

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

In the matter of an Application for  
mandate in the nature of Writs of  
Certiorari and Mandamus under  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

Dr. A M Jazeel  
155, People's Bank Road,  
Addalaichenai -02.

**Petitioner**

**CA/Writ/340/2020**

Vs

1. Eastern University, Sri Lanka
2. Prof. F. C. Ragal  
Vice – Chancellor
- 2A. Prof. V. Kanagasingham  
Vice - Chancellor
3. Prof. V. Kanagasingham
- 3A. Prof. K. E Karunakaran
4. Dr. A. N. Arulpragasam
- 4A. Dr. T. Sathananthan
5. Prof. P. Peratheepan
- 5A. Prof. P. Vinobaba
6. Mr. M. Ravi
- 6A. Dr. V. Gunapalasinghem
7. Mrs. V. R. Ragel
- 7A. Dr. S. Jeyarajah
8. Dr. J. Kennedy
- 8A. Prof. (Mrs) C.G. Devadason
9. Dr. K. Premakumar
- 9A. P. Premanandarajah
10. Mr. S. Thedehanamoorthy
11. Mrs. K. Shanthrakumar
- 11A. Mr. T. Baskar
12. Prof. M Selvarajah
- 12A. Dr. (Mrs) Q. Y Soundararajah
13. Prof. Riyas Sulaima Lebbe
- 13A. Dr. K. Arulanandem

14. Dr. S. M. Hussain
15. Dr. H. R. Thabawita
- 15A. Prof. Riyas Sulaima Lebbe
16. Dr. Gunasinham Sukunan
- 16A. Prof. Nimal F. Perera
17. Mr. Seenithamby Mohanarajah
18. Mr. S. Thilagarajah
- 18A. Dr. Gadambanathan
19. Mr. S. Shanmugam
- 19A. Dr. M. A. R. Ajmal
20. Mr. P. Premanath
- 20A. Mr. G. Thanapalasundaram
21. Mr. T. Sivanathan
- 21A. Mr. B. Maria Sulojan
22. Mr. A. L. Joufer Sedique
- 22A. Mr. P.T. A. Hassan
23. Mr. Nadaraja Sivalingam
24. Ms. S. J. M. S. Samarakoon
25. Dr. C. Mukunthan
- 25A. Mr. N. Vimalaraj
26. Dr. C. Arulmoly
- 26A. Mr. K. Karunaharan
27. Mr. A Phirathan

All of  
Eastern University, Sri  
Lanka  
Vantharumoolai,  
Chenkalady

28. University Grants Commission  
No. 20, Ward Place,  
Colombo 7.

#### **Respondent – Respondents**

29. Mr. R.M.P.S. Rathnayake
30. Dr. T. Mathiventhan

29<sup>th</sup> and 30<sup>th</sup> of  
Eastern University, Sri Lanka,  
Vantharumoolai,  
Chenkalady

#### **Added Respondents**

Before : **Hon. M Sampath K. B. Wijeratne,J.(CA)**  
: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsels: K. G. Jinasena instructed by D. K. V. Jayanath  
for the Petitioner.  
M. Gunathilake, ASG/PC with S. Dunuwille, SC  
for the State.

Argued on : 01.02.2024

Decided on : 15.03.2024

**M. Ahsan R. Marikar, J. (CA)**

### **Introduction**

- 1) The Petitioner had filed this application against the Respondents, as the Respondents had failed to appoint him for the post of Senior Lecturer (Grade II) of the Department of Education.
- 2) On the said grounds the Petitioner had sought the following reliefs prayed for in the petition dated 17<sup>th</sup> September 2020.
- 3) The reliefs sought by the petition are as follows;
  - a) Issue notice on the Respondents;
  - b) Grant and issue mandate in the nature of Writ of Certiorari to quash the decision made Selection Committee 1 of the 1<sup>st</sup> Respondent University to introduce having a minimum mark, in addition the qualifications stipulated by the 28<sup>th</sup> Respondent UGC, for the eligible candidates who appear before the Selection Committees appointed by the University;
  - c) Grant and issue a mandate in the nature of Writ of Certiorari to quash the recommendations made by the Selection Committee that met on 24<sup>th</sup> August 2020 not to appoint the Petitioner as a Senior

Lecturer (Grade II) of the Department Education and Childcare of the 1<sup>st</sup> Respondent University;

