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

Case : WP(C)/1682/2026

SYEDA HACHINA AMIN
W/O- MR. ABUL KASHIM.
R/O- BARLECHAKONA
P.O.- MADHUKUCHI
P.S.- RANGIA
DIST.- KAMRUP(R)
ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM
COOPERATION DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM.

3:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
PERSONNEL DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM

4:THE REGISTRAR OF COOPERATIVE SOCIETIES
KHANAPARA
GUWAHATI-781022

DIST. - KAMRUP(M) ASSAM

5:THE ZONAL REGISTRAR OF COOPERATIVE SOCIETIES
BHANGAGARH
GUWAHATI-781005
DIST.- KAMRUP(M)
ASSAM.

6:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
BARPETA
ASSAM.

7:THE ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
BARPETA
ASSAM.

8:SMTI. NIJORA MUDOI
SENIOR INSPECTOR / AUDITOR .
O/O- ASSISTANT REGISTRAR OF COOPERATIVE SOCIETIES
JORHAT.

Advocate for : MR. M SARMA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND ORS

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

23.03.2026

Heard Mr. M Sarma, learned counsel for the petitioner. Also heard Mr. G Bordoloi, learned Standing Counsel, Co-operation Department and Mr. C.K.S Baruah, learned Government Advocate for the respondents.

2. The petitioner before the Court is serving as Senior Inspector/ Auditor and posted at ARCS, Rangia and she is the care-giver of a 12-year-old boy who suffers from 50% disability with autism Spectrum Disorder along with Mental Retardation. The petitioner along with other officers were sought to be transferred by order dated 15th March 2026, whereby as many as 43 officers

were transferred to different places. Name of the petitioner is at serial number 20. Although in the impugned transfer order, there is no reference or mention to the Election Commission's standing orders or circulars, however, the learned standing counsel for the co-operation department has submitted before the Court on instructions that these were issued in terms of the Election Commission notification or guidelines.

3. At the request of the Court, the learned counsel representing Election Commission is appeared before the court, although they are not arrayed as party respondents.

4. Ms. S. Katak, learned Standing Counsel, ECI has submitted before the Court by referring to notification dated 09.02.2026, which is enclosed as Annexure-K to the writ petition being W.P(C) No. 1625/2026 that the conditions under which the transfers are effected is specified under Clause 3. However, in terms of Clause 5, there is a provision that in case of any difficulty in compliance of the instructions, specific cases may be referred with reasons to the Commission through the CEO for exemption and the Commission would issue directions, if considered necessary.

5. The learned counsel for the Social, Justice & Empowerment Department, Government of Assam is also not before the court. However, Mr. CKS Baruah, learned State counsel on instruction has submitted that there is no specific guideline or instructions issued by the Government of India regarding exemption of persons regarding from routine transfer who are suffering from benchmark disabilities or a care-givers to disabled person.

6. The learned counsel for the petitioner on the other hand has referred to the Government of India circular issued by the Department of Personnel and

Public Grievance dated 02.02.2024, whereby there is a provision for exemption from routine exercise of transfer or rotational transfer in respect of government employees who are care-givers of dependent daughter, son, parents, spouse, brother, sister with specified disability. There is still an earlier circular dated 08.10.2018 whereby the care-givers of dependent daughter, son, parents, spouse, brother, sister with specified disability certified by the certifying authority as persons which benchmark disability are also exempted from routine transfer and rotational transfer.

7. Having heard the counsel for the parties and upon careful perusal of the papers available before the court in the case record, it is seen that these transfers are effected in deference to the Election Commission of India notification and in view of the ensuing General Elections to the Legislative Assemblies in the State of Assam. The category required to be satisfied by officers are specified under Clause 3 of the notification dated 09.02.2026 issued by ECI which reads as under:

“3. Hence, the Commissioner has decided that no officer connected directly with election shall be allowed to continue in the present district (revenue district) of posting:

(i) If she/he is posted in her/his home district.

(ii) If she/he has completed three years in that district during last four (4) years or would be completing 3 years on or before 31st May, 2026 from Assam, Kerala, Tamil Nadu and West Bengal and 30th June, 2026 for Puducherry.

While calculating the period of three years, promotion to a post within the district is to be counted. However, the services rendered (during the last four years) in the "State headquarters", even if located in the same revenue district, may not be accounted for in calculation of three years period in the present district. Similarly, the officers who are being transferred out to satisfy the condition of Para 3(ii) may be allowed to be posted in the State headquarters even if it lies in the same revenue district.”

8. It is also seen at Clause 5 that specific cases with reasons for exemption can be referred to the Commission through the CEO and if it is considered

necessary, specific directions would be issued.

9. Under such circumstances, the Court is of the considered view that this writ petition can be closed at this stage without issuing notice, as it is submitted that a representation dated 17.03.2026 shown to be received on 17.03.2026, ventilating the grievance of the petitioner and requesting for exemption from the transfer. This representation has not been disposed of. As such, the respondents, more particularly the respondents in the cooperation department will ensure that the case of the petitioner seeking exemption be referred to the ECI through the CEO by supporting reasons of the department as to the claim of the petitioner that she is a care-giver of her disabled son who is suffering from benchmark disability.

10. Upon the case being referred to the ECI, the authorities in the ECI will forthwith examine the case of the petitioner in terms of Clause 5 of the Notification dated 09.02.2026 and thereafter pass appropriate speaking order. Needless to say, copy of the said order be furnished to the petitioner.

11. Let the co-operation department forthwith forward the application within a period of 48 hours from the date of receipt of a certified copy of this order, and thereafter the Election Commission will pass appropriate orders within one (1) week therefrom.

12. With the above directions, the writ petition accordingly stands disposed.

13. The interim order passed on 20.03.2026 will continue to be in operation till 31st of March or till disposal of the representation by which time the Election Commission of India will pass appropriate orders as directed.

JUDGE

Comparing Assistant