

GAHC010049802023



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

**Case No. : WP(C)/1321/2023**

AZHARUL ISLAM  
S/O- LATE MOMTAZ ALI AHMED,  
VILL- PORAVITA BAZAR,  
P.O- JAMADARHAT,  
DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS  
THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,  
EDUCATION DEPARTMENT (ELEMENTARY)  
DISPUR, GHY-6.

2:THE COMMISSIONER AND SECRETARYX  
TO THE GOVT. OF ASSAM  
FINANCE DEPARTMENT  
DISPUR  
GHY-6.

3:THE AXOM SARBA SIKSHA ABHIJAN MISSION  
ASSAM  
TO BE REP. BY THE MISSION DIRECTOR  
KAHILIPARA  
GUWAHATI-19

4:THE DISTRICT MISSION-COORDINATOR  
SSA  
DHUBRI  
ASSAM  
TO BE REP. BY THE DISTRICT MISSION COORDINATO

**Advocate for the Petitioner : MR. A R BHUYAN**

**Advocate for the Respondent : SC, ELEM. EDU**

**BEFORE  
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

**ORDER**

**28.04.2023**

Heard Mr. A R Bhuiyan, learned counsel for the petitioner and Mr. P K Bora, learned Standing counsel, Department of School Education, Assam for the respondent No. 1. Also heard Mr. A Chaliha, learned Standing counsel, Finance Department, Assam for the respondent No. 2 as well as Mr. B Choudhury, learned Standing counsel, SSA, Assam for the respondent Nos. 3 & 4.

2. Petitioner is the District Programme Officer (ST) in the establishment of Samagra Siksha Assam, Dhubri, serving on contractual basis.

3. The petitioner was arrested by police in Anti Corruption Bureau (ACB) P.S. Case No. 33/2022 registered under section 7 (a) of the Prevention of Corruption Act, 1988 for accepting bribe amount of Rs. 10,000/- from an individual.

4. Later, he was released on bail on 22.09.2022 by the learned Special Judge in said ACB P.S. Case No. 33/2022.

5. Since the petitioner was arrested in ACB P.S. Case No. 33/2022 and detained in custody, the authorities in the SSA, Assam issued a Show-Cause notice to him on 16.09.2022 and further, by communication dated 06.10.2022 directed him to appear before the authorities for a hearing.

6. After his release on bail, the petitioner filed application before the Mission Director, SSA, Assam enabling him to join his service, stating that he is the only earning member of his family consisting of his aged parents, two minor school going children along with his wife. As no salaries have been paid to him since the date of his arrest, the petitioner and his family are suffering from acute financial hardship.

7. Placing a notification No. SSA. Esstt/MISC/33/2003 dated 03.07.2012 issued by

the Mission Director, SSA, Assam (Annexure-7 to this petition), the petitioner submitted that pertaining to agreement of all the contractual employees who are serving under the SSA, Assam, the provisions of SR&FR of SSA, Assam is applicable to such employees.

8. Further, by placing the order under Memo No. SSA/Esstt/Office-Order 753/2013/5182-A dated 14.08.2015 issued by the Mission Director, SSA, Assam, the petitioner submitted the spirit of the rules and procedures as prescribed under the Assam Services (Discipline and Appeal) Rules, 1964 followed by the Government for enquiry, departmental proceeding, award of punishment, appeals etc are to be followed by the A.S.S.A.M. in terms of Service Regulations & Financial Regulations, 2003 of the SSA, Assam as and when any enquiry/departmental proceeding is required to be conducted in respect of any employee, contractual or otherwise, employed under A.S.S.A.M.

9. Petitioner submitted that since he has not been allowed to join his service after being released on bail and has also not been paid his salaries since the date of his arrest and issuance of the Show-Cause Notice on 16.09.2022 by the authorities in the SSA, Assam; pursuant to the Notification dated 03.07.2012 as well as the order dated 14.08.2015 issued by the authorities of SSA, Assam, he is entitled for subsistence allowance, till such enquiry is completed against the petitioner.

10. On the other hand, Mr. B Choudhury, Standing counsel, SSA, Assam on specific instructions, submitted that there is no such provision for payment of subsistence allowance during the enquiry proceeding with regard to any such contractual employee serving under the SSA, Assam.

11. Issue Notice, returnable by **4 (four) weeks**.

12. As Mr. P K Bora, Standing counsel, Department of School Education; Mr. A Chaliha, Standing counsel, Finance Department and Mr. B Choudhury, Standing counsel, SSA, Assam have accepted notices on behalf of the respondent Nos. 1, 2, 3 & 4 respectively, no formal notice need be issued those respondents.

13. Petitioner shall serve requisite extra copies of this writ petition including the

Annexures appended thereto, to Mr. P K Bora, Standing counsel, Department of School Education; Mr. A Chaliha, Standing counsel, Finance Department and Mr. B Choudhury, Standing counsel, SSA, Assam by 02.05.2023, obtaining necessary acknowledgments from them in that regard.

14. The respondents in the SSA, Assam shall file its affidavit(s) in the matter at the earliest, serving copies of the same on the learned counsel for the petitioner, during the said period of time.

15. Pendency of this writ petition shall not be a bar for the respondent authorities in the SSA, Assam to dispose of the representation of the petitioner dated 03.12.2022, reminders dated 21.12.2022, 10.01.2023 and 16.02.2023 submitted before the Mission Director, SSA, Assam, intimating the petitioner about the outcome of the same.

16. Further, the respondent authorities in the SSA, Assam shall also complete the enquiry initiated against the petitioner in terms of the Show-Cause Notice issued to him on 16.09.2022 (Annexure-13 to this petition).

17. On the returnable date, the respondent SSA, Assam shall apprise the Court as to whether the petitioner is entitled for any such financial benefit till continuation of the enquiry initiated against him considering his prayer made in his representation and further, as to whether he can be allowed to join his service or not.

18. List accordingly.

**JUDGE**

**Comparing Assistant**