- d) Grant and issue mandate in the nature of Writ of Mandamus compelling the Council 1<sup>st</sup> Respondent University of which 1<sup>st</sup> to 24<sup>th</sup> Respondents are members to appoint the Petitioner to the Post of Senior Lecturer (Grade II) of the Department of Education and Childcare of the 1<sup>st</sup> Respondent University;
- e) Grant and issue an interim order preventing the 1<sup>st</sup> Respondent University to proceed further to conduct an interview to select a candidate or to make any appointment for a post a Lecturer (Probationary) of the Department of Education and Childcare until the final determination of this application;
- f) Issue an order directing the 2<sup>nd</sup> and the 27<sup>th</sup> Respondents to tender the documents listed in P10 and P10A for the perusal of Your Lordships Court.
- g) Grant the cost and for such other and further relief as to your Lordship's Court shall seems meet.

#### **Facts of the Petitioner's case**

- 4) The Petitioner has contended that he is employed as a Lecturer (Grade III) in the 'Sri Lanka Teacher Educator Service'.
- 5) The 2<sup>nd</sup> Respondent is the Vice Chancellor of the 1<sup>st</sup> Respondent University. The 3<sup>rd</sup> to 24<sup>th</sup> Respondents are the other members of the Governing Council of the 1<sup>st</sup> Respondent University.
- 6) The Petitioner had referred to his education qualification in paragraph 8 of the petition and submitted P1(a) – P1(h) documents to support it.
- 7) The contention of the Petitioner is on 11<sup>th</sup> November 2018, the 1<sup>st</sup> Respondent University called for applications for the post of Senior Lecturer (Grade I) / (Grade II) and Lecturer (Probationary) in the

Department of Education and Child Care of the Faculty of Arts and Culture of the 1<sup>st</sup> Respondent University.

- 8) The Petitioner had submitted an application for the post of Senior Lecturer (Grade II). Later when the Petitioner inquired about his application, he was informed by reliable sources, the Selection Committee had appointed a Lecturer Probationary without calling him for an interview. However, after having a discussion with the 2<sup>nd</sup> Respondent and submitting the P5 letter to the Vice Chancellor and the 28<sup>th</sup> Respondent, the Petitioner was called for an interview on 24<sup>th</sup> August 2020.
- 9) After participating at the said interview, as per the facts stated in paragraphs 14 to 28 with all the necessary qualifications, the University Selection Committee had overlooked the Petitioner for the post he applied for.
- 10) On the said grounds, the Petitioner had sought to invoke the Writ Jurisdiction for the decision taken by the Respondents for having violated the recruitment scheme, as his legitimate expectation of being appointed for the post he applied for was not fulfilled.

### **Objections of the Respondents**

- 11) The 1<sup>st</sup> to the 27<sup>th</sup> Respondents had contended that the Petitioner had filed a Fundamental Rights application seeking a similar relief in the Supreme Court in Case No. SCFR/287/2020. On that, multiplicity of litigation and this application, amounts to an abuse of process.
- 12) Further the Petitioner is guilty of laches, as the Petitioner was aware of the methodology adopted in selecting candidates for the post of Senior Lecturer.

- 13) Upon the request of the candidates, the marking scheme was made available for perusal from 25<sup>th</sup> May 2019. The said marking scheme had been approved by the Governing Council of the 1<sup>st</sup> Respondent University.
- 14) The Petitioner has not availed alternative remedies before filing the petition and also had not made an appeal to the Vice Chancellor or the Governing Council to reconsider the merits pertinent to the eligibility criteria for the post of Senior Lecturer (Grade II).
- 15) The academic qualifications of the Petitioner had not met the requirement for the post of Senior Lecturer (Grade II). Therefore, the 1<sup>st</sup> Respondent had not shortlisted the Petitioner for the interview. Further there had been discrepancies in the dates of the Petitioner's PhD and BA degree.
- 16) The suitability of the candidate had been decided by the Selection Committee and the power is vested with them to select a suitable candidate for the post in dispute. The marking scheme which was applied to select the candidates had been approved by the Governing Council.
- 17) Therefore, the Respondents have complied with all circulars and regulations relevant to the selection process. The Petitioner was not selected as he had failed to earn the required marks referred to in the marking scheme for the post of Senior Lecturer (Grade II)
- 18) On the said circumstances the Respondent has moved to dismiss the application made by the Petitioner.
- 19) The 28<sup>th</sup> Respondent had filed a separate objection. However, the said objections reiterate the same facts referred to by the 1<sup>st</sup> to the 27<sup>th</sup> Respondents.

