

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7973 of 2020

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Sandip Kumar Roy Son of Late Mihir Kumar Roy, Resident of 405, Panchratan Apartment, Kasturba Path, Boring Road, North S.K. Puri, P.S. - S.K. Puri, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary Department of Agriculture Government of Bihar, New Secretariat Patna Bihar.
2. The Secretary Department of Agriculture Government of Bihar, New Secretariat Patna Bihar.
3. The Bihar State Agriculture Marketing Board now repealed through its Administrator, Pant Bhawan, Bailey Road, Patna.
4. The Administrator Bihar State Agriculture Marketing Board now repealed through its administrator Pant Bhawan Bailey Road Patna.
5. The Special Secretary (Establishment), Department of Agriculture Government of Bihar, New Secretariat, Patna, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Awadesh Kumar
		Mr.Sanjeev Kumar Mishra, Advocates
For the Respondent/s	:	Mr.Sarvesh Kumar Singh, AAG-13

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

11 16-03-2021 The petitioner has put to challenge an office order issued vide Memo No. 932 dated 28.08.2020, passed by the Administrator, Bihar State Agriculture Marketing Board (now dissolved), whereby and whereunder pay scale granted to the petitioner towards first ACP with effect from 2002 has been reduced from 10000-15200 to 7500-12000/-. Recovery of excess amount paid to the petitioner from 2002 is also stipulated under the impugned order which has been brought on record by



way of Annexure-15 to the writ application.

2. A supplementary counter affidavit has been filed on behalf of the State of Bihar, paragraphs No. 12, 13 and 15 of which read thus:-

“12. That the Finance Department prima facie came to its tentative opinion in the file that the 1st ACP granted to the petitioner in the scale of Rs. 10,000-15,200/- from the year 2002 does not appear to be correct rather the 1st ACP ought to have been allowed in the scale of Rs. 7500-12,000/- as per ACP Rules, 2003.

13. That in view of prima facie opinion of the Finance Department, the Department of Agriculture issued letter no. 1237 dated 15.04.2020 for taking an appropriate action as opined by the Finance Department and consequently the Administrator of the Board has issued the order dated 28.08.2020.

15. That so far order impugned issued by the Administrator of the Board (Dissolved) is concerned, the same is in the light of tentative opinion/advice of the Finance Department and in the light of letter no. 04/Agri. Vidh i- 60/14-1685 dated 30.03.2015, therefore, contention of the petitioner as made in the supplementary



affidavit to the effect that the Administrator has no jurisdiction to issue such order seems to be incorrect and misconceived.”

3. It is evident on reading of paragraph Nos. 12,13 and 15 of the supplementary counter affidavit that the decision to reduce the pay fixed consequent on grant of first ACP to the petitioner and recovery of excess amount to the petitioner in 2002 is based on a tentative opinion of the Finance Department.

4. In my opinion, on the basis of tentative opinion of the Finance Department, no decision ought to have been taken by respondent No.4 to recover the amount, which according to the said tentative opinion was found paid to the petitioner in excess to what he was legally entitled.

5. The impugned order dated 28.08.2020, passed by Respondent No.4 is set aside on this limited ground.

6. The respondents shall, however, be at liberty to pass an order afresh in this regard, but after giving the petitioner an opportunity of hearing, if decision is found to be adverse to his interest.

7. Consequently, the petitioner shall continue to receive pay at the same rate, which he was getting prior to issuance of the impugned order with clear understanding that if



the fixation is found to be incorrect and the tentative opinion of the Finance Department attains finality, he shall not resist recovery of the amount paid to him in excess, which he receives in the light of the present order.

8. This application is allowed with the observation as noted above.

(Chakradhari Sharan Singh, J)

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