



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

Case No. : WA/24/2026

SMTI. ACHILA AONOK
D/O LATE LIMATOSHI AO, KHALASI (CASUAL), OFFICE OF THE
EXECUTIVE ENGINEER, WATER RESOURCES DEPARTMENT,
KOHIMA DIVISION, NAGALAND, KOHIMA

VERSUS

THE STATE OF NAGALAND AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
NAGALAND, KOHIMA

2:THE COMMISISONER AND SECRETARY
TO THE GOVT. OF NAGALAND
WATER RESOURCES DEPARTMENT
NAGALAND
KOHIMA

3:THE CHIEF ENGINEER
WATER RESOURCES DEPARTMENT
NAGALAND
KOHIMA

4:THE EXECUTIVE ENGINEER
WATER RESOURCES DEPARTMENT
KOHIMA DIVISION
NAGALAND
KOHIM

Advocate for the Petitioner : S. TEMJEN, CHOPIKA SUMI, TEMSU
JAMIR, TOSHITEMJEN PONGENER, LONGTSUBENI T HUMTSOE

Advocate for the Respondent : GOVT ADV NL,

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER**

Advocate for the Appellant : Ms. Longtsubeni T.

Humtsoe

Advocate for the Respondent

Nos. 1 to 4 : Mr. V. Zhimomi

Date on which judgment is reserved : 03.06.2026

Date of pronouncement of judgment : **08.06.2026**

Whether the pronouncement is of the Operative part of the judgment ? : No

Whether full judgment has been pronounced ? : Yes

JUDGMENT & ORDER (CAV)

(Y. Longkumer, J)

This intra-court writ appeal is preferred to assail the order dated 05.05.2026 in W.P.(C) 68/2026. In the Writ Petition W.P.(C) 68/2026, the appellant was the petitioner.

2. Heard the learned counsel for the appellant Ms. Longtsubeni T. Humtsoe. Also heard Mr. V. Zhimomi, learned Government Advocate appearing for the State respondents.

3. The facts leading to the filing of this appeal is that the appellant/petitioner is the daughter of one late Mr. Limatoshi Ao, who died in harness on 23.08.2009. The appellant's father was a Driver who was an employee under the Department of Irrigation & Flood Control now re-named as Water Resources Department, Nagaland. Unfortunately, the appellant's father met with an accident while performing duty and sustained serious injuries and succumbed to his injuries at Naga Hospital Authority Kohima Nagaland on 23.08.2009.

4. In view of the sudden demise of the appellant's father, the petitioner/appellant applied for appointment on compassionate ground by an application dated 10.09.2009. However, the appellant/petitioner was instead given appointment as Khalasi on casual basis by an order dated 18.08.2012.

5. The appellant/petitioner submitted several representations to the authorities praying for appointment on regular basis on compassionate grounds. However, the prayer of the appellant/petitioner was not considered. The appellant/petitioner had also obtained information under the RTI Act from the authorities regarding the appointments made on compassionate grounds in the Department of Water Resources. The RTI information received on 13.10.2025 reveals that all the applicants and appointments which were made on compassionate ground were those persons who had applied later than the appellant. Besides, it was also shown that the Department had made appointments randomly without

following the due process and norms as formulated in the compassionate appointment scheme of the Government of Nagaland.

6. The appellant/petitioner having exhausted all other options approached this Court by filing a writ petition registered as W.P.(C) 14/2026 which was disposed of at the motion stage by order dated 09.02.2026 with a direction to the respondent nos. 2, 3 and 4 to consider the representation of the petitioner dated 20.08.2025 and to dispose of the same with a speaking order within a period of 2 months from the date of receipt of the order.

7. As per the direction of the learned Single Judge in W.P.(C) 14/2026, the respondent authorities disposed of the petitioner's representation by letter No.WRD/EST/GR-IV/GEN/2024/145 dated 15.04.2026 stating that the appellant/petitioner's case cannot be considered on the ground that the appellant was appointed as Khalasi on casual basis and not on compassionate ground. It was also stated that the appellant had completed 14 years of service and according to the seniority list of the casual employees maintained by the Department, her name was at Sl.No.26 and as such, regularizing the service of the appellant before the persons ahead of her would be an infringement of their rights. It was also stated in the letter dated 15.04.2026 that due to her current standing in the seniority list and the limited number of available slots under the prescribed quota it was not possible to regularize her service at the moment. Being aggrieved, the appellant/petitioner again approached this Court by filing subsequent writ petition registered as W.P.(C) 68/2026 challenging the impugned letter dated 15.04.2026.

