dated 10.06.2026, whereby the operation of the impugned order dated 08.06.2026 was directed to remain in abeyance insofar as the petitioner is concerned, shall continue to operate until disposal of the representation to be submitted by the petitioner.

23. The competent authority shall complete the aforesaid exercise within a period of two months from the date of this order.

24. Both I.A. (Civil) No. 2608/2026 and I.A. (Civil) No. 3158/2026 stand disposed of accordingly.

JUDGE

Comparing Assistant