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 under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 137/2018

Dr.C.J.A. Jayawardena,
150/14A, Kumbukgahaduuwa,
Parliament Road, Kotte.

PETITIONER

Vs.

1) University of Colombo.
2) Prof. Lakshman Dissanayake,
   Vice Chancellor
2A) Prof. Chandrika Wijeratne,
   Vice Chancellor
3) Dr. R.C.K.Hettiarachchi.
4) Prof. D.A.Premakumara De Silva.
5) Dr. M.P.P.Dharmadasa.
6) Prof. M.V.Vithanapathirana.
7) Indira Nanayakkara.
8) Prof. Jennifer Perera.
9) Prof. Nayani Melegoda.
10) Dr. K.P Hewagamage.
11) Prof. Devaka Weerakoon.
12) Dr. Harsha Cabral, P.C.
13) Thilak Karunaratne.
14) Nigel Hatch, P.C.
15) DR. Ranee Jayamaha.
16) J.M.Swaminathan.
17) Prof. Rohan Jayasekara.

18) C. Mubarak.
19) Prof. K.R.R.Mahanama.
20) Prof. J.K.D.S.Jayanetti.
21) Dr. T.U Hewage.
22) Rajan Asirwatham
23) Prof. Lakshman Ratnayake
24) Prof. M.Dayal.P.De Costa.
25) Prof. T.S.A Peiris.
26) Prof. Leslie Jayasekara.
27) Prof. Upul J. Sonndadara.
28) Prof. N.D.Kodikara.
29) K.A.S.Edward,

All at University of Colombo,
94, Cumaratunga Munidasa Mawatha,
Colombo 3.

RESPONDENTS

Before: **Arjuna Obeyesekere, J**

Counsel: Chrishmal Waransuriya with Ms. Kumudini Hettiarachchi for the Petitioner

Ms. Nayomi Kahawita, Senior State Counsel for the Respondents

Argued on: 19th June 2019, 26th September 2019 and 19th December 2019

Written Submissions: Tendered on behalf of the Petitioner on 24th May 2019, 5th February 2020, and 16th June 2020.

Tendered on behalf of the Respondents on 18th June 2019 and 13th May 2020

Decided on: 22nd June 2020

Arjuna Obeyesekere, J

The Petitioner, having obtained a Bachelor of Science Degree (B.Sc) in Mathematics with First Class Honours from the 1st Respondent, University of Colombo, had joined the 1st Respondent as a Temporary Assistant Lecturer in January 1986. In August 1986, the Petitioner had proceeded to the Ohio State University, USA, where he completed his Master of Science Degree (M.Sc) in Mathematics, obtaining a GPA of 3.8. The Petitioner had subsequently been awarded the Doctor of Philosophy (Ph.D) in Pure Mathematics by the University of Memphis, USA, after securing a GPA of 4.0.

By letter dated 17th January 2000, annexed to the petition marked '**P1**', the Petitioner had been appointed as a Senior Lecturer, Grade II in the Department of Mathematics of the 1st Respondent. The Petitioner continues to serve the 1st Respondent in the capacity of a Senior Lecturer.

The Petitioner had submitted an application dated 30th October 2016, annexed to the petition marked '**P5**', seeking promotion to the post of Associate Professor / Professor. Being apprehensive that his application was not being considered by the 1st Respondent, the Petitioner filed this application on 26th March 2018 seeking a Writ of Mandamus directing the 1st Respondent to determine his application according to law.

However, by letter dated 14th May 2018, annexed to the petition marked '**P15**', the 1st Respondent had made available to the Petitioner the marks assigned to him by one of the Panels that was appointed to evaluate his application. With

the permission of this Court, the Petitioner thereafter filed an amended petition on 4th June 2018, seeking *inter alia* the following relief:

a) A Writ of Certiorari quashing those parts of the decision of the Senate Appointed Panel, as reflected in the annexure to the letter marked '**P15**', not to allot 4 marks for Section 3.2;

b) A Writ of Mandamus directing the Respondents to determine according to law, the Petitioner's appointment for the post of Professor / Associate Professor.