8. Before the learned Single Judge it was argued on behalf of the appellant/petitioner that the petitioner had applied for compassionate appointment on 10.09.2009 however, the competent authorities instead of appointing the petitioner on compassionate ground in terms of the scheme of compassionate appointment, appointed the appellant/petitioner as Khalasi on casual basis by order dated 18.08.2012. It was contended that the appointment of the petitioner/appellant could not have been made on casual basis and the State respondents could not have placed the petitioner under the casual employees category of the Department and the same is an infringement and denial of the petitioner's fundamental right as well as against the scheme of compassionate appointment.

9. It was the submission of the petitioner/appellant that the petitioner should have been appointed on regular basis because she has applied for compassionate appointment in view of the demise of her father who died in harness on 23.08.2009 and her application was submitted on 10.09.2009.

10. The contention of the State respondents before the learned Single Judge was that the petitioner/appellant was not appointed on compassionate ground. However, the petitioner was appointed as Khalasi on casual basis by order dated 18.08.2012. Moreover, the petitioner/appellant accepted the offer of casual appointment and has been working as Khalasi on casual basis since her appointment on 18.08.2012. Therefore, it was contended that the petitioner/appellant does not have any right to claim that her appointment on 18.08.2012 was made on compassionate ground.

11. The learned Single Judge after hearing the parties arrived at a finding that having accepted the offer of engagement as Khalasi on casual basis, after a lapse of about 14 years, the application of the petitioner cannot be ordered by the Court to be considered as an application for appointment on compassionate ground. Firstly, because of the fact that earlier the State had a different policy of appointment on compassionate ground and by subsequent O.M dated 17.09.2015 and Addendum dated 09.04.2019, a new policy is in force. Secondly, the order of appointment made on 18.08.2012 has to be first set aside and only then the authorities can entertain and consider the case of the petitioner for appointment on compassionate ground.

12. The learned Single Judge also held that as the petitioner had accepted her appointment as Khalasi on casual basis, there is no legal basis for the Court to direct the respondent authorities to consider the application of the petitioner under the compassionate scheme in force. Finally, the learned Single Judge held that the petitioner has been under the casual/work charged category and should pursue for regularization of her service in terms of the O.M. dated 28.08.2024 or such other scheme subsequent there to. Being aggrieved by the order of the learned Single Judge in W.P.(C) 68/2026, the appellant/petitioner has come before this Court.

13. The submission of the learned counsel for the appellant before us is that the learned Single Judge has wrongly held that the appointment made on 18.08.2012 has to be first set aside. In fact it is the argument of the appellant that the petitioner was wrongly appointed on casual basis whereas there was a scheme for compassionate appointment at the time

of her application and therefore, she should have been appointed under that scheme. In fact, the appellant has approached the Court seeking regular appointment as the authorities' inspite of a clear provision of compassionate appointment in existence, had appointed her on casual basis.

14. The learned counsel for the appellant has further submitted that the learned Single Judge had failed to appreciate the fact that the petitioner's father died in harness on 23.08.2009 and she had applied for compassionate appointment on 10.09.2009. By filing an application dated 10.09.2009, the petitioner had prayed for any suitable post because the compassionate appointment under the scheme can be given either in Group-C and Group-D post as per the qualification of the applicant.

15. Mr. V. Zhimomi, learned Government Advocate appearing for the State respondents has submitted that there is no infirmity in the order dated 05.05.2026 passed in W.P.(C) 68/2026 and prays that the said order may be upheld.

16. We have considered the submissions of the learned counsel for the parties and have also gone through the materials on record.

17. It is an admitted fact that the father of the appellant was serving as Driver in the erstwhile Irrigation & Flood Control Department, Nagaland now re-named as Water Resources department. The father of the appellant met with an accident and died while on duty on 23.08.2009. After the death of her father the appellant/petitioner submitted application dated 10.09.2009 stating that her mother is unemployed and over aged and she and her siblings are all students. It was prayed before the authorities to offer her any suitable post in order to survive. Accordingly,

the appellant/petitioner's application was processed and she was appointed on casual basis as Khalasi by order dated 18.08.2012.

18. It appears from the records that the appellant/petitioner had made several requests for regularization of service on compassionate ground. Her representation for regularization was also forwarded to the competent authorities. However, there has been no positive outcome.

19. It is pertinent to note that at the time when the petitioner/appellant's father died in harness on 23.08.2009, the State of Nagaland had a scheme of compassionate appointment for dependants of deceased Government servant notified by O.M. No.AR-8/8/78 dated 13.02.2002. The said O.M dated 13.02.2002 is reproduced as under for easy reference:-

*"Government of Nagaland
Personnel and Administrative Reforms Department
(Administrative Reforms Branch)
OFFICE MEMORANDUM*

NO.AR-8/8/78

Dated, Kohima, the 13th Feb' 2002

Sub: Scheme of Compassionate Appointment for dependents of deceased Govt servants.

