

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3760 of 2017

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Ram Sevak Mahto, son of Late Shamoli Mahto, resident of Village- Salarpur,
P.O.- Amarpur, P.S.- Medni Chowki, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
2. The District Magistrate, Lakhisarai.
3. The District Education Officer, Lakhisarai.
4. The District Programme Officer (Establishment), Primary Education, Lakhisarai.
5. The Block Education Officer, Piparia (Lakhisarai).
6. The Drawing and Disbursing Officer, Piparia, Lakhisarai.
7. The Treasury Officer, Lakhisarai.
8. The In-charge Head Master, Integrated Middle School, Piparia Diyara, Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigendra Kumar, Advocate
For the Respondent/s : Mr. Narendra Kumar-Gp20

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 21-03-2018 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

The controversy in the present writ application pertains to liability of petitioner on account of non-completion of the construction work.

Learned counsel for the petitioner submits that for construction, the petitioner has aggregated materials at the work place but he has not been allowed to complete construction and as such respondents fixing accountability on the petitioner containing financial embezzlement is unsustainable. He submits



that respondents are not providing measurement of construction material aggregated by the petitioner at the work place. He further submitted that respondents may be directed to allow the petitioner to complete the remaining construction work.

Learned counsel for the petitioner submits that if the respondents permits the petitioner to complete the construction work he shall complete the construction work within a reasonable time and once the petitioner completes the construction, the respondents shall be at liberty to complete measurement afresh of the work completed by the petitioner and in case after allowing to complete construction work and on fresh measurement if the respondents finds anything payable by the petitioner, petitioner is ready to settle the same and deposit the amount which is determined as liability of the petitioner.

Learned counsel for the respondents referring para-12 submits that petitioner was under suspension and also a criminal case was instituted against him.

Unfortunately, the court noticed tendency of State to divert teaching staff in other activities other than teaching and the allocation of fund in completing construction of building which is non of the business of the teachers have been assigned by the respondents and now they are raising plea that petitioner



has defalcated amount allocated for construction.

From pleading in para-11 of the counter affidavit, it appears that the petitioner is under suspension and criminal case has been lodged against him does not entitle the petitioner to complete the construction sounds unreasonable and it does not appear to be justified. The question of defalcation of fund in the present case cannot be presumed only on account of non-completion of construction work.

In the matter of construction, the petitioner has aggregated the construction material at the work site and in the ordinary course of business while measuring the work, the respondents are required to take into consideration the cost of the aggregated material and if they have not considered the cost of the aggregated material at the work site then their accounting is faulty as measurement is not complete.

Additionally the court finds that respondents have chosen to appoint the petitioner as agency to carry construction which is not ordinarily the responsibility of the Headmaster of the school.

Under the aforesaid circumstances, the respondents are directed to provide at least three months time to the petitioner to complete the remaining construction work if the petitioner has



aggregated construction materials at the work site. In case, there is no construction materials aggregated by the petitioner at the work site, the respondents shall be at liberty to proceed against the petitioner by completing measurement of the construction in presence of the petitioner and settle their account within the aforesaid period of three months from the date of receipt/production of a copy of this order.

In view of the aforesaid, the order contained in Annexure-1 shall be kept in abeyance for a period of three months so that the petitioner if any he has aggregated the construction materials may complete the construction work.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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