Pursuant to the filing of this application, the Petitioner and the 1st Respondent had exchanged correspondence relating to the subject matter of this application, culminating in the 1st Respondent informing the Petitioner, by letter dated 3rd September 2018, marked '**R8**', that '*the Council at its meeting held on 10th July 2018 noted that you have not obtained the minimum required marks for Section 3.0 of your application. Therefore, the Council decided not to promote you to the post of Associate Professor / Professor.*'

The 1st Respondent had further informed the Attorney-at-Law for the Petitioner by letter dated 1st February 2019 that, '*the Council at its meeting held on 19th December 2018 having considered the provisions of Commission Circular No. 916 and Establishments Circular Letter No. 4/2010 issued by the University Grants Commission, decided not to promote Dr. Jayawardena to the post of Associate Professor/Professor and to stick to the earlier decision of the Council at its 539th meeting held on 9th August 2018.*'

These two letters have been annexed to the motion dated 13th February 2019, marked as '**P17**' and '**P18**', respectively. In view of '**P17**' and '**P18**', the Petitioner has sought to amend the above prayer for the aforementioned Writ of Certiorari, by referring to '**P17**' and '**P18**' as reflecting the decision not to grant him the appointment as Associate Professor / Professor.

Are academic issues outside the jurisdiction of this Court?

The issue that this Court must decide in this application is whether the decision of the 1st Respondent not to appoint the Petitioner to the post of Associate Professor / Professor is illegal, irrational or unreasonable.

In considering the above issue, this Court would first like to lay down the parameters within which Courts have previously acted when faced with decisions by academic institutions, especially since this is a matter on which a great deal of emphasis has been placed by the learned Senior State Counsel in resisting this application.

In **Administrative Law** by Wade and Forsyth[1], it has been pointed out that Courts will be reluctant to enter into "*issues of academic or pastoral judgment which the University was equipped to consider in breadth and in depth but on which any judgment of the Courts would be jejune and inappropriate. That undoubtedly included such questions as what mark or class a student ought to be awarded or whether an aegrotat was justified*."[2]

[1] H.W.R. Wade, C.F, Forsyth, *Administrative Law* [11th Edition, 2014] Oxford University Press, page 537.
[2] Clark v. University of Lincolnshire and Humberside [2000] 1 WLR 1988, as referred to in Administrative Law by Wade and Forsyth (supra).

In **Abeysundara Mudiyanselage Sarath Weera Bandara vs University of Colombo and others**[3], having considered several English cases in this regard, this Court held as follows:

> "*The consistent judicial opinion, therefore, is that in matters which lie within the jurisdiction of the educational institutions and their authorities, the Court has to be slow and circumspect before interfering with any decision taken by them in connection therewith.* ***Unless a decision is demonstrably illegal, arbitrary and unconscionable****, their province and authority should not be encroached upon. This is mainly because of want of judicially manageable standards and necessary expertise to assess, scrutinise and judge the merits and/or demerits of such decisions.*
>
> *Dealing with the scope of interference in matters relating to orders passed by the authorities of educational institutions, the Courts should normally be very slow to pass orders in regard thereto and such matters should normally be left to the decision of the educational authorities.*"

In **Dr. Karunananda v. Open University of Sri Lanka and Others**,[4] the Supreme Court was called upon to consider whether the petitioner's fundamental rights guaranteed under Article 12(1) had been infringed by the refusal of the Open University to promote the petitioner as a Professor. In the said case, the Supreme Court was confronted with an argument on behalf of the University that the decision whether to confer a professorship could be executed only by persons who are qualified and placed in equal or higher standing and accordingly, an application seeking appointment as a Professor, could only be

[3] CA (Writ) Application No. 844/2010; CA Minutes of 8th June 2018.
[4] [2006] 3 Sri LR 225; at pages 236 - 237.

assessed by similarly qualified peers from the academic community having an 'academic mind' and that such evaluations may not be on par with the reasoning of a judicial mind. In response to the said argument, the Supreme Court held as follows:

> "*Therefore, although there may be cautionary remarks indicating reluctance to enter into academic judgment,* ***I am not in agreement with the view that academic decisions are beyond challenge****. There is no necessity for the Courts to unnecessarily intervene in matters "purely of academic nature," since such issues would be best dealt with by academics, who are 'fully equipped' to consider the question in hand. However, if there are allegations against decisions of academic establishments that fall under the category stipulated in terms of Article 126 of the Constitution, there are no provisions to restrain this Court from examining an alleged violation relating to an infringement or imminent infringement irrespective of the fact that the said violation is in relation to a decision of an academic establishment*."

Of course, the above position is a restatement of the approach adopted by Courts when exercising judicial review of administrative decisions, as pointed out in the following passage from **Administrative Law** by Wade and Forsyth:[5]

> "*The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision.*

[5] Supra; page 302.

Decisions which are extravagant or capricious cannot be legitimate. But if the decision is within the confines of reasonableness, it is no part of the courts function to look further into its merits."