There have been demands from time to time for appointments in Government of spouses/children/relatives of those Government servants who die in harness. In order to lay down a rational policy to provide employment under the Government on compassionate grounds to family members of Government servants who die while in service leaving his/her family in need of immediate assistance by way of employment, the State Government had constituted a Committee under the Chief Secretary to examine the matter and make suitable recommendations thereof.

Accordingly, based on the recommendations of the Committee, a scheme for Compassionate Appointments has been adopted by the Government.

- 1) *Appointment on compassionate grounds may be given only to a:
a) spouse, or
b) son, or
c) daughter, or
d) brother or sister.*
- 2) *Appointment on compassionate grounds shall be made only on a regular basis to direct recruitment posts and only if regular vacancies meant for that purpose are available in that Department where the deceased Government employee was serving. Applicants shall have no claim to appointment under this scheme in any other Department other than that where the deceased employee was serving.*
- 3) *Appointments under this scheme, irrespective of the appointing authority specified under the rules, shall be made only with the approval of the respective Heads of Administrative Departments with the prior clearance of the Department of P& AR.*
- 4) *Appointments on compassionate grounds under this scheme shall apply only to Grade-III and Grade-IV direct recruitment posts under the State Government.*
- 5) *The benefit of such appointment shall be available to only one relative.*
- 6) *The number of appointments made under this scheme shall be limited to not more than 5% of the direct recruitment vacancies arising a year. All Departments shall maintain a waiting list in chronological order for each applicant.*
- 7) *Applicants under this scheme should be eligible and qualified for the posts in all respects under the provisions of the relevant Recruitment Rules. No relaxation in eligibility will be made under any circumstances, except to the extent provided under this scheme.*

- 8) *Appointments will not be restricted to a Grade-IV post provided the applicant is educationally qualified and a vacancy exists in a Grade III post.*
- 9) *The scheme will be applicable only to dependents of deceased Government servants appointed and serving on regular basis at the time of death and will not be applicable to those who were working on daily wage or casual or ad-hoc or contract or re employment/extension/consultant basis.*
- 10) *The Upper age limit of applicants under this scheme may be relaxed in exceptional cases up to a maximum of 5 years in addition to existing relaxation, if any. The lower age limit shall, however, in no case be relaxed below 18 years of age.*
- 11) *A spouse appointed under this scheme shall be allowed to continue in service even after re-marriage.*
- 12) *Appointments made under this scheme shall not be transferable to any other person under any circumstances and any request for the same shall be invariably rejected.*
- 13) *The inter-se seniority of persons appointed under this scheme shall be fixed with reference to their date of appointment and their interpolation with the direct recruits/promotees shall be made with reference to their dates of appointment without disturbing the inter-se seniority of direct recruits/promotees.*
- 14) *Date of joining by a person appointed under this scheme shall be treated as the date of his/her regular appointment.*
- 15) *All Departments shall amend their respective Service Rules/Recruitment Rules to make a provision for compassionate appointment.*
- 16) *This scheme shall be operative from 1st April 2001.*
- 17) *Any dispute arising out of the provisions of this scheme or any clarification shall be referred to the Department of Personnel & Administrative Reforms for decision of the Government.*

*Sd/- R.S. PANDEY
Chief Secretary to the Govt. of Nagaland*

20. As can be seen from the O.M. dated 13.02.2002, the appointment on compassionate ground can be given to a spouse, son, daughter or brother or sister of the deceased government employee. At point No.2 of the O.M dated 13.02.2002, it is categorically stated that appointment on compassionate ground shall be made only on regular basis to direct recruitment post and only if regular vacancies meant for that purpose are available in that department where the deceased Government employee was serving. It is also laid down that appointment on compassionate ground under this scheme shall apply only to Grade-III and Grade-IV direct recruitment post under the State Government. All the Departments are also required to maintain waiting list in chronological order for each applicant.

21. A similar case scenario came up before the learned Single Judge in W.P.(C)16(K)/2002 wherein the Court had allowed the writ petition with a direction to regularize the service of the writ petitioner and grant regular scale of pay. In W.P.(C)16(K)/2002 also the petitioner's husband had died in harness. After the death of her husband, the petitioner was appointed as Typist but on contract basis. The petitioner continued to serve as Typist on a fixed pay of Rs.3000/- per month and she had approached the court praying for regularization of her service as she had been appointed on compassionate ground.

22. In W.P.(C) 16(K)/2002, the State respondents had filed their counter affidavit raising the ground that the petitioner was appointed on contract basis and she has no right to get regularization of her service.

23. The learned Single Judge after hearing the parties was of the opinion that the appointment of the petitioner being made on

compassionate ground should have been made on regular basis and accordingly, direction was issued for regularization of her service.