### **Disputed facts**

- 20) This matter was taken up for argument on 1<sup>st</sup> February 2024 and both parties concluded their oral submissions. The matter was fixed for

judgement on the said oral submissions, facts pertinent to the petition, objections and the documents.

21) Considering the facts argued by the Counsels for the Petitioner and the Respondents, I am of view the following disputed facts need to be considered to arrive at my conclusion.

- I. Has the 1<sup>st</sup> Respondent University called for application for the post of Senior Lecturer (Grade I/Grade II)?
- II. Has the Petitioner applied for the post of Senior Lecturer (Grade I/Grade II) and participated in the interview?
- III. Have the Respondents failed to select the Petitioner for the post of Senior Lecturer (Grade I/Grade II)?
- IV. If so, does the said decision violate the legitimate expectation of the Petitioner?

**I. Has the 1<sup>st</sup> Respondent University called for application for the post of Senior Lecturer (Grade I/Grade II)?**

22) There is no dispute that the 1<sup>st</sup> Respondent had called for applications by P3 document for the post of Senior Lecturer (Grade I/Grade II). As this fact is not challenged by P3 document it is assumed that the 1<sup>st</sup> Respondent had called for applications for the post of Senior Lecturer (Grade I/Grade II).

**II. Has the Petitioner applied for the post of Senior Lecturer (Grade I/Grade II) and participated in the interview?**

23) The Petitioner had submitted an application for the aforesaid post by P4 document. As he was not called for an interview, he had come to know that his application was incomplete. After submitting a fresh application

and communicating with the Vice Chancellor, the Petitioner was informed by P5 document, and was called for an interview.

- 24) The Petitioner had participated in the interview before the Selection Committee.
- 25) Thus, both parties have admitted that the Petitioner participated in the interview before the Selection Committee of the 1<sup>st</sup> Respondent for the Post of Senior lecturer (Grade I/Grade II).

**III. Have the Respondents failed to select the Petitioner for the post of Senior Lecturer (Grade I/Grade II)?**

- 26) After participating in the interview for the post of Senior Lecturer (Grade I/Grade II), the Petitioner was not selected for the post he had applied for at the 1<sup>st</sup> Respondent University.
- 27) The main dispute raised by the Petitioner is, with all his qualifications referred to in P1(a) to P1(h), he was not selected and overlooked by the Selection Committee is *ultra vires*.
- 28) The State Counsel who appeared for the 1<sup>st</sup> to 27<sup>th</sup> Respondents had denied the said position.
- 29) The phrase *ultra vires* is defined in the book of **Principles of Administrative Law in Sri Lanka**<sup>1</sup>;

*“Ultra vires and intra vires are two Latin phrases which respectively mean “beyond power” and “within power”.*

*They are frequently used in discussing the nullity question.*

*When an exercise of power is said to be ultra vires, what it meant is that as the exercise of power is invalid and a nullity.”*

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<sup>1</sup> Sunil F.A Coorey, Principles of Administrative Law in Sri Lanka (3<sup>rd</sup> ed. Vol2),Page46



- 30) Justice Arjuna Obeysekera in **CA Writ Application No.66 of 2013** decided on 16<sup>th</sup> May 2020 stated;

*“CAA must act reasonably and rationally, with due appreciation of the duties and responsibilities conferred on it by the CAA Act. Thus, while the decision reached at each of the stages must not be illegal or ultra vires, and should be arrived at after adhering to the applicable procedure, the decisions must not be unreasonable in a Wednesbury sense.”*

- 31) In considering the definition of *ultra vires* and the facts pertinent to the aforesaid decision the Respondents have not violated the applicable procedure and/or they were not unreasonable.
- 32) Therefore, the Petitioner’s position that the Respondents acted in an *ultra vires* manner, cannot be accepted.
- 33) However, non-selection of the Petitioner is admitted by both parties.

**IV. If so, does the said decision violate the legitimate expectation of the Petitioner?**

- 34) The position taken by the Petitioner is, not selecting him after all his qualifications is violating his legitimate expectation for the post that he had applied for.
- 35) The legitimate expectation referred to by the Petitioner in the instant action has to be considered following the decisions and the principles decided presently.

