

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.323 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 13198 of 2010**

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Umashankar Prasad Yadav, Son of Late Bateshwar Prasad Yadav, Retired Assistant Teacher of Sri Baldeo Bandelal High School, Godhta, P.S. Madhepura, District - Madhepura.

.... Petitioner / Appellant

Versus

1. The State of Bihar.
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The Regional Deputy Director of Education, Koshi Division, Saharsa.
4. The District Education Officer, Madhepura.

.... Respondents / Respondents

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Appearance:

For the Appellant/s : Mr. Rajendra Prasad Singh, Sr. Advocate &
Mr. Rishiraj, Advocate.

For the Respondent/s : Mr. Amit Prakash, G.A. 13.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 23-06-2017

Heard learned Senior Counsel for the appellant and

learned counsel for the State.

The reason why the Writ Application of the appellant

was dismissed is evident from a reading of the following paragraph

which reads as under:

“The petitioner, no doubt, was appointed initially on
3rd July, 1972. That could have been treated as basis
for working out the retirement benefits, if only the
appointment was against a clear vacancy, recognized
for the institution. In the counter affidavit, it is clearly
mentioned that the petitioner was appointed by the



Managing Committee at a time when the institution was under partial recognition for Class VIII & IX, and the recognition was only for five posts. The appointment of the petitioner is said to be not against the five posts, and that he could be treated as regular, only from 6th January, 1976 from which date the vacancy was available. The petitioner did not dispute the facts, stated by the respondents in the counter affidavit. Thus, it is clear that the appointment of the petitioner against a clear and recognized vacancy has taken place only in the year 1976. He cannot claim the retirement benefits from a date anterior to 6th January, 1976.”

Nothing more is required to be added over and above what the learned Single Judge has had to say as to the reason for dismissing the Writ Application refusing the prayer. The entitlement of the appellant will flow in terms of the date when the post became recognized and available. His appointment previously is of no help so far as the State is concerned.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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