GOVERNOR'S SECRETARIAT, BIHAR

RAJ BHAVAN, PATNA-800022

Letter No.- PU(Appeal)-23/2010-_____/GS(I), Dated-

From,

A L Srivastava
Officer on Special Duty (Judicial)

To,

The Vice Chancellor
Patna University,
Patna.

FAX

Sub.:- Request of Vice Chancellor, Patna University for review of the order passed by the Hon'ble Chancellor dated 13.07.2010 in respect of appeal of Dr. Ran Vijoy Kumar, University Professor, Deptt. of History, Patna University, Patna.

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 26th 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).-23/2010-1073 /GS(I), Dated-_____

Copy alongwith copy of order dated 26.07-2015 passed by the Hon'ble Chancellor forwarded to Dr. Ran Vijoy Kumar, University Professor, Deptt. of History, Patna University, Patna for information and necessary action.

Sd/-
Officer on Special Duty (Judl.)

Memo No.- PU(Appeal)-23/2010-_____/GS(I), Dated-_____

Copy alongwith copy of order dated 26.07-2015 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)-23/2010-1073 /GS(I), Dated- 29-07-2015

Copy alongwith copy of order dated 26.07-2015 passed by the Hon'ble Chancellor forwarded to I/c Computer Cell for uploading on the website of Raj Bhavan, Patna.

Encl.-As above.

29/7/15
Officer on Special Duty (Judl.)

File No.-PU-23/2010

Dr. Ran Vijay Kumar vs. Patna University, Patna

Order

This is a Review Application dated 22nd July, 2010 filed by the then Vice Chancellor, Patna University praying for the review of the order dated 13.07.2010 passed by my predecessor in office whereby he had set aside the order dated 03.06.2010 passed by the Vice Chancellor of Patna University dismissing Dr. Ran Vijay Kumar, University Professor, Department of History, Patna University from service.

The facts of the case are that Patna College started B.B.A. (Hons) three years' degree course in the Self Financing Scheme, under Governor's Secretariat letter dated 11.04.2005. Dr. Ran Vijay Kumar, the Principal In-charge of Patna College was also the Director of the said course. There were complaints of taking admission to more than the sanctioned number of seats in the said course. A three member Fact Finding Committee was formed to look into the matter. This committee submitted a report on 15.11.2008 on the basis of which a show cause was issued to Dr. Ran Vijay Kumar on 03.12.2008.

Dr. Ran Vijay Kumar replied to this show cause notice on 10.12.2008. It seems that his reply was not found satisfactory. He was placed under suspension vide Memo No. 49/R dated 12.01.2009. Subsequently a charge sheet dated 10.02.2009 was served on him to which he submitted his reply dated 05.03.2009. The Vice Chancellor did not find this reply to be satisfactory and therefore passed the order dated 03.06.2010 dismissing Dr. Ran Vijay Kumar from service.

Dr Ran Vijay Kumar filed an appeal against the order of dismissal before the Chancellor of the University under Section 11(17) of the Patna University Act, 1976.

This appeal was allowed by the then Chancellor vide order dated 13.07.2010 and the order dismissing Dr. Ran Vijay Kumar from service was set aside. The present Review Application seeks review of this order dated 13.07.2010.

I have heard Sri Vivekanand Prasad Singh, Advocate, learned Counsel for the University and Sri Binod Murari Mishra, learned Advocate for Dr. Ran Vijay Kumar.

Section 10(4a) of the Patna University Act confers power on the Chancellor to review of his own order, and reads as follows:-

"The Chancellor may review or recall any order passed by him, if such review or recall is, in the opinion of the Chancellor, necessary in the interest of justice as he thinks fit and proper or on account of a mistake which is apparent from the record".

Thus the power of the Chancellor to review or recall his earlier order is limited only to the circumstances where the review would be in the interest of Justice or the order under review having being passed on account of a mistake which is apparent from the record.

I have looked into order dated 13.07.2010 passed by my predecessor in office and have also considered the submissions made by the counsel for the University.

The order dated 13.07.2010 is a detailed order containing well considered reasons for allowing the appeal of Dr. Ran Vijay Kumar. The counsel for the University submitted that there was an observation by a Learned Single Judge of the Patna High Court in C.W.J.C. No. 17966 of 2008 (Ashutosh Kumar and others. Vs. The State of Bihar and others) in which it was observed as follows:-

"The University would be well advised to hand over the matter to the Cabinet (Vigilance) Department of the Bihar Government for investigation.

In conclusion, we are of the view that admission of 146 students were

by fraud attributable to the Director-cum-Principal, Course Co-ordinator, the presents and others who acted for the admitted candidates, and others. The students cannot be permitted to retain the benefits obtained by fraud. We, therefore, uphold the order dated 20.11.2008 (Annexure-M), whereby admission of 146 candidates were declared null and void".

However this order cannot be of any benefit to the University for the reason that in L.P.A. No. 564 of 2009 (Dr. Ran Vijay Kumar vs. The State of Bihar and others) a division bench of Patna High Court in an appeal against the above mentioned observations of the Single Judge, had observed as follows:-

"However, to take care of such apprehension we clarify that any observation or finding in the judgment and order under appeal shall not be made the sole basis for proceeding against the appellant in any proceeding and if there is any proceeding or investigation in relation to irregular admissions the same shall be conducted in accordance with law without being unduly influenced by any observation and finding in the judgment and order under appeal".

Thus, it is clear that the observation made by the learned Single Judge in one sense could not be made any basis for passing the order of dismissal.

The learned counsel for the University did not dispute the aforesaid order of the above L.P.A. 564 of 2009. The learned counsel for the University submitted that one of the grounds on which the appeal of Dr. Ran Vijay Kumar was allowed, was that an outsider (Retd. Additional District Judge) could not be made an Enquiry Officer in a disciplinary proceeding of the University. He submitted that there is no bar to the appointment of an outsider of the University to holding an inquiry against its officer, teacher or employee and as such the order allowing the appeal was illegal on this point.

My learned predecessor relied on a judgment of Patna High Court reported in 1996(1) PLJR, 435 (Dr. Vidyapati Prasad Singh vs. State of Bihar and others) for holding that the order of the Vice Chancellor was not sustainable as it was passed on the report of an Enquiry Officer (Retd. Additional District Judge) who was an outsider and as such the report of such an Enquiry Officer and his findings could not be relied on to pass an order of dismissal. The view taken by the Patna High Court is a possible view and, in any case, cannot be said to be an error apparent on the record.

No error is apparent on the face of the record of the present case or in the order of the then Chancellor. My predecessor has also held that the impugned order of dismissal appears to be colourable exercise of power, arbitrary and malafide and has given reasons to support his conclusions. These are findings of facts and there does not seem to be any error apparent on the record. If on the facts of the case the Chancellor has taken one of the two possible views, it cannot be said that it would be in the necessary interest of justice to review or recall the order. The Review Application does not make out any case for review or recall of the order in the interest of justice.

Having considered the circumstances of the case and submissions made by the parties' counsel I do not find any merit in the review petition, which is hereby dismissed.

Patna

Dated the- 26 July, 2015

(Keshari Nath Tripathi)

Chancellor