



GOVERNOR'S SECRETARIAT, BIHAR

RAJ BHAVAN, PATNA-800022

Letter No.- PU(Appeal)-07/2010-_____/GS(I),

Dated-

From,

A L Srivastava
Officer on Special Duty (Judicial)

To,

The Vice Chancellor
Patna University,
Patna.

FAX

Sub.- Common Order passed on appeal of Dr. Jyoti Shekhar, University Professor, Deptt. of Applied Economics & Commerce and Dr Ashim Lal Chakraborty, Lecturer, Deptt of Applied Economics & Commerce, Patna University against dismissal from service.

Sir,

I am directed to invite a reference to this Secretariat's letter no-PU(Appeal)-33/2010-906/GS(I), dated 16-06-2015 on the above subject and to enclose herewith a copy of the order dated 24th July, 2015 passed by Hon'ble Chancellor after hearing the concerned parties and the University for information and necessary follow-up action forthwith under intimation to this Secretariat.

Yours faithfully,

Encl:-As above.

Sd/-

(A. L. Srivastava)
Officer on Special Duty (Judl.)

Memo No.- PU(Appeal)-07/2010-_____/GS(I),

Dated-

Copy alongwith copy of order dated 24.07-2015 passed by the Hon'ble Chancellor forwarded to Dr. Jyoti Shekhar, University Professor, Deptt. of Applied Economics and Commerce, Patna University, Patna for information and necessary action.

Sd/-

Officer on Special Duty (Judl.)

Memo No.- PU(Appeal)-07/2010-_____/GS(I),

Dated-

Copy alongwith copy of order dated 24.07-2015 passed by the Hon'ble Chancellor forwarded to Dr Ashim Lal Chakraborty, Lecturer, Deptt of Applied Economics & Commerce, Patna University, Patna for information and necessary action.

Sd/-

Officer on Special Duty (Judl.)

Memo No.- PU(Appeal)-07/2010-_____/GS(I),

Dated-

Copy alongwith copy of order dated 24.07-2015 passed by the Hon'ble Chancellor forwarded to the Principal Secretary, Education Department, Govt. of Bihar, Patna for information.

Sd/-

Officer on Special Duty (Judl.)

Memo No.- PU(Appeal)-07/2010- 1068 /GS(I),

Dated- 29/07/2015

Copy alongwith copy of order dated 24.07-2015 passed by the Hon'ble Chancellor forwarded to I/c Computer Cell for uploading on the website of Raj Bhavan, Patna.

Encl.-As above.

AZ 28-7-15
Officer on Special Duty (Judl.)

Appeal No. 13/2014
PU-07/2010

Dr. Jyoti Shekhar, Director, M.B.A. Course

Versus

Patna University and others

AND

Appeal No. 11/2014

PU-29/2010

Dr. Ashimlal Chakraborti

Vs.

Patna University and others

Order

Above mentioned two appeals have been filed under Section 11(17) of Patna University Act, 1976 as amended upto date. Since common questions are involved in both the appeals hence both the appeals are being decided by one and common order.

Appeal No. 13/2014 has been filed by Dr. Jyoti Shekhar, Professor, Department of Applied Economics and Commerce, Patna University, Patna, whereas Appeal No. 11 of 2014 has been filed by Dr. Ashim Lal Chakraborty, Co-ordinator in the said department respectively against two separate orders dated 03.06.2010 passed by the then Vice Chancellor of the University under Section 11(16) of the said Act removing the appellants from the service. This order was communicated to the appellants by the Registrar of the University through Memo No. 863 and Memo No. 864 both dated 03.06.2010 of the Patna University.

The facts of both the appeals are as follows:-

- (1) Patna University (hereinafter referred to as the University) published an advertisement on 23.03.2006 for admission to MBA programme in the

Department of Applied Economics. At that time Dr. Umesh Mishra was the Director of Programme. The appellant No. 1 has contended that he had nothing to do with this course as he was appointed Director (ex-officio) of the MBA course being the Head of the Department of Applied Economics and Commerce on 07.06.2006. He further contends that the process of verification of the details in the application forms for admission had already been completed prior to his being appointed as ex-officio Director.

According to appellant No. 2 he was made Co-ordinator for the M.B.A. Course only to assist the Director (appellant No. 1) for smooth functioning of the course and no specific duty was cast upon the appellant No. 2.

