

**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*, *Quo Warranto* and *Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0389/2021

1. Ven. Lelwala Ariyadhamma Thero

Sri Vijayananda Dharmayatanaya,
Singhepura, Hokandara South, Hokandara.

Petitioner

Vs

1. University of Kelaniya

2. Snr. Prof. Nilanthi de Silva

Vice Chancellor

3. Prof. M.M. Gunathilaka

Dean, Faculty of Social Sciences

4. Snr. Prof. J.M.D. Ariyaratna

Dean / Faculty of Graduate Studies

5. Dr. P.G. Wijayarathna

Computing Dean, Faculty of Computing and Technology

6. Snr. Prof. S.R.D. Kalingamudali

Dean, Faculty of Science

7. Dr. P.N.D. Fernando

Dean, Faculty of Commerce and Management Studies.

8. Mr.U.S.Senarath

Dean, Faculty of Humanities

9. **Snr. Prof, S.J.de S. Hewavisenthi**
Dean, Faculty of Medicine
10. **Mr. Rakhitha Shri Dharshana Abeygoonawardana**
11. **Prof. H. Abeygunawardena**
12. **Prof. Ranjith Arthanayake**
13. **Mr. Sanjaya Bandara**
14. **Mr. S.M. Gotabaya Jayarathne**
15. **Prof. Ananda Patabandige**
16. **Prof. Nimal Perera**
17. **Prof. Rohan Rajapakse**
18. **Mr. L.E. Susantha Silva**
19. **Mr. Cyril Suduwella**
20. **Mr. Upali Wijayaweera**
21. **Rev. (Sar.Prof.) Induragare Dhammarathana Thero**
22. **Prof. Kapila Seneviratne**
23. **Mr. K. K. K. Dharmathilaka**
The Registrar
24. **Rev. Snr. Prof. Nabiriththankadawara Gnanarathana Thero**
25. **Rev.Snr.Prof.Makuruppe Dhammananda Thero**
26. **Rev. M. Pagnnaloka Thero**
27. **Ven S. Wijayawimala Thero**
28. **Rev. W Bhaddiya Thero**
29. **Rev. Y. Ariyawansa Thero**
30. **Dr.H.W. Samarasinghe**
All of
C/O The Registrar
University of Kelaniya, Kelaniya.
31. **University Grants Commission**
No. 90, Ward Place,
Colombo 07.

32. **Rev. M. Wajirabuddhi Thero**
33. **Rev. S. Nanda Thero**
32nd and 33rd Respondents
C/O The Registrar
University of Kelaniya, Kelaniya

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALLIYADDE, J.

Counsel: K.G. Jinasena, instructed by D.K. Vikum Jayantha for the
Petitioner.

N. De Zoysa SC for the 1st to 25th and 31st Respondents.

Argued on: 07.08.2023

Written Submissions on: 14.10.2023 by the Petitioners
Filed out of time by the Respondents.

Decided on: 07.12.2023

MOHAMMED LAFFAR, J.

The Petitioner is seeking, *inter-alia* a Writ of Certiorari quashing the decision of the Council of the University of Kelaniya to issue letters of Appointment in the Department of Pali and Buddhist Studies at the Faculty of Humanities to the 26th, 27th and 28th Respondents. The Petitioner also seeks a Writ of Certiorari quashing the letter of Appointment issued by the Council of the University of Kelaniya for the post of Lecturer (Probationary) in the Department of Pali and

Buddhist Studies at the Faculty of Humanities, a Writ of Certiorari quashing the decision of the University of Kelaniya to appoint the 32nd Respondent for the post of Lecturer (Probationary) in the Department of Pali and Buddhist Studies at the Faculty of Humanities, a Writ of Certiorari quashing the decision of Selection Committees to recommend the 32nd Respondent for the post of Lecturer (Probationary) in the Department of Pali and Buddhist Studies at the Faculty of Humanities of the University of Kelaniya, a Writ of Quo Warranto to declare that the 26th, 27th, 28th and 32nd Respondents are not eligible and entitle in law to hold the said positions as Lecturer (Unconfirmed) and Lecturer (Probationary) in the Department of Pali and Buddhist Studies at the Faculty of Humanities of the University of Kelaniya and to issue a Writ of Mandamus compelling the Council of the University of Kelaniya of which 2nd and 22nd Respondents are members to appoint the Petitioner for a post of Lecturer (Unconfirmed) or Lecturer (Probationary) in the Department of Pali and Buddhist Studies Faculty of Humanities at the University of Kelaniya.

