

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

In the matter of an application for Writs of
Certiorari and Mandamus in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Patti Vidanelage Bandula Karunatilaka
No. 135/31, 1st Lane, Madiwela Road,
Udahamulla, Nugegoda.

Petitioner

Case No. CA (Writ) 433/2011

Vs.

1. The University of Peradeniya
Peradeniya.
2. Atula Senaratne
The Vice Chancellor,
The University of Peradeniya,
Peradeniya.
(Former)
- 2A. Prof. Upul Dissanayake
The Vice Chancellor,
The University of Peradeniya,
Peradeniya.
3. H. M. S. K. Hennayake
Deputy Vice Chancellor
(Former)
- 3A. Prof. R. L. Wijayaweera
Deputy Vice Chancellor
(Former)
- 3B. S. H. P. P. Karunaratne
Deputy Vice Chancellor
4. K. Samarasinghe
Dean, Faculty of Agriculture
(Former)

- 4A. Dr. D. K. N. G. Pushpakumara
Dean, Faculty of Agriculture
5. Dr. D. B. M. Wickremaratne
Dean, Faculty of Allied Health Science
6. Prof. A. M. Navaratne Bandara
Dean, Faculty of Arts
(Former)
- 6A. Prof. O. G. Dayaratna Banda
Dean, Faculty of Arts
7. Prof. U. B. Dissanayake
Dean, Faculty of Dental Sciences
(Former)
- 7A. Prof. W. M. Tilakaratne
Dean, Faculty of Dental Sciences
(Former)
- 7B. Dr. J. A. V. P. Jayasinghe
Dean, Faculty of Dental Sciences
8. Prof. L. Rajapaksha
Dean, Faculty of Engineering
9. M. D. Lamawansa
Dean, Faculty of Medicine
(Former)
- 9A. Prof. Vajira S. Weerasinghe
Dean, Faculty of Medicine
10. S. H. P. P. Karunaratne
Dean, Faculty of Science
(Former)
- 10A.A. Wickramasinghe
Dean, Faculty of Science
(Former)
- 10B.S. R. Kodituwakku
Dean, Faculty of Science
11. Prof. H. B. S. Ariyaratne
Dean, Veterinary Medicine and Animal
Sciences

12. R. L. Wijeyaweera
Senate Representative
(Former)
- 12A. W. M. Tillakaratne
Senate Representative
(Former)
- 12B. S. R. Kodituwakku
Senate Representative
(Former)
- 12C. Prof. K. Samarasinghe
Senate Representative
13. N. V. I. Ratnatunga
Senate Representative
(Former)
- 13A. H. M. D. R. Herath
Senate Representative
(Former)
- 13B. Prof. A. S. P. Abeyratne
Senate Representative
14. A. U. Gamage
UGC Nominee
(Former)
- 14A. Lal Wijenayaka
UGC Nominee
(Former)
- 14B. K. R. B. Wijeratne
UGC Nominee
15. M. L. A. Cader
UGC Nominee
(Former)
- 15A. Dr. Ranil Abeysinghe
UGC Nominee
16. K. D. G. Abeyagunasekera
UGC Nominee
17. S. Ratwatte
UGC Nominee
(Former)

17A. Dr. M. T. Z. Mohamed

UGC Nominee

18. W. D. P. Jayasekera

UGC Nominee

(Former)

18A. E. M. P. Elkaduwa

UGC Nominee

19. U. W. Attanayake

UGC Nominee

20. R. Chandrasekera

UGC Nominee

(Former)

20A. U. Kumarapperuma

UGC Nominee

21. B. M. N. Balasooriya

UGC Nominee

(Former)

21A. M. Seneviratne

UGC Nominee

22. Mohan Samaranayake

UGC Nominee

(Former)

22A. Prof. P. B. Meegaskumbura

UGC Nominee

23. A. Hewage

UGC Nominee

(Former)

23A. Dr. S. Thiruchandran

UGC Nominee

24. L. Weerasinghe

UGC Nominee

(Former)

24A. D. Amarasinghe

UGC Nominee

(Former)

24B. Prof. I. M. K. Liyanage

UGC Nominee

25. G. Seneviratne

UGC Nominee

(Former)

25A. V. Wickremaratne

UGC Nominee

(Former)

25B. Dr. V. Nandakumar

UGC Nominee

(Former)

25C. Prof. C. M. Madduma Bandara

UGC Nominee

26. M. S. Premawansa

UGC Nominee

(Former)

26A. Prof. K. N. O. Dharmadasa

UGC Nominee

(Former)

26B. G. S. J. Dissanayake

UGC Nominee

27. Dr. M. Alfred

Dean, Faculty of Management

3A to 27 Respondents; All are members of the Council of the University of Peradeniya, Peradeniya.

Respondents

Before: Janak De Silva J.

N. Bandula Karunarathna J.

Counsel:

Manohara De Silva P.C. with A. Wickremanayake for the Petitioner

Anusha Fernando DSG for 1st to 26th Respondents

Written Submissions tendered on:

Petitioner on 29.10.2018

1st to 26th Respondents on 19.10.2018

Argued on: 28.06.2019

Decided on: 31.01.2020

Janak De Silva J.