- (2) That after the completion of admission process, one Raj Kumar of Jehanabad, wrote a letter dated 23.05.2007 addressed to the Hon'ble Chancellor complaining therein that some irregularities have been committed during the process of admission in the said course. Sri Raj Kumar also made some other allegations against the appellants. He did not disclose as to whether he was a student of the Patna University or an applicant for admission to MBA Programme in the Department of Applied Economics.
- (3) That on the recommendation of the Controller of Examination-cum-Convenor of the student cell of the University the Vice Chancellor, on 22.11.2008 constituted a three-Member Committee consisting of Prof. Dr. D.K. Sharma, Prof. Dr. Rash Bihari Singh and Prof. Dr. B.K. Mishra to examine the matter and submit its report within a week. This Committee submitted its report on 30.11.2008 and recommended as follows:-

- (i) The admission of the following five students be cancelled and an F.I.R. be lodged by the course director against each of them for committing forgery :
- (a) Harish Ahsan, Class Roll No. 31; PU Exam Roll No. 19 (MAT score card)
 - (b) Shazia Firdaus, Class Roll No. 54, PU Exam Roll No. 54 (MAT score card)
 - (c) Azra Bano, Class Roll No. 62, PU Exam Roll No. 09 (MAT score card)
 - (d) Khursheed Asgar, PU Exam Roll No. 24 (Medical Certificate)
 - (e) Saquib Ahmad Kidwai, PU Exam Roll No. 52 (Medical Certificate)
- (ii) The Director and Co-ordinator of the MBA course be immediately removed from their posts for their administrative lapses and casual approach towards the entire process of admission.
- (iii) The university may also think of initiating suitable disciplinary action against them for this callous act. In any case, they should not be entrusted any job of responsibility in future.
- (iv) The entire matter may be handed over to the state vigilance department for a thorough probe.
- (4) That on the basis of the report of the three-member committee, the Vice Chancellor made an order putting both appellants under suspension vide order contained in Memo No. 63/08 dated 27.01.2009 and Memo No. 66/08 dated 29.01.2009. And later on both the appellants were asked to submit their explanation within one month by the University under letter No. 82/R and 83/R dated 10.02.2009 by enclosing therewith a copy of the said report and containing charges against them.

- (5) That both the appellants separately submitted a detailed reply to the charges but the University Authorities did not find it satisfactory and accordingly, departmental proceeding was initiated against the appellants and by a letter dated 11.06.2009 Shri G.P. Srivastava, Additional District Judge (retd.) was appointed as the Enquiry Officer.
- (6) That the Enquiry Officer Sri G.P. Srivastava submitted his report on 10.12.2009 wherein he has found all the charges established and proved against the appellants for committing gross irregularity in the admission of above said course. Thereafter both appellants were asked to show cause within a fortnight as to why their services be not terminated under Article 16(2) of the Service Statutes by letter No. 219/VC-Res and letter No. 220/VC-Res dated 18.01.2010.
- (7) That the University authority by holding the shown cause to be unsatisfactory and also finding himself in complete agreement with the finding of the Enquiry Officer dismissed both the appellants from the service of the University with immediate effect by the letters contained in Memo No. GEN/863 and Memo No. GEN/864 dated 03.06.2010 under the signature of the Registrar.
- (8) That my predecessor in Office, by his order dated 28.04.2011 and 07.06.2011 had stayed the operation of the dismissal orders dated 03.06.2010 with respect to both the appellants respectively and directed that they may be reinstated immediately. Consequently, the appellants have joined on the post and are working since then.

The following contentions have been made by the appellant No.1 Dr. Jyoti Shekhar in this appeal:-