However, there are two preliminary objections taken by the State Counsel for the 1st to 25th Respondents and the 31st Respondent as to the maintainability of this Application. In the first of these objections the Counsel for the Respondents submits that the Petitioner has already invoked the alternative remedy provided under Section 86 of the Universities Act No. 16 of 1978 by going before the Universities Services Appeal Board. Secondly, he submits, that the Petitioner has failed to make a frank and full disclosure of all relevant

material facts, in specific that the Petitioner has suppressed material facts pertaining to the invocation of the alternative remedy by the Petitioner.

Given two preliminary objections were raised, I move to adjudicate on these first. It can be said that a preliminary objection by Nature is such that, it obviates the need for any consideration to be given to the Merits of the case. In support I cite the case of **Sangamaya Vs. Sri Lanka Ports Authority and another**¹ wherein Thilakawardena, J. stated that,

“....A determination of a preliminary objection obviates or makes unnecessary, any consideration of the facts contained in the pleadings and/or the merits of the case.”.

It is trite law that a Preliminary objection is not limited to rise out of a pure question of law but that it may be given rise to as a mixed question of law and fact or on a question of fact alone where there are *ex facie* either no dispute or a frivolous dispute on the fundamental facts that are being urged before the court and contained in the pleadings that have been filed.

However, while it is tempting to take Preliminary Objections to dismiss a matter *in limine* to dispose of that matter expeditiously, it is important to give proper consideration to the question of a Preliminary Objection, in other words to not conflate every objection as a preliminary objection and to give due consideration for the need

¹ [2003] 3 Sri. L.R 146 at 148.

for justice to be done in each case. For these reasons, I shall emphasize how a clear distinction of a Preliminary objection can be drawn. There are two considerations for the Court in this regard. Firstly, whether it *prima facie* appears to be a question on the maintainability of an Application or on the basis of the assumption of the truth of all the averments of fact made by the suitor. Secondly, whether the objection before the Court is one which can be taken in argument though not raised in the written defence. If both these criterium are met, the objection raised may qualify as a Preliminary Objection.

In the immediate matter, the Court on the question of the first preliminary objection is confronted with a question of law. Mainly, whether the Petitioner's Application should be dismissed as he has invoked an alternative remedy and has invoked the discretionary jurisdiction while that matter is pending. To delineate our law in this regard I would like to quote from a recent judgement of this Court. In **Pinnaduwege Baby Mallika Chandraseana vs C.W Abeyesuriya**² having carefully considered judicial developments in the law this Court held,

“Prerogative Writs are discretionary remedies, and therefore, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available to him.”

However, this Court further held

² CA/WRIT/457/2019

“It is to be noted that, the alternative remedy is, always, not a bar to invoke the Writ jurisdiction of this Court. If the Court is of the view that, the alternative remedy is inadequate, where there has been a violation of the principle of Natural Justice, where the impugned order is without jurisdiction and there are errors on the face of the record, the Petitioner is permitted to invoke the Writ jurisdiction before exhausting the alternative remedies provided in law.”

According to **Section 86 (a) of the Universities Act No.16 of 1978** which reads,

“The Appeals Board shall have and may exercise the following powers, duties and functions:—

(a) to conduct investigations into appointments and promotions alleged to have been made to the staff of the Commission and to Higher Educational Institutions in contravention of the schemes of recruitment and the procedures for appointment in force at the time such appointments or promotions were made;”

It is the view of this Court that in the immediate matter there is an adequate and effectious statutory remedy provided to redress the Petitioner’s grievances under Section 86 of the Universities Act No.16 of 1978. Therefore, in the instant Application since the Petitioner has already invoked an alternative remedy provided in law, while that matter is pending the necessity to invoke the Writ jurisdiction of this Court does not arise.

In regard to the second preliminary objection, the *uberrima fides* duty of the Petitioner to make a full and frank disclosure of all material facts relevant to an Application. Our law in this regard can be summed up by the case of, **Fonseka vs. Lt. General Jagath Jayasuriya and Five Others**³ wherein a divisional bench of this Court held that,

“a Petitioner who seeks relief by writ which is an extra-ordinary remedy must in fairness to Court, bare every material fact so that the discretion of Court is not wrongly invoked or exercised.”

Further, in **Dahanayake and Others v. Sri Lanka Insurance Corporation Ltd. and Others**⁴ wherein this Court held that,

“if there is no full and truthful disclosure of all material facts, the Court would not go into the merits of the Application but will dismiss it without further examination.”

The Petitioner in the immediate matter breached this principle by suppressing material facts concerning the invocation of the alternative remedy under Section 86 of the Universities Act No. 16 of 1978 and its pending nature to this Court. Whereby, I find that the Petitioner through such suppression of material facts have attempted to pollute the pure stream of justice.

³ [2011] 2 Sri LR 372.

⁴ [2005]1 Sri LR 67

For the foregoing reasons, I uphold the preliminary objections raised and dismiss the Application. Thus, the Application is dismissed. No costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL