

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an application for mandates in the nature of Writs of Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

**I. S. Ama Sudakshinee
Pothuhera**
Hunukotuwa waththa,
Pannala, Aranayake.

Petitioner

CA WRIT APPLICATION

NO. 186/2025

Vs.

- 1. University Grants Commission**
- 2. Prof. Kapila Senevirathna**
The Chairman
- 3. Prof. W.S. Wasantha Kumara**
- 4. Prof. O. G. Dayarathne Banda**
- 5. Dr. S. Raviraj**
- 6. Dr. R. A. Attalage**
- 7. Mrs. C.K.W. Unambuwa, P. C.**
- 8. Prof. (Mrs) Hemamali Gunatilaka**
- 9. Dr. Priyantha Premakumara**
All are of
University Grant Commission
No.20, Ward Place,
Colombo 07.
- 10. University of Kelaniya**
- 11. Prof. Nilanthi de Silva**
Vice Chancellor
- 12. Professor M.M. Gunathilaka**
Dean, Faculty of Social Science
- 13. Professor (Mrs) P.A. Paranagama**
Dean, Faculty of Graduate
Studies
- 14. Professor Dhammadika
Weerasinghe**
Dean, Faculty of Computing and
Technology

- 15. Prof. S.R.D. Kalingamudali**
Dean, Faculty of Science
- 16. Prof. W.M.C. Bandara**
wanninayake
Dean, Faculty of Com. & Management Studies
- 17. Mr. U.S. Senarath**
Dean, Faculty of Humanities
- 18. Prof. M. N. Chandratilake**
Dean, Faculty of Medicine
- 19. Mr. G.M.R.D. Aponsu**
- 20. Mr. Udaya H. Kasthurirathne**
- 21. Dr. R. Chinthaka L De Silva**
- 22. Mr. D.D. Yashaswin**
Samarasinghe
- 23. Ms. Chathini Uduwana**
- 24. Dr. (Mrs) M. Jaanaki**
Gooneratne
- 25. Mr. T.R. Waruna Sri Dhanapala**
- 26. Mr. A.H. Ranjith Udayasiri**
- 27. Mr. Rakhitha S.D.**
Abeygoonawardhana
- 28. Mr. Kolitha Sanath Gunarathne**
- 29. Mr. Kandaudahewa Gemunu**
Gunasumana
- 30. Prof. S.S. Weligamage**
- 31. Prof. W.M. Semasinghe**
- 32. Mr. K.K.K. Dharmathilaka**

The Registrar

All of
The Registrar
University of Kelaniya, Kelaniya.

Respondents

- Before : **Hon. M.T. Mohammed Laffar, J.(CA)**
- : **Hon. K. Priyantha Fernando, J. (CA)**
- Counsel : K. G. Jinasena instructed by D. K. V. Jayanath for the Petitioner.

Prabhashanee Jayasekara, S.C. for the Respondents.

Written Submissions : Petitioner filed on 04.04.2025.
Respondent filed on 21.04.2025
Decided on : 22.05.2025

K. P. Fernando, J. (CA)

The Petitioner has instituted this action seeking substantive reliefs of Writs of Certiorari quashing the decision of the University Grants Commission (UGC) to authorize the 10th Respondent (University) to conduct an inquiry against the Petitioner and quashing the decision of the University to conduct a disciplinary inquiry against the Petitioner on the basis of the charge sheet P9; a Writ of Mandamus compelling the UGC to conduct an investigation based on the appeals marked as P6, P15 and P15A; a Writ of Prohibition against the 11th Respondent preventing the conduct of the inquiry scheduled to be held on 19th and 20th March 2025.

On the date of support of the Application, the learned State Counsel appearing for the Respondents raised the following preliminary objections on the maintainability of the instant application:

- a. The Petitioner is guilty of laches.
- b. The Petitioner has acquiesced and actively participated in the disciplinary process she now impugns.

The inquiry was held by way of written submissions.

THE PETITIONER'S POSITION:

She was appointed to the position of Assistant Registrar, effective from March 12, 2020 as per the letter of appointment issued under the signature of the Chairman

of the UGC, dated 3rd March 2020 (P3). As per P3, she is entitled to be confirmed in the position effective from March 12, 2023. However, by the letter dated

November 27, 2023 (P5), the Vice-Chancellor (VC) had informed her that her probationary period had been extended from 12th March to 11th March 2023.