- (i) The appellant was not the Director of MBA Programme (course) when the admission process for the course had begun and completed.
- (ii) The VC of the University had no power to appoint the three-Member Committee. The power vests in the syndicate of the University which is the appointing authority.
- (iii) The complaint of Raj Kumar neither disclosed his capacity nor was supported by any document or evidence.
- (iv) The convenor of the Student Cell-cum-Controllor of Examination, on whose recommendation the three member committee was appointed, had not even visited the appellant's Department nor had verified any document relating to the admissions in question.
- (v) The recommendation of the three member committee dated 30.11.2008 was not based on any evidence or proof and has wrongly held that the appellant had connived with the students in taking their admission.
- (vi) The three-member committee neither examined the appellant nor gave him any opportunity to defend himself. The entire proceedings before it were in violation of the principles of natural justice.
- (vii) There was no verification of any document and as such it could not be said that fake admissions were made.
- (viii) The appellant was never communicated the report of All India Management Association dated 05.03.2006 and as such he could not take any action against the students.
- (ix) The appointment of Shri G.P. Srivastava as Enquiry Officer was bad as the VC had no power to appoint any outsider to hold the enquiry,

particularly in view of the judgment of Patna High Court report in 1996(1)PLJR 435.

- (x) The findings recorded by the Enquiry Officer are most perfunctory, mechanical and without appreciating the relevant aspects of the case. The findings are based on conjectures and surmises.
- (xi) Not a single witness was examined by the Enquiry Officer. The appellant's request to let him know as to how it was learnt that the MAT score cards and Medical Certificates were fake with respect to specific students, was illegally turned down.
- (xii) The VC had no power to delegate his function of holding an enquiry to a member of the State Judicial Service.
- (xiii) The VC's order dated 03.06.2010 is illegal, beyond his jurisdiction, vitiated by violation of natural justice and non-application of mind, besides being arbitrary and against relevant Statutes of the University.
- (xiv) The VC has not sought the approval of the syndicate to the dismissal order.

The following contentions have been made by the appellant No.2 Dr. Ashim Lal Chakraborty in this appeal:-

- (i) That before passing the impugned order of dismissal the approval of the Syndicate had not been sought as the power of appointment of the appellant vests in the Syndicate being Executive Council of the University.
- (ii) That the appellant was appointed as Co-ordinator, subordinate to the Director, for smooth running of the course and also to assist the Director.

- (iii) That considering the distinction of roles between the Director and the Co-ordinator the complaint letter dated 23.05.2007 of Sri Raj Kumar was only forwarded to the office of the Director and not to this appellant.
- (iv) That the main charges against this Appellant were that without verifying the MAT Scores of 3 students and medical certification of 2 other students, later found fake, admitting them to the MBA course when the same could have been verified easily on the internet, amounted to dereliction of duty particularly in view of the fact that having taken a written undertaking from the students to produce the MAT score cards at a later date, their admissions ought to have been cancelled when the original score cards were not produced on time.
- (v) That so far as the medical certificate of the handicapped students found fake is concerned the appellant has suggested and opined that, case may be considered after the verification of the certificate issued by the Vocational Rehabilitation Centre for Handicapped, Patna in presence of applicants by C.M.O., Patna University dispensary, Patna.
- (vi) That it would not be out of context to mention here that during the period when interim protection was granted by the erstwhile His Excellency the appellant was found both as an academican and administrator fit to take up the additional responsibility in the well considered opinion of the Vice Chancellor.

On receipt of the appeals, the University was called upon to submit its reply thereon. Briefly sated, the reply of the University is as follows:-

- (i) One Raj Kumar of village Anakupur, District-Jehanabad made a complaint to the Chancellor regarding admissions to MBA course in the University. The Chancellor's Secretariat called for a report from the Student Celi of the University.
- (ii) Appellant's comments were also called for on the said complaint.

- (iii) On the basis of the aforesaid complaint a three member committee was constituted to enquire into the matter. This Committee recommended for cancellation of the admission of 5 students who got admission on fake MAT Score Card and Medical Certificate. The Committee also recommended for lodging an F.I.R. and also for removal of the Director and the Coordinator of the Course.
- (iv) After the receipt of the above recommendations legal opinion was also obtained from Shri Ram Balak Mahato, Senior Advocate, Patna High Court. Accordingly the appellant No. 1 Dr. Jyoti Shekhar being the Director and appellant No. 2 Dr. Ashim Lal Chakraborty, the Coordinator were placed under suspension.
- (v) Thereafter Shri G.P. Srivastava, Retd. Additional District Judge, was appointed the Enquiry Officer, who conducted the enquiry.
- (vi) After the receipt of the report of Enquiry Officer, legal opinion in the matter was again sought from Shri Ram Balak Mahato.
- (vii) The appellants were issued show cause notice dated 18.01.2010 separately as to why their services be not terminated under Article 16(2) of the service Statute. The appellants submitted their reply to show cause notice but the same was found to be unsatisfactory. Accordingly, the appellants were dismissed from services by office order contained in Memo No. GEN/863 and GEN/864 dated 03.06.2010.
- (viii) The appellants had full knowledge of the fake MAT Score Card and fake medical certificates submitted by five students as two of them had applied for admission in general category whereas they submitted their medical certificate of their disability in the regime of the appellant No. 1's directorship. Similarly three other students submitted fake MAT Score Card during his regime.

