

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13979 of 2009

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1. Ram Bharosa Rajbhar S/O Sri Krishna Rajbhar Vill-Amawan Dubey, P.O-Maheshpur, P.S- Vijayipur, Distt- Gopalganj (Bihar) At Present The Secretary, The School Education Committee, Government Upgraded Middle School, Amawan Dubey, P.O-Maheshpur, P.S- Vijayipur, Distt- Gopalganj
 2. Raj Banshi Pandey S/O Late Indradeo Pandey Vill-Sudama Chak, P.S- Vijayipur, Distt- Gopalganj (Bihar), The Retired Headmaster, Government Upgraded Middle School, Amawan Dubey, P.O-Maheshpur, P.S- Vijayipur, Distt- Gopalganj

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Department Of Human Resources, Government Of Bihar, New Secretariat, Vikash Bhawan, Bailey Road, Patna
3. The Director (Primary Education), Department Of Human Resources, Government Of Bihar, New Secretariat, Vikash Bhawan, Bailey Road, Patna
4. The Deputy Director (Primary Education), Department Of Human Resources, Government Of Bihar, New Secretariat, Vikash Bhawan, Bailey Road, Patna
5. The Director Bihar Education Project, Government Of Bihar, Patna
6. The Collector-Cum-Co-Ordinator Mass Education Project, Gopalganj, Distt- Gopalganj
7. The District Superintendent Of Education-Rum-District Programme Officer Gopalganj, Distt- Gopalganj
8. The Account Officer Gopalganj, Distt- Gopalganj
9. The Area Education Officer Bhore, P.S- Bhore, Distt- Gopalganj
10. The Block Education Extension Officer Vijayipur, Block- Vijayipur
11. The Headmaster Upgraded Government Middle School ,Amawan Dubey, P.S & Block- Vijayipur
12. Sri Santosh Kumar Rai Junior Engineer, Bihar Education Project Gopalganj, Distt- Gopalganj
13. 13. Sri Ashok Kumar Junior Engineer, Bihar Education Project, Gopalganj, Distt- Gopalganj
14. Sri Sunil Kumar Singh Junior Engineer, Mass Education Project, Gopalganj, Distt- Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nityanand Mishra, Adv.

For the Respondent/s : Mr. Pankaj Kr. Singh, (SC28)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 30-01-2015

Heard learned counsel for the parties.

The prayer of the petitioners in this writ application reads as follows:-

"1. ----- for directing/commanding to the respondents concerned to pay the remaining dues amount amounting to Rs. 7,16,000/- along with applicable interest according to the rate of financial year 2007-08 Rs. 14,16,000/- which is evident from bare perusal of Annexure-6 of this writ application for further construction of 6 (six) class rooms of Government upgraded Middle School, Amawan Dubey, i.e. school of the petitioners and further make the payment of procedural and Miscellaneous Expenditure cost amounting to about Rs. 45000/- along with litigation cost for which petitioners are entitled to in accordance with law and further for issuance of any other appropriate writ or writs, order or orders, direction or directions in favour of the petitioners for which they are entitled to in accordance with law."

Learned counsel for the petitioners in support of the aforementioned prayer having regard to the measurement made by the Junior Engineer would submit that despite the fact that the petitioners had completed the work, the balance payment has not been made.

This Court would, however, find it difficult to accept such submission in view of the fact that the respondents in their counter affidavit have explained that as per the report of the Junior

Engineer dated 1.10.2009, the petitioners had completed the work of Rs. 4,74,869/- and in fact a sum of Rs. 2,25,131/- was recoverable against them against the advance of Rs. 7 lac given to them on 31.3.2007.

Let it be noted that copy of the counter affidavit was served on the learned counsel for the petitioners on 21.1.2010 and there is no rejoinder to it. In such a situation, this case cannot be a case of admitted payment. Admittedly, this case arises out of non-statutory contract. The money claim of non-statutory contract cannot be maintained in a writ application as has been held by the Apex Court in the case of *Radhakrishna Agrawal Vs. State of Bihar* reported in *AIR 1977 SC 1496*.

That being so, this application is dismissed.

Nothing said in this order, however, shall come in the way of the petitioners in approaching the competent civil court for realization of the amount in accordance with law.

(Mihir Kumar Jha, J)

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