The Petitioner was at all times material to this application a Professor attached to the Arts Faculty of the University of Peradeniya as a lecturer in History. He has sought the following relief from Court:

- (a) A mandate in the nature of a writ of certiorari quashing the decision/s of the 1st and/or 2nd Respondents as reflected in documents marked P11 and P17;
- (b) A mandate in the nature of a writ of certiorari quashing the decision of the 1st and/or 2nd to 26th Respondents to deduct one month's salary from the Petitioner's Provident Fund account as evinced by documents marked P18(a), P18(b) and P18(c) in breach of Section 94 of the Universities Act No. 16 of 1978 as amended.

- (c) A mandate in the nature of a Writ of Mandamus mandating the 1st and/or 2nd to 26th Respondents to return to the Petitioner with legal interest the deduction made from the Petitioner's Provident Fund account as evinced by documents marked P18(a), P18(b) and P18(c),
- (d) A mandate in the nature of a Writ of Certiorari quashing the decision of the 1st and/or 2nd to 26th Respondents refusing to award Emeritus Professorship to the Petitioner arrived at during 391st meeting of the Council (vide P24),
- (e) A mandate in the nature of a Writ of mandamus compelling the 1st and/or 2nd to 26th Respondents to award Emeritus Professorship to the Petitioner.

The Petitioner applied for and obtained vacation leave from the University to serve as the Chairman of the Sri Lanka Bureau of Foreign Employment (SLBFE) [2R2(a)]. In that communication the Petitioner held out that he will not be receiving any financial remuneration for this work [2R1(a) and 2R1(b)].

The SLBFE later informed that the Petitioner was paid a basic salary for the period June 2005 to November 2005. He was paid Rs. 35,000/= for June and July whereas he was paid a sum of Rs. 85,000/= for the balance period [2R4(b)]. He was also paid a salary by the 1st Respondent for the same period [2R4(a)]. The Auditor General claimed that this was contrary to law [2R5].

The 1st Respondent appointed a Committee of three (3) persons to investigate into this matter. The majority concluded that the conduct of the Petitioner is unethical [P19]. Consequently, the Council of the 1st Respondent decided to recover the salary paid to the Petitioner for the period January to July 2005 [P11] which was later amended to limit its application to June 2005 [P17]. Accordingly, steps were taken to recover the salary paid in June 2005 and to return the deductions from January to May 2005 [P18(a), (b) and (c)]. The Petitioner is challenging these decisions and also seeking to impugn the decision of the 1st Respondent not to award the title of Professor Emeritus to the Petitioner.

The unmeritorious conduct of the Petitioner looms large on the facts of the case. The Petitioner does not contest the fact that he has informed the 1st Respondent he will not be receiving any financial remuneration for this work [2R1(a) and 2R1(b)]. However, the Petitioner seeks to deny that he made a similar representation to the line Ministry of the SLBFE. He strenuously submitted that the contents in the Cabinet Memorandum [P6(a)] and letter written by the then Secretary of the line Ministry [P14] to the effect that the Petitioner will not be receiving any payment from the 1st Respondent for the said period is not something he made.

Even if the denial of the Petitioner is accepted, the uncontested fact is that the Petitioner informed the 1st Respondent that he will not be receiving any financial remuneration for this work at SLBFE when in fact he did receive such remuneration.

The Petitioner claims that the decision to deduct moneys from his Provident Fund account was arrived at in breach of the rules of natural justice.

In terms of Article 140 of the Constitution this Court must act "according to law" in deciding whether to issue writs of Certiorari and Mandamus. This means English common law principles [*Sirisena Cooray v. Tissa Dias Bandaranayake* (1999) 1 Sri. L. R. 1 at 14-15)].

English Courts have considered the conduct of the Petitioner in deciding whether to grant discretionary relief by way of judicial review. A ratepayer was denied a remedy to quash a refusal to make a refund of rates because of his previous deliberate and unjustifiable withholding of rates owed [*Dorot Properties Ltd. v. London Borough of Brent* (1990) C.O.D. 378]. A local authority which pursued pointless litigation was denied any remedy [*Windsor and Maidenhead Royal BC v. Brandrose Investments Ltd.* (1983) 1 W.L.R. 509]. A local council which sought to challenge ministerial confirmation of its own proposals for re-organising schools,

relying on their own procedural error was denied relief [*R. v. Secretary of State for Education and Science ex. P. Birmingham City Council* (1985) 83 L.G.R. 79].

Our Courts have adopted this approach and withheld relief due to the unmeritorious conduct of the Petitioner even where there has been a clear violation of natural justice [*Wickremasinghe v. Ceylon Electricity Board and Another* (1982) 2 Sri.L.R. 607].

I hold that the conduct of the Petitioner as an academic of repute is unmeritorious in misrepresenting that he will not be receiving any financial remuneration for work at the SLBFE and that such conduct is sufficient for this Court to deny him any discretionary relief.

For all the foregoing reasons, this application is dismissed with costs fixed at Rs. 50,000/=.

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Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.

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Judge of the Court of Appeal