As Lord Hailsham L.C. has observed, two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable.[6] Similarly Lord Diplock has observed that, *'the very concept of administrative discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred'*. [7] As such, the test to be applied is not what a court of law thinks or considers is reasonable nor what the proverbial *Man on the Clapham Omnibus* would consider reasonable. Instead, it is settled law that in considering the validity of the exercise of discretionary power, the Court will consider whether the power has been properly used, or abused. In the words of Lord Bingham, '*they (judges) are auditors of legality; no more, but no less*.'[8]

This Court is therefore of the view that while due recognition will be given to the view of the decision maker, whether the decision relates to academic matters or otherwise, this Court can, and will, in the exercise of the jurisdiction vested in it by Article 140 of the Constitution, examine whether the impugned decision of the 1st Respondent is tainted with illegality, irrationality or procedural impropriety. This Court would however exercise extreme caution if asked to consider, for example as in this case, whether a decision of a selection

[6] Re W (an infant) [1971] AC 682 at 700.
[7] Secretary of State for Education and Science v Metropolitan Borough Council of Tameside [1977] AC 1014 at 1064.
[8] Tom Bingham, *The Rule of Law* [2011] Penguin Books at page 61.

board or panel to award less marks than what a petitioner claims is rightfully due, is irrational or unreasonable.

Circular governing appointment of Associate Professor and Professor – 'P3'

The starting point in the consideration of the issue before this Court is Circular No. 916 dated 30th September 2009 annexed to the petition marked '**P3**'[9]. By this Circular, the University Grants Commission had approved the scheme of recruitment contained therein for the posts of Associate Professor, Professor and Senior Professor in the University System. It is observed that the scheme of recruitment set out in Circular No. 916, which is effective from 1st October 2009, seeks to ensure uniformity in the selection of persons to be promoted to the posts of Associate Professor, Professor, and Senior Professor across all Universities in Sri Lanka.

According to Circular No. 916, a Senior Lecturer Grade I or Grade II may be considered for promotion to the post of Associate Professor or Professor if he or she has obtained the minimum mark specified in the marking scheme contained in the said Circular. The marking scheme for selection to the posts of Associate Professor and Professor has been set out in Part 4 of the Annex to the said Circular and contain three sections under which a candidate is marked. Part 4 also specifies the minimum mark that a candidate is required to obtain for each section and the minimum aggregate mark that an applicant should obtain in order to qualify for the relevant appointment. Thereafter, qualified applicants will be subject to the selection process.

[9] This circular has been amended by Establishments Circular Letter No. 4/2010 marked 'P4'.

Details of the aforementioned sections and the minimum marks that should be obtained are set out in the following table.

Section	**Description**	**Minimum mark for Associate Professor**	**Minimum mark for Professor**
Section 1	Contribution to teaching and academic development	10	20
Section 2	Research and creative work	25	50
Section 3.1 Section 3.2 Section 3.3	Dissemination of knowledge Awards Contribution to University and National Development	10	10
Total minimum mark		70	105

This Court must note that each of the above Sections have been sub-divided into several sub-sections and that the Circular contains a detailed marking scheme for each of the sub-sections, including the marks that should be allotted for each such sub-section.

In terms of Circular No. 916, an application for merit promotion should be accompanied by the following:

a) Curriculum vitae of the applicant;

b) A self assessed application of the applicant's whole career specifying the contribution made in respect of each of the above sections;

c) Three copies of the publications, research papers and other relevant documents;

d) Titles of three outstanding research papers/publications by the candidate.

This Court must observe that the method of evaluation is different to the traditional system, in that the applicant makes an assessment of himself, with supporting documents, and specifies the marks that he or she is claiming for each sub-section.

Under the heading, '**Method of Evaluation**', the Circular sets out the manner of evaluating each application that is received by the relevant University. Accordingly, the Senate shall appoint two External Experts in the relevant field from outside the higher educational institution concerned, to evaluate the applicants' contribution under Sections 2 and 3.1. Both experts shall be Senior Professors or Professors of a University in Sri Lanka or a recognized University abroad. For convenience, this Court shall refer to the External Experts as the '**Experts Panel**'.

The evaluation of the applicant under Sections 1, 3.2 and 3.3 is carried out by a panel appointed by the Senate consisting of three Senior Professors or Professors with speciality in the relevant field. The Dean of the relevant Faculty shall function as its Chairman. Whenever possible, the said Panel, which this Court shall refer to as the '**Senate Appointed Panel**', should include at least one person from outside the University to which the applicant belongs, and

one person from the same University but from outside the Faculty to which the applicant belongs. The Circular requires the Senate Appointed Panel, while allocating marks, to submit a report to the Selection Committee regarding the applicant's teaching ability, service to the University, profession, industry, national development, community etc, and leadership qualities.

