

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5778 of 2009

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Amarendra Prasad, son of Dr. Bansi Prasad, Resident of House No. J/49, People's Co-operative Colony, Kankarbagh, Patna. At present posted as Development Officer, Grade-1 (S.R. No. 07527), The New India Assurance Company Ltd., Branch Office No.1, Pandey Plaza, Exhibition Road, Patna.

.... Petitioner/s

Versus

1. The Union of India through the Secretary to Government of India, Ministry of Finance and Company Affairs (Department of Economic Affairs), Insurance Division, New Delhi.
2. The Joint Secretary, Government of India, Ministry of Finance and Company Affairs (Department of Economic Affairs), Insurance Division, New Delhi.
3. The New India Assurance Company Ltd., 87, Mahatma Gandhi Road, Mumbai through its Chairman-cum-Managing Director.
4. Chief Regional Manager, the New India Assurance Company Ltd. Regional Office at B.S.F.C. Building, Fraser Road, Patna.
5. Divisional Manager, The New India Assurance Company Ltd. Division Office No.1, 3rd Floor, Red Cross Building, North Gandhi Maidan, Patna-800001.
6. Senior Branch Manager, The New India Assurance Company Ltd. Patna Branch No.1, Pandey Plaza, Exhibition Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Pd. Singh, Adv.
For the Resp. 1 & 2 : Mr. Anjani Sharan, Adv.
For the Resp. 3 to 6 : Mr. Durgesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-01-2018

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the order dated 8.12.2008 (Annexure-2), whereby and whereunder, the New India Assurance Company Limited has passed the order for deduction of Rs. 1,94,417/- in 38 instalments from the salary of the petitioner and 12 others in view of the enforcement of General Insurance (Rationalization of Pay Scale and Other Conditions of Service of



Officers) Scheme, 1976, amended from time to time, and last amendment has been affected in the year 2003.

The Scheme was challenged before different High Courts and all the cases were brought before the Hon'ble Apex Court and the Hon'ble Apex Court has declared that the amendment affected in the year 2003 is not in any manner ultra vires, accordingly, the action has been taken by the authority and passed the order for recovery of the said amount. The aforesaid judgment is reported in (2008) 5 SCC 472 (National Insurance Co. Ltd. Vs. General Insurance Dev. Officers Assn. & Ors.). In such a situation, the order has been passed by the authority on 8.12.2008 directed to recover the amount of Rs. 1,94,417/- which is the subject matter of challenge before this Court.

Learned counsel for the petitioner has submitted that while passing the order of deduction, the Corporation did not care to give notice as it was obligatory for the Corporation to issue show-cause to the petitioner before passing the order for recovery.

Asking a show-cause is a minimum requirement before affecting deduction. Admittedly, in the present case, before passing the recovery order, no notice has been given to the petitioner and, suo-motu, the authority has taken a decision to recover the amount as aforesaid.



In that view of the matter, the order does not stand to the test of fairness rather it is an arbitrary exercise of power by the authority. Accordingly, the order dated 8.12.2008 (Annexure-2) is quashed with a direction to the authority to serve a show-cause notice to the petitioner and after receipt of explanation, the Corporation will be at liberty to take decision in accordance with law.

This order will be abide by the final order passed by the authority concerned.

Learned counsel for the petitioner has raised a grievance that the petitioner has not been paid the arrear of pay revision since 1.8.2007 but, learned counsel for the New India Assurance Company has vehemently opposed the submission of the learned counsel for the petitioner.

Let the petitioner should file a detailed representation before the competent authority who will examine the case of the petitioner and will take a decision in accordance with law.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.01.2018
Transmission Date	NA