- 36) The case of **R (Association of British Civilian Internees: Far East Region) v Secretary of State for Defense**<sup>2</sup> laid down a test to identify when the expectation is legitimate ;

*“How on a fair reading of the promise it would have been reasonably understood by those to whom it was made?”*

- 37) In the book of **Administrative Law**<sup>3</sup> it was stated;

*“Even no promise of a benefit has been made and there is no established practice of granting that benefit, the person concerned is, elementarily, entitled to be treated fairly.*

*But he is not entitled to rely upon his expectation of a benefit unless it is founded upon some promise or established practice. To do this is to confuse the protection of legitimate expectations with the duty to act fairly.”*

- 38) Further, in the case of **Desmond Perera v Karunaratne**<sup>4</sup> it was stated;

*“What is meant by legitimate expectation? A simple definition that can be given is, a right or interest which is looked forward by a person”*

- 39) In the said decisions it is obvious that a legitimate expectation is a right or interest which a person looks forward to and also a Public Body will act fairly to him. In the instant action, the Petitioner has faced an interview and, in the interview, he cannot expect that he would be definitely selected

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<sup>2</sup> [2003] EWCA Civ 473.

<sup>3</sup> Wade, H.W.R., & Forsyth, C.F. (2014) Administrative Law (11<sup>th</sup> ed.)

<sup>4</sup> [1994] 3 SLR 316.

as the Selection Committee of the interview board will select people based on how they present themselves during the interview.

- 40) The State Counsel Shamanthi Dunuwille, argued that the methodology for selecting the post for which the Petitioner had applied for was known to the Petitioner and the marking scheme was made available for the candidates, on request.
- 41) The Petitioner failed to obtain the threshold of the required marks that should have been obtained to be selected for the post of Senior Lecturer (Grade I/Grade II).
- 42) The Selection Committee had acted impartially and given marks for the Petitioner considering his qualifications. On perusal of R2 document part 1(a) requires a Basic Degree with a 1<sup>st</sup> Class or 2<sup>nd</sup> Upper or a 2<sup>nd</sup> Lower to obtain the required marks referred to in the marking scheme.
- 43) As the Petitioner did not have a degree, in the required field, he had only obtained 5 marks for the particular part 1(a).
- 44) For Part 1(b), the Petitioner had obtained 25 marks for his PhD. For Parts 2 to 5, the marks were given to the Petitioner by the Selection Board, after considering how he performed before the interview board.
- 45) In considering the aforesaid facts, I do not see any *ultra vires* caused related to the interview held for the Petitioner by the Selection Committee of the 1<sup>st</sup> Respondent University.
- 46) The average of his mark's summary sheet had been submitted by R9. On perusal of the said average, the Petitioner had failed to obtain the threshold mark of 60, which is referred to in the marking scheme out of 100.
- 47) The foremost question that arises is whether the Selection committee has given these marks in accordance with the circulars issued by the UGC. As per the facts and documents, the marking scheme had been approved by the 1<sup>st</sup> Respondent Governing Council on 25<sup>th</sup> May 2019.

- 48) Thus, the Selection Committee cannot grant any marks outside the marking scheme which is prevailing presently. To my knowledge the Selection Committee has given the marks for the Petitioner for his qualifications which was required for the post of Senior Lecturer (Grade I/Grade II) and the marks given for parts 2 to 5 which already has been mentioned is subject to his research publications relevant to the related field interviewed by the Selection Committee, and as per the University Grants Commission Circular No. 916 Section 3.2, 3.3 and 1.6.
- 49) The performance of the Petitioner cannot be considered in a Writ Application as it should be decided by the Selection Committee as per the Petitioner's participation and how he had faced the interview.
- 50) On the said circumstances, I do not see any grounds to interfere with the decision taken by the Selection Committee.
- 51) Beside these facts, it was brought to the notice of this court that the Petitioner had instituted a Fundamental Rights case against the Respondents on similar grounds. Both parties admitted in Court that the Case had been dismissed.
- 52) It is reported in ***Kunanantham v University of Jaffna and Others***<sup>5</sup>, as follows;

*“The determination of qualification for different posts is a matter for the UGC and it is not a matter for the University.”*

*“The Appeal Board does not have the power to investigate into the non- appointment of staff to the Higher Education Institution.”*

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<sup>5</sup> [2004] 1 SLR 239.

- 53) In view of that I do not see any legitimate expectation for the Petitioner to invoke the Writ Jurisdiction and or not proven that the Respondents have acted *ultra vires*.

**CONCLUSION**

- 54) For the reasons spelt out above I dismiss the petition dated 17<sup>th</sup> September 2020 against the 1<sup>st</sup> to 28<sup>th</sup> Respondents.
- 55) No cost ordered.

**Judge of the Court of Appeal**

**M Sampath K. B. Wijeratne, J. (CA)**

I agree

**Judge of the Court of Appeal**

