

GAHC010115142025



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

Case No. : WA/211/2025

1.KAMOLESH DAS AND 3 ORS.
SON OF PRNOBESH SHIL, RESIDENT OF GAURIPUR, WARD NO. 2, P.O
AND P.S- GAURIPUR, DISTRICT- DHUBRI, ASSAM, PIN-783331.

2: SHAHAJAHAN RAHMAN
S/O AFIZUR RAHMAN VILL. CHAGALCHARA PT-III P.S. DHUBRI DIST.
DHUBRI ASSAM PIN 783331

3: MOBASHIR ALOM
S/O TAZUDDIN AHMED R/O BIDYAPARA PT-2 COLLEGE ROAD
P.S. DHUBRI DIST. DHUBRI ASSAM PIN 783301

4: AMINUR RAHMAN PRADHANI
S/O ACHIM UDDIN PRADHANI
VILL. DEBOTTAR HASDOHA PT-6 PIN 78333

VERSUS

1.THE UNION OF INDIA AND 9 ORS.
TO BE REPRESENTED BY THE SECRETARY GOVT. OF INDIA, MINISTRY OF
HEALTH AND FAMILY WELFARE, NIRMAN BHAWAN, NEW DELHI-110011.

2:THE DIRECTOR GENERAL (PH)
DIRECTORATE OF HEALTH SERVICES GOVT. OF INDIA
NIRMAN BHAWAN NEW DELHI 110011

3:DEPUTY DIRECTOR (ADMINISTRATION)
DIRECTORATE GENERAL OF HEALTH SERVICES GOVT. OF INDIA
NIRMAN BHAWAN NEW DELHI 110011

4:THE STATE OF ASSAM
REPRESENTED BY COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT.
DISPUR GUWAHATI 781006

5:THE JOINT SECY. TO THE GOVT. OF ASSAM
HEALTH AND FAMILY WELFARE DEPTT.
DISPUR GUWAHATI 06

6:DIRECTOR OF HEALTH SERVICES ASSAM
HENGRABARI GUWAHATI 36

7:THE DEPUTY COMMISSIONER DHUBRI
P.O. AND DIST. DHUBRI ASSAM PIN 783301

8:JOINT DIRECTOR OF HEALTH SERVICES CUM MEMBER SECY.
DIST. HEALTH SOCIETY DHUBRI DIST. P.O. AND DIST. DHUBRI
ASSAM PIN 783301

9:THE SUPERINTENDENT
DHUBRI CIVIL HOSPITAL DHUBRI
DIST. DHUBRI (ASSAM) PIN 783324

10:HOSPITAL MANAGEMENT SOCIETY
DHUBRI CIVIL HOSPITAL REPRESENTED BY ITS CHAIRMAN CUM
DEPUTY COMMISSIONER DHUBRI
P.O. AND DIST. DHUBRI ASSAM PIN 78330

For the Appellant(s) : Mr. A.Z. Ahmed, Advocate.
For the Respondent(s) : Mr. D. Saikia, Advocate General, Assam.
: Mr. D.P. Borah, Standing Counsel, Health and Family Welfare
Department.
: Ms. R. Barua, Advocate.
: Mr. P. Saikia, Government Advocate, Assam.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

18.11.2025

(Ashutosh Kumar, CJ)

Apropos the order dated 15.09.2025, Mr. D. Saikia, Advocate General, Assam has examined the matter and has submitted before us today that the appellants were the contractual employees, who were brought in service by the Health Society and not by the Government. In

fact, they were not even paid by the Government during their entire contractual tenure.

To recapitulate the facts arising in this appeal, in the year 2010, a Memorandum of Understanding (MOU) was executed between the Ministry of Health and Family Welfare, Government of India and the Government of Assam for implementation of the National Programme for prevention and management of burn injuries.

The objective of this National programme was to establish adequate treatment facilities for burn injuries, especially in the district level hospitals and their peripheral Health Care Institutions.

To give shape to this programme, one medical college and two adjacent districts were selected on a pilot basis for implementation.

In the State of Assam, the Burn Unit was being run in the Gauhati Medical College and Hospital, whereas in the districts of Nagaon and Dhubri, Special Burn Units were opened, in which the appellants were employed by the Society on contractual basis.