Under the heading '**Method of Selection**', the Circular '**P3**' makes it clear that selection shall be by a **Selection Committee** consisting of the following:

a) The Vice Chancellor of the University, who shall be the Chairman.

b) Two nominees appointed by the University Grants Commission;

c) Two nominees of the University Council who were appointed to the Council by the University Grants Commission;

d) Head of the relevant Department;

e) Two Senior Professors / Professors appointed by the Senate from among its members with knowledge of the subject at least at degree level.

The Circular '**P3**' goes on to state as follows:

> "*Candidates with the required qualifications shall be requested to appear before a Selection Committee. .... Every applicant shall appear before the Selection Committee and make a presentation on his/her main area of research or creative work. Audio visual, multimedia facilities etc may be provided for the presentation. This may be followed by a discussion with*

the Selection Committee. The Selection Committee shall arrive at a score on a scale of 10 for a candidate's presentation skills."

This Court observes that the University Grants Commission has issued Establishments Circular Letter No. 2/2011 dated 14th February 2011, marked '**R4**' under the heading, 'Selection procedure for appointment to the post of Associate Professor/ Professor'. Paragraph 4 thereof reads as follows:

"*The Commission further decided that the Selection Committee should not change or alter the marks given by the external reviewers as well as the internal panel. Yet, the Selection Committee could examine all the relevant documents relating to the evaluation process of the application/s submitted by candidate/s and a recommendation could be made for appointment of a third reviewer if it feels necessary.* ***On receipt of comments from a third evaluator a final decision should be reached by the Selection Committee following the guidelines in the marking scheme.***"

The provisions of the above Circulars, '**P3**' and '**R4**' can thus be summarised as follows:

a) The scheme of evaluation set out in Circular No. 916 seeks to ensure that an application for the post of Associate Professor or Professor is evaluated by those persons who have the expertise in the relevant discipline as that of the applicant or has knowledge of the work carried out by the applicant.

b) A distinction is drawn between ***evaluation*** and ***selection***. Thus, the role of the Experts Panel and the Senate Appointed Panel is to carry out an extensive evaluation of the application, and submit its evaluation sheets and reports to the Selection Committee.

c) The task of selection is with the Selection Committee. The said Committee would have the benefit of the aforementioned evaluation sheets and reports, as well as the opportunity of listening to the applicant, whenever the applicant has qualified by scoring the minimum marks. If it so desires, the Selection Committee can seek a fresh evaluation from a third expert reviewer.

d) It is the view of this Court that the final decision whether to promote an applicant to the post of Associate Professor / Professor is a decision that must be taken by the Selection Committee. Of course, in doing so, the Selection Committee shall follow the guidelines in the marking scheme contained in '**P3**'.

This Court, in **Dr. Chelliah Elankumaran vs University of Jaffna and others**[10] was called upon to consider whether the Selection Committee had the power to reduce marks given by the Experts Panel or the Senate Appointed Panel. Having considered the provisions of Circular No. 723, which was the Circular applicable to that application, and in terms of which the evaluation and selection had been carried out, this Court held as follows:

> "*The Petitioner's complaint is that the Selection Committee does not have the power to adjust or alter the marks given by the External Experts or the*

[10] CA (Writ) Application No. 147/2013; CA Minutes of 17th May 2019.

Panel. What then is the role of the Selection Committee? Circular No. 723 sets out that the 'final selection shall be made by the Selection Committee based on the evaluation reports and in conformity with the procedure of appointment'. ***This Court is of the view that the Selection Committee cannot merely rubber stamp the marks given by the External Experts and the Panel and that the Selection Committee must have the power to examine the marks given by each of the experts and the panel, and where necessary make adjustments****. However, this Court is mindful that granting the Selection Committee the power to make any adjustment it wishes would render nugatory the object that is sought to be achieved by having experts to review an application for Professor. Either way, this Court is of the view that Circular No. 723 does not contemplate a complete re-assessment of Sections 2 and 3.1, as in the instant case.*

Therefore, it is imperative that the right balance is struck between the two*.* ***This Court is of the view that where there are any inconsistencies which are of a non-academic nature, or any glaring errors in the marks given by the experts or the panel, the Selection Committee has the power to rectify such errors or inconsistencies****. However, where any adjustments are carried out, this Court is of the view that the Selection Committee must set out the reasons for such adjustment and if required, provide to Court the basis on which the marks given by the experts was adjusted. Furthermore, where the Selection Committee is of the view that adjustments need to be made in respect of marks given on academic issues, it is prudent that the Selection Committee consults the External Experts and arrive at a consensus which addresses the concerns of the Selection Committee*."