It was alleged that according to the contract of employment, the appointing authority is the UGC, and as such the decision to extend probationary period is illegal since no such authority has been delegated to VC. On December 26, 2023,

the Petitioner has submitted a letter (P6) challenging the decision to extend her probationary period. By paragraph 2(vii) of P6, she has also made a complaint against the Dean of the Faculty of Social Sciences. Upon receiving the said complaint, the VC has proceeded to appoint H. D. Premaratne, a retired employee of the Ministry of Health as the Preliminary Inquiry Officer (PIO) to investigate into the allegation made therein.

It was stressed that, as per the caption of the Council Decision No. 522.19.07, the investigating officer was appointed to conduct a preliminary investigation against the complaint made by Mrs. I.S.A.P. Pothuhera, the Petitioner.

The PIO had submitted his report dated 8th March 2024 recommending that a disciplinary inquiry be conducted against the Petitioner. Subsequently, a charge sheet dated July 25, 2024 containing nine charges had been issued under the signature of the VC.

Following the Petitioner's complaint to HE the President, the Secretary to the President on 15th January 2025 had issued a letter (P17) to the Ministry of Education requesting intervention in the matter. The UGC has thereafter instructed the University to pause the disciplinary inquiry. However, the VC has again proceeded to conduct the said inquiry on March 19. 2025. By letter dated

11th March 2025 (P22), the Petitioner has urged the VC to suspend the inquiry scheduled for 19th March until the UGC conducts its own investigation in terms of Section 15 (xii) of the Universities Act No. 16 of 1978 as amended by Universities (Amended) Act No. 7 of 1985.

PRELIMINARY OBJECTIONS:

1. IS THE PETITIONER GUILTY OF LACHES?

The first decision to commence disciplinary proceedings was taken on 09.01.2024. Pursuant to this decision, a preliminary investigation was conducted and report has been submitted on 08.03.2024. (vide paragraph 09 of the Petition) The Petitioner has admitted that a statement was obtained from her as a part of the preliminary investigation.

By her own admission, the Petitioner would have known by March 2024 that, disciplinary proceedings were being taken against her. Yet, only around January 2025-i.e. nearly 10 months after the conclusion of the preliminary inquiry against her, that the Petitioner has sought writ against the decision of the University.

It is only around March 2025-i.e., nearly 12 months after the conclusion of the preliminary inquiry against her, that she has sought relief from the Court.

It was contended that the correct stage (if at all) to have sought recourse was the time when the University decided to commence disciplinary proceedings or at best, upon the conclusion of the preliminary investigations.

In response, the Petitioner has submitted that she has justified the delay by seeking all other remedies before making the instant application.

By the letter dated 26th December 2023, regarding the decision taken to extend the probationary period, the Petitioner has urged the Council to withdraw the decision taken to extend the period of probation and **to conduct an impartial inquiry in respect of any allegation against her.**

In fact, on 22nd August 2024, the Petitioner had answered the Charge Sheet by P10 and **requested the VC to grant an opportunity to have a Defence Officer if the Council decided to proceed with a disciplinary inquiry.**

An application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed. What is reasonable time and what will constitute undue delay will depend upon the

facts of each particular case. However, the time lag that can be explained does not spell laches or delay. If the delay can be reasonably explained, the Court will not decline to interfere. The delay which a Court can excuse is one which is caused by the applicant pursuing a legal remedy and not a remedy which is extra-legal. **One satisfactory way to explain the delay is for the petitioner to show that he has been seeking relief elsewhere in a manner provided by law**-page 379 of *Biso Menika vs. Cyril de Alwis and Others*-**S.C.** No. 59/81-SLR 1982 Volume I.

In the instant case, the Petitioner has been seeking to conduct an impartial inquiry from December 2023 by the Council of the University and has been requesting the UGC a transfer to any other Higher Education Institution to continue her employment. These acts can be considered as seeking remedy elsewhere in a manner provided by law. Thus, she has explained the delay.

However, as explained below, by her acts spanning for nearly one year she has acquiesced in the disciplinary proceedings.

2. HAS THE PETITIONER ACQUIESCED IN THE DISCIPLINARY PROCEEDINGS COMMENCED AGAINST HER?

It was contended by the respondents that the Petitioner has participated in the disciplinary proceedings without raising any complaints as regards the legality thereof.

