

GAHC010106402025



2026:GAU-AS:708

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

Case No. : WP(C)/2747/2025

FOKRUN NEHAR LASKAR
D/O LATE AZIR UDDIN LASKR, R/O VILL- CHIPARSANGAN PART-III, P.O.
CHIPARSANGAN, P.S. ALGAPUR, DISTRICT- HAILAKANDI, ASSAM
PIN- 788801

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT
OF ASSAM, ELEMENTARY EDUCATION DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM

PERSONNEL DEPARTMENT
DISPUR
GUWAHATI-6

3:THE DIRECTOR
ELEMENTARY EDUCATION
ASSAM

KAHILIPARA
GUWAHATI-19

4:THE DISTRICT LEVEL COMMITTEE
HAILAKANDI (FOR COMPASSIONATE APPOINTMENT)
REPRESENTED BY ITS CHAIRMAN/DISTRICT COMMISSIONER
HAILAKANDI
P.O. P.S. AND DIST- HAILAKANDI
ASSAM

5:THE DISTRICT ELEMENTARY EDUCATION OFFICER
HAILAKANDI DISTRICT

P.O.
P.S. AND DIST- HAILAKANDI
ASSAM
PIN-788151

6:THE DEPUTY INSPECTOR OF SCHOOLS
HAILAKANDI
P.O.
P.S. AND DIST- HAILAKANDI
ASSAM
PIN-78815

Advocate for the Petitioner : MR. R A CHOUDHURY, TARIQUE AZIZ,MR. R A MAZUMDER

Advocate for the Respondent : SC, ELEM. EDU, GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

21/01/2026

Heard Mr. R A Choudhury, learned counsel for the petitioner. Also heard Mr. P N Sarma, learned Standing counsel, Elementary Education Department appearing for the respondent Nos. 1, 3, 5 & 6 and Ms. K Phukan, learned Government Advocate appearing for the respondent Nos. 2 & 4.

2. The petitioner has instituted the present writ petition assailing the Office Memorandum dated 18.09.2024 issued by the Commissioner & Secretary, Government of Assam, Personnel Department, wherein, it was stipulated that further consideration of applications for appointment on compassionate grounds by the constituted District Level Committee as well as the State Level Committee have been done away with.

3. The father of the petitioner while serving as Head Teacher in 147 Nos. Baiyarpar Maktab in Hailakandi District, had died-in-harness on 28.10.2016. The petitioner submitted an

application for consideration of his case for appointment on compassionate grounds on 03.03.2017. The said application was considered by the jurisdictional District Level Committee in its meeting held on 05.10.2021 and had rejected the same on the ground that the father of the petitioner at the time of his demise had a balance service of only 1 year 7 months 3 days left. Accordingly, by referring to the Office Memorandum dated 01.06.2015, the claim of the petitioner was rejected.

4. The petitioner being aggrieved by the rejection of her claim by the jurisdictional District Level Committee approached this Court by way of instituting a writ petition, being WP(C) No. 2945/2023.

5. A Co-ordinate Bench of this Court vide order dated 11.10.2023 proceeded to dispose of the said writ petition by interfering with the decision of the jurisdictional District Level Committee and remanding back the matter to the jurisdictional District Level Committee for a fresh consideration of the claim of the petitioner in accordance with law. However, such consideration has not been extended to the petitioner.

6. The Co-ordinate Bench of this Court had passed the order dated 11.10.2023, noticing the judgment dated 30.01.2023 passed by this Court in WP(C) No. 1646/2021, wherein, this Court had interfered with the provisions of Clause-1 of the Office Memorandum dated 01.06.2015.

7. 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.

8. 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.

9. 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."*

10. 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."*

11. The case of the petitioner, herein, is squarely covered by the decisions of the Coordinate 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.

12. In view of the decision of the Division Bench of this Court in WA No. 287/2023 and other analogous matters, the challenge presented in the present writ petition to the Office Memorandum dated 18.09.2024 need not be gone into.

13. 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.

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

JUDGE

Comparing Assistant