Over a period of time, the State could develop the necessary infrastructure and two regular hospitals came up at Nagaon and Dhubri, respectively. Because of that, the district hospitals which were running as burn hospitals were disbanded.

It is only under these circumstances that the appellants became jobless as they were contractual employees of the Society.

The State is not willing to take them in notwithstanding the

judgment of the Supreme Court in ***Dharam Singh & Ors. -Vs- State of U.P. & Anr. [Civil Appeal No(s). 8558 of 2018, dated 19.08.2025]; Jaggo -Vs- Union of India :: (2024) SCC OnLine SC 3826; Shripal & Anr. -Vs- Nagar Nigam, Ghaziabad :: 2025 SC OnLine SC 221***, on the ground that the appellants were not the contractual employees of the State but of the Society.

The learned Advocate General, Assam has submitted that there are many such contractual employees in different hospitals who have not been regularized. Regularizing the services of the appellants or extending their contractual assignment would only open a floodgate for many such employees, who were engaged on *ad hoc*/temporary or on contract basis.

However, the Memorandum of Understanding between the Ministry of Health and Family Welfare, Government of India and the State of Assam clearly provided that the Burn Units set up would be maintained till the end of the XIth Financial Year, whereafter the State would undertake the responsibility of accommodating the contractual employees against sanctioned posts to be created in future.

In fact, Clause 8 of the Memorandum of Understanding is being reproduced here for ready reference :

“8. State Government Commitments

- 8.1 *The State Government hereby undertakes that it will take over the responsibility for maintaining the Burns Department after end of XIth five year plan i.e. 31.3.2012.*
- 8.2 *State Government shall take over the liability of the staff recruited on contractual basis at the end of XIth five year plan i.e. 31.3.2012. State*

Government shall take steps in advance to engage manpower on permanent basis for running their Burns Department.

- 8.3 *State shall create regular posts against sanctioned contractual positions so that at the end of XIth five year plan i.e. 31.3.2012 necessary posts exist for a smooth continuation of burns care services. The officials to be engaged on contract basis initially shall be engaged only if they are found eligible as per the guidelines laid down.*
- 8.4 *The State Government shall ensure that funds made available under the project to support the identified Medical Colleges/District Hospitals are used only for implementation of the agreed Action plan and the funds are not diverted for meeting any expenditure other than burns care related activities.*
- 8.5 *The State Government shall ensure that the utilization certificate (duly audited) are sent to the Ministry of Health & Family Welfare, Government of India after close of the financial year, within the period stipulated in the General Financial Rules. The Ministry of Health & Family Welfare reserves the right to request the C&AG of India to audit the accounts and countersign the certificate through the State Accountant General concerned.*
- 8.6 *The State Government shall agree to the Inspection of the Identified Institutions by the Representatives of the Ministry of Health & Family Welfare, Government of India and provide access to such information as may be necessary to make an assessment of the progress of the activities included under the scheme.*
- 8.7 *The responsibility for maintenance of equipments shall be with the State Government. Necessary mechanism to keep the equipment fully functional and operational to provide unhindered serves to the beneficiaries should be ensured.”*

The learned Advocate General, Assam submits that the commitment made in Clause 8.3 of the Memorandum of Understanding is with respect to only the contractual employees of the State Government and not of the Society.

As we have noted earlier, in the order dated 15.09.2025, referred to above, that pursuant to this Memorandum of Understanding, the Joint

Director of Dhubri Civil Hospital and the Deputy Commissioner of Dhubri District actually formed a Body under the name and style of "Hospital Management Society of Dhubri Civil Hospital" and this Society had issued advertisement inviting applications for various contractual posts to run the Burn Unit at Dhubri Civil Hospital.

Similar arrangement was made in Nagaon Burn Unit.

In that case, the position of the appellants would be akin to the contractual employees under the State establishments.

The learned Advocate General, Assam seeks some more time for a wider interpretation of the terms of the Memorandum of Understanding and also to again explore the possibility of accommodating the appellants for the reason of their experience.

Let this case come up for consideration again on **11.12.2025**.

JUDGE

CHIEF JUSTICE

Comparing Assistant