- (ix) The VC is fully empowered under Section 11(16) of Patna University Act to take disciplinary action against any teacher or employee of the University.
- (x) The appellants had appeared before the Enquiry Officer Shri G.P. Srivastava along with his counsel and had placed their defence.
- (xi) The statements made by the appellants in their memo of appeals are baseless, incorrect and fit to be dismissed.

In the light of the submissions of both the parties the following issues are to be considered:-

- (A) Whether the order of Vice Chancellor with respect to suspension/dismissal of the appellants have to be approved by the Syndicate as per Section 11(9) of the Patna University Act, 1976 ?**
- (B) Whether the appointment of Sri G.P. Srivastava, Retired Additional District Judge as Enquiry Officer is legal ? If not, its effect ?**
- (C) Whether the orders of dismissal of the two appellants from service are justified and sustainable ?**

Issue (A)

Section 11(9) of the Patna University Act, 1976 as amended up to date is as follows:-

"The Vice-Chancellor shall carry out the orders of the Syndicate in respect of appointment, transfer, discharge or suspension of officers and teachers of the University, and shall exercise general control over the educational arrangement of the University, and shall be responsible for the discipline of the University".

It is admitted by the parties that the orders were never placed before the Syndicate of the University for its approval. It was the duty of the Vice Chancellor to place these orders before the Syndicate for approval. The words "appointment" and "discharge" are wide enough to cover the case of dismissal also. No reason has been put forward on behalf of its Vice Chancellor for not placing the matter before the Syndicate which is the highest body of the University. One may infer arbitrariness and mala fides on the part of the Vice Chancellor in this behalf. The plea that the matter of dismissal was not brought to the notice of the Syndicate because an appeal lies to the Chancellor against this under Section 11(17) of the Act, is not sustainable. It may be noted that had the Syndicate disapproved the order of dismissal, there would have been no question of filing any appeal before the Chancellor. The impugned orders of dismissal are thus not sustainable.

Issue (B)

This issue relates to appointment of a retired Judicial Officer who is an outsider so far as the administration of the affairs of the University are concerned, as the Enquiry Officer in disciplinary proceeding. This question was considered by the Patna High Court in the case of "Dr. Vidyapati Prasad Singh vs. State of Bihar and others, reported in 1996(1) PLJR, 435", in which it was held as follows :-

"There being no such power vested with the respondents under the Act, and/or Statute to appoint an outsider as an Enquiry Officer, I hold that the appointment of retired District and Sessions Judge as Enquiry Officer in the case of the petitioner is completely illegal".

On a query made by me as to whether any appeal was filed against this judgment and whether it still holds good, the counsel for the parties stated that no appeal was filed against it and the judgment remains operative.

The case of the University is that the Vice Chancellor agreed with the finding of the Enquiry Officer. Since the appointment of the Enquiry Officer was bad in law, his findings cannot be relied on for passing the dismissal orders. There is no independent application of mind by the Vice Chancellor. The order of dismissal of the two appellants passed by the Vice Chancellor are vitiated on this ground also and liable to be quashed.

Issue (C)

In view of the findings on Issue (A) and (B) this issue need not be decided.


Order

Both the appeals of Dr. Jyoti Shekhar and Dr. Ashim Lal Chakraborti are allowed and the two orders of dismissal dated 03.06.2010 contained under Memo No. GEN/863 & GEN/864 respectively in respect of the appellants are hereby quashed.

Since in view of the Stay Order dated 28.04.2011 and 07.06.2011 passed by the then Chancellor the appellants were reinstated on their respective posts and are working since then, no separate order is needed in this behalf. They shall continue in the service on their respective posts and will receive all the due pay, allowances, privileges attached to their posts.

Patna

Dated the- 24th July, 2015


(Keshari Nath Tripathi)
Chancellor