In this regard, the Petitioner has admitted to having provided a statement in the preliminary inquiry. (vide paragraph 9 of the Petition). In terms of the summary of her statement as recorded in the report P8, the Petitioner has not raised any concerns relating to the legality of the proceedings.

The Petitioner has not raised any concerns regarding the legality of the charge sheet or the disciplinary proceedings in the answer P10. In fact, the Petitioner has expressly declared that she will participate in the formal inquiry. (paragraph 2 of P10).

Further, in paragraph 3 of P10, the Petitioner has requested that she be permitted to appoint an officer to appear on her behalf at the formal disciplinary inquiry.

By paragraph 18(ii) of P15B, the Petitioner has expressly admitted that, “....*in terms of Section 75 of the Act, the Disciplinary Authority of the Petitioner is the Council of the 10th Respondent University*”.

It is seen that the Petitioner herself has requested the Council of the University to conduct disciplinary proceedings against her in respect of any allegations levelled against her as follows: (vide P6)- “4. *In view of the facts and the legal provisions stated above, I respectfully urge Your Honourable Members of the Council to withdraw the decision taken to extend the period of my probation and to **conduct an impartial inquiry in respect of any allegation to be made against me***”. (emphasis added)

It is respondents’ position that the Council of the University is the disciplinary authority of the Petitioner. Attention was drawn to the provisions of Section 45(2)(xii) of the Universities Act which provides as follows:

provisions of section 45(2) (xii) of the Universities Act which provides as follows:

- 1) “*Subject to the provisions of this Act the Council shall exercise the powers and perform and discharge the duties and functions conferred or imposed on, or assigned to, the University.*
- 2) *Without prejudice to the generality of the powers conferred upon it by subsection (1), the Council shall exercise, perform and discharge the following powers, duties and functions:*

...

(xii) to appoint persons to, and to suspend, dismiss or otherwise punish persons in the employment of the University.” (Emphasis added)

The fact that the Council of the University exercises disciplinary control over the Petitioner is confirmed by the provisions of Section 75(2) of the Universities Act read with Section 44 of the Act.

Section 44: “*The Council of a University (hereinafter referred to as “the council”, shall be the executive body and **governing authority of the University** and shall consist of the following persons....*” (emphasis added)

Section 75:

“(1) *The retirement age of a public officer as may be determined by the Government, from time to time, shall apply with effect from the same date as applicable to a public officer in respect of the retirement age of the holder of any post, other than that of a teacher.*

(2)(a) *the Commission or **the governing authority of any Higher Educational Institution to which the holder of such post is attached** or in the case where such person is attached to a Higher Educational Institute, the governing authority of the Higher Educational Institution to which such institute is affiliated may base on the recommendations of the Institute suspend the holder of such post **pending an inquiry by the Commission or such governing authority** or the Institute, as the case may be, for misconduct, inefficiency or dereliction of duty; or*

(2)(b) *where such holder of post is found guilty after such inquiry, the Commission, the governing authority of the Higher Educational Institution to which such*

*person is attached or in the case where such person is attached to a Higher Educational Institute, the governing authority of the Higher Educational Institution to which such Institute is affiliated, as the case may be, may on resolution adopted by the Commission or the governing authority of the relevant Higher Educational Institution, **dismiss or compulsorily retire the holder of such post.**” [Emphasis added]*

It is decided in the case of **K.G. Eranda Wijesiri vs. University of Kelaniya and 05 Others**-CA (WRIT) 756/2007 decided on 15.10.2010, that the Council of the University is the disciplinary authority of those in the employment of the University. In the said case, the petitioner was a Chief Security Officer attached to the University of Kelaniya. He was appointed by the UGC and assigned to the University. The counsel for the petitioner took up the position that the University of Kelaniya is not the disciplinary authority of the petitioner. Pursuant to an analysis of Section 45(2)(xii) and Section 75(2) of the Universities Act, the Court of Appeal held that the University of Kelaniya was, in fact, the disciplinary authority of the petitioner.

In the above circumstances, the Petitioner has acquiesced in the disciplinary proceedings commenced against her by the University and it disentitled the Petitioner from being granted the reliefs prayed for in this Application. Thus, I uphold the 2nd Preliminary Objection.

In the circumstances, I proceed to dismiss the instant Application of the Petitioner.

Judge of the Court of Appeal

M.T. Mohammed Laffar, J. (Act.P/CA)

I agree.

Judge of the Court of Appeal