24. Against the judgment dated 27.03.2003, passed in W.P. (C)16(K)/2002, the State respondents filed an appeal registered as W.A 2(K)/2005 which was decided on 16.09.2005 and the said judgment is reported in **(2005) 4 GLT 523, State of Nagaland vs Asieno Sakhrie.**

25. The issue before the Division Bench was whether the State could deny the petitioner the benefit of compassionate appointment and regularization by relying upon the fact that her appointment has been described as contractual or temporary. The Coordinate Bench of this Court held that the petitioner's case had to be examined as one arising from claim for compassionate appointment not as ordinary contractual engagement. The object of the compassionate appointment is to provide immediate relief to the family of the deceased employee and the State as a model employer ought not to defeat that object through technical objections. It was held by the Division Bench that since the petitioner had been appointed because of her husband's death, and she had been continuously retained for many years, the State Government could not treat her as merely a casual or contractual employee. As a result, the Division Bench upheld the directions for regularization/absorption in service.

26. The Hon'ble Supreme Court in the case of **Sukhendu Bhattacharjee and others vs State of Assam and others** reported in **2026 INSC 523**, while considering the matter of regularization of work charged/Muster Roll employees held that,

" 60. It is a settled principle that equals must be treated equally, and if persons similarly placed are treated differently without a rational basis, it would amount to a violation of Article 14 of the Constitution. If two sets of employees stand on the same footing in terms of date of engagement, nature of duties, length of service and eligibility under a declared policy, the State cannot extend a benefit to one large group and deny it to the smaller group without demonstrating a valid distinction. Equality does not allow selective or partial implementation of a policy. Once a policy decision is taken to benefit a defined class, it must be applied uniformly to all who satisfy the prescribed conditions."

27. In the instant case, the State of Nagaland itself had framed a policy in 2002 vide O.M. dated 13.02.2002. Pursuant to the aforesaid policy decision, all dependants of deceased Government servants who died in harness were given appointment on regular basis under the scheme/policy. The appellant/petitioner also belongs to this category. The appellant/petitioner fulfills the criteria set out in the O.M. dated 13.02.2002 as her father was a regular Government employee who died in harness and she is the rightful daughter of the deceased Government employee. Once the State has adopted a policy for compassionate appointment, it is a constitutional obligation to treat all eligible persons alike. The appellant/petitioner cannot be excluded and denied the same benefit.

28. The father of the petitioner/appellant died on 23.08.2009 and the appellant/petitioner applied for appointment on 10.09.2009 and thereafter, she was appointed on 18.08.2012. Therefore, her case should

have been considered in terms of the O.M. dated 13.02.2002. Compassionate appointment has to be against a sanctioned post and is meant to give immediate sustained relief not a stop gap charity. Once the authority decides to grant compassionate appointment, employment cannot be casual or contingent. The State respondents have therefore denied the appellant of her right for compassionate appointment for several years and she was forced to accept the casual appointment which she was bound to accept. The respondents ought to have considered the case of the appellant as a case of compassionate appointment and ought to have appointed her on regular basis. A compassionate appointee's claim cannot be defeated merely because the initial appointment was labeled as 'casual'. The long continuance of the petitioner/appellant in service needs to be regularized as the facts clearly show that the appointment originated from a compassionate claim.

29. The petitioner's claim is not merely a plea for regularization but a claim that the authorities failed to implement the compassionate appointment policy correctly and that the petitioner should be accorded the status and benefits that ought to have been granted when she was initially appointed.

30. Resultantly, the writ appeal is allowed and the order dated 05.05.2026 passed in W.P.(C) 68/2026 is interfered with and set aside. The O.M. dated 13.02.2002 mandates all departments to maintain a waiting list in chronological order for each applicant. Accordingly, the State respondents are directed to regularize the service of the petitioner from a date just after the date when the last compassionate applicant who applied ahead of her was appointed ; and ahead of any candidate who

applied for compassionate appointment later than her i.e. later than 10.09.2009 and her seniority shall be counted from the date of such regularization.

31. As far as back wages/arrears are concerned the Hon'ble Supreme Court in ***Bhikhani Devi & Etc Vrs Union of India & others, 2026 INSC 612*** held that a claim for arrears is required to be balanced with settled principles governing limitation. The petitioner/appellant herein has raised the claim for regularization of her compassionate appointment before the Court for the first time in 2026, i.e., after a lapse of 14 years from the date of her appointment on casual basis. As such, we are of the view that the petitioner/appellant shall not be entitled to any back wages/arrears upon regularization.

32. The above exercise shall be carried out by the respondents specifically the respondent Nos. 2, 3 and 4 within a period of 4(four) months from the date a copy of this order is served on them.

33. Writ appeal is disposed of.

JUDGE

JUDGE

Comparing Assistant