

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.328 of 2016
IN
Civil Writ Jurisdiction Case No. 12210 of 2011**

- =====
1. The State of Bihar through the Principal Secretary to Government, Human Resources Development Department, Vikash Bhawan (New Secretariat), Patna
 2. The Director (Primary), Human Resources Development Department, Bihar, Vikash Bhawan (New Secretariat), Patna
 3. The District Education officer, Muzaffarpur
 4. The District Superintendent of Education, Muzaffarpur
 5. The Block Education Extension Officer, Muraul, Distt. - Muzaffarpur
 6. The Head Master Cum Drawing and Disbursing officer, Rajkiya Middle School, Muraul Circle, Muraul, Distt. - Muzaffarpur
 7. The District Provident Officer, Muzaffarpur
 8. The Treasury officer, Muzaffarpur

.... Appellant/s
Versus

1. Kameshwar Prasad Sharma S/o Late Yugal Rai Sharma R/o vill. + P.O. Mirapur, P.S. Sakra, Distt. - Muzaffarpur
2. The Accountant General (A & E), Birchand Patel Path, Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sita Ram Yadav, GP-16
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 29-06-2017

Learned Writ Court has allowed the writ petition of the petitioner, a pensioner, and has directed counting of his service in the



temporary establishment from 26.11.1974 for calculating pensionary benefits on account of the fact that it was found by the learned Writ Court after due analysis that in the case of Rajendra Lal Das vs. State of Bihar, 2003 (2) P.L.J.R. 504, and Upendra Prasad vs. The State of Bihar & Ors., 1995 (2) P.L.J.R. 822, that for the purpose of grant of promotion under the 1st time bound promotion scheme, the service rendered by an incumbent in the temporary service will be counted as period spent for the purpose of calculating the total length of service for promotion and if that be so, learned Writ Court has found that in the case of the present petitioner, the period can always be counted for grant of pension.

In our considered view, in doing so the learned Writ Court has not committed any error. The petitioner himself, even though initially claimed the period to be counted for the purpose of his promotion, fairly gave up his claim and took the stand that he would be satisfied if it was counted for the pension. Learned Writ Court accordingly directed for payment of pension by treating him to have been in service from 26.11.1974 instead of 26.11.1975. In our considered view, in the peculiar facts and circumstances of the present case, the learned Writ Court has not committed any error in granting the said relief to the petitioner warranting re-consideration. However, if any legal question could not be canvassed in the present



writ petition, the same can be canvassed in an appropriate case.

For the present, finding no case for interference, the appeal is disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.jha/-

AFR/NAFR	NAFR
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