

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7582 of 2016

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Jeewan Kumar Jayaswal Son of Late Sachchida Nand Jayaswal, presently residing in the house of Mr. A.K. Jha, Mohalla- Patelnagar, Sahdeo Path, Police Station- Shastrinagar, District- and town of Patna.

.... Petitioner/s

Versus

1. The New India Assurance Company Ltd., New India Assurance Building, 87, Mahatma Gandhi Road, Fort, Mumbai- 400001 through its Chairman-cum-Managing Director.
2. The Chairman-cum-Managing Director, the New India Assurance Company Ltd., New India Assurance Building, 87, Mahatma Gandhi Road, Fort, Mumbai- 400001.
3. The General Manager, the New India Assurance Company Ltd., New India Assurance Building, 87, Mahatma Gandhi Road, Fort, Mumbai- 400001.
4. The Chief Regional Manager, the New India Assurance Company Ltd., B.S.F.C. Building, Fraser Road, Patna- 800001.
5. The Regional Manager, the New India Assurance Company Ltd., B.S.F.C. Building, Fraser Road, Patna- 800001.
6. The Senior Divisional Manager, Divisional Office-I, the New India Assurance Company Ltd., Jawar Lal Nehru Road, Red Cross Bhawan, 3rd Floor, North Gandhi Maidan, Patna.
7. The Branch Manager, the New India Assurance Company Ltd., Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shanti Pratap and
Mr. Arvind Kumar Verma, Advocates

For the Respondent/s : Mr. Durgesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 20-12-2017



Heard learned counsel for the petitioner and the respondents.

2. The petitioner has moved the Court for a direction to the respondents to consider him under the pensionary scheme of the company and not under the C.P.F. scheme which has been given to him.

3. Learned counsel for the petitioner submitted that he was dismissed in the year 1992 but subsequently upon his reinstatement in the year 2000, his salary slip showed that he was under the pensionary scheme but only after retirement, it has been disclosed by the authorities that due to him not opting for the pension scheme, he would be considered to be under C.P.F. scheme. Learned counsel submitted that in the year 1995, when the pensionary scheme came into force, the petitioner was out of job and, thus, could not apply.

4. Learned counsel for the respondents submitted that for a few months, the salary statement showed the petitioner in the pension scheme due to the system automatically being programmed for that and also due to inadvertence on the part of the concerned officer, which led to such discrepancy. However, it was submitted that the salary slip of the petitioner showed deductions of C.P.F. and to that extent, the petitioner cannot claim ignorance of



him continuing in the C.P.F. scheme. Learned counsel submitted that under the scheme of pension introduced in the year 1995, the employee was required to give his option to opt under the scheme within 120 days and the petitioner not doing so has fortified his right for being considered under the pensionary scheme.

5. Having considered the matter, the Court does not find any merit in the writ application. Even if the petitioner was entitled to payment of pensionary benefit, he was obliged to apply under the scheme within 120 days. In the present case, as he was out of service, the said 120 days could be reckoned from his date of reinstatement, but the onus was for him to file a formal application indicating his option for the pensionary scheme. Moreover, the petitioner cannot plead ignorance on the basis of there being indication in the salary slip that he was in the pension scheme for the reason that the salary statement also reflected his deductions as contribution to the C.P.F. fund which clearly indicated that he had not moved to the pensionary scheme. Further, it is admitted position, that the petitioner has also drawn and accepted all retrial benefits under the C.P.F. scheme and now taking a stand that he should be considered under the pensionary scheme, cannot be accepted, as it would amount to extending the policy beyond 120 days of its coming into force and due to which many other persons



may have been debarred from giving such option. The petitioner being aware of such fact and also not applying for the pensionary scheme while in service, after having availed of all retrial benefits under the C.P.F. scheme, should now be satisfied with what he has got and cannot become wiser and greedy.

6. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

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