While the above reflects the position under the Circular that was applicable in that application, Circular No. 916 marked '**P3**' read together with Circular '**R4**' on the face of it appears to effectively shut out the Selection Committee from adjusting the marks allotted to a candidate. However, the use of the words, '***a final decision should be reached by the Selection Committee following the guidelines in the marking scheme***' in '**R4**' makes it clear that the final decision of *selection* must be with the Selection Committee, and that it cannot abdicate the powers conferred on it, by merely accepting whatever marks allotted to a candidate by either the Experts Panel or the Senate Appointed Panel.

Evaluation of the Petitioner's application

This Court shall now consider the outcome of the evaluation carried out by the Experts Panel and the Senate Appointed Panel.

The learned Senior State Counsel appearing for all Respondents submitted that the application of the Petitioner has been evaluated in terms of Circular No. 916 marked '**P3**'. The 1st Respondent had accordingly appointed Professor D.D.S.Kulatunga, Department of Mathematics, University of Kelaniya, and Professor A.A.I.Perera, Professor in Mathematics, Department of Mathematics, University of Peradeniya as the two External Experts. In terms of expertise, there can be no doubt that the members of the Experts Panel possessed the competence to evaluate the application of the Petitioner. The evaluation reports of the said Experts were not made available to this Court along with the Statement of Objections. However, after the conclusion of oral submissions, the evaluation reports were made available to this Court by way of a motion dated 12th December 2019, marked '**R14**', and '**R15**'.

The marks allotted by the Experts Panel for Sections 2 and 3.1 are set out below.

Name of Expert	**Report**	**Section 2**	**Section 3.1**
Professor D.D.S.Kulatunga	'R14'	76.95	3.00
Professor A.A.I.Perera	'R15'	58.75	2.50
Average marks		67.85	2.75

The Senate Appointed Panel had consisted of four persons including the 19th, 27th and the 28th Respondents. According to the summary of the marks given by the Panel, annexed to the amended petition marked '**P15**' the Senate Appointed Panel had allotted the following marks to the Petitioner:

Section	**Marks**
1	34
Section 3.2	02
Section 3.3	04

In addition to the allocation of marks, the Senate Appointed Panel under the heading, 'Report of the Selection Committee', had stated that the Petitioner "*presented the topic well. He has good teaching skills. Presentation is satisfactory.*"

The marks assigned by the Experts Panel and the Senate Appointed Panel can thus be summarised as follows:

Section	**Minimum marks for Associate Professor**	**Minimum marks for Professor**	**Marks scored by the Petitioner**
Section 1	10	20	34
Section 2	25	50	67.85
Section 3.1 Section 3.2 Section 3.3 Total for Section 3	 10	 10	2.75 2 4 **8.75**
Total minimum mark	70	105	110.6

Thus, even though the Petitioner had secured sufficient aggregate marks for appointment to the post of Professor, the Petitioner had failed to obtain the minimum marks required for Section 3, thus disqualifying him from presenting himself before the Selection Committee to be considered for selection and appointment to the post of Associate Professor / Professor.

<u>The role played by the Selection Committee</u>

Even though the Petitioner had not been interviewed by the Selection Committee, the reports of the two panels had been considered by the Selection Committee, which comprised of the 2nd Respondent, who at that time was the Vice Chancellor of the 1st Respondent, and the 19th – 26th Respondents, at a meeting held on 24th January 2018. This Court must observe

at this stage that even though the 19th Respondent functioned as a member of the Senate Appointed Panel, and the 21st Respondent functioned as an observer at the Senate Appointed Panel, and therefore should not have sat on the Selection Committee, the Petitioner has not raised any issue before this Court in this regard. This Court however feels very strongly that the membership of the Selection Committee must be kept distinct and separate from the Experts Panel and the Senate Appointed Panel, in order to ensure the integrity, independence and transparency of the selection process.

The decision of the Selection Committee, as borne out by its report marked '**R2**' is as follows:

> "*The Committee decided to send to the third reviewer for evaluation of Section 2 and 3.1, as per Establishment Circular Letter No. 2/2011.*
>
> *Further, the Committee noted no marks allocated for University Awards in Section 3.2. Hence, it was decided to seek clarification from UGC whether this could be* ***rectified****."*

In his affidavit to this Court, the 2nd Respondent has stated that the above decision was taken in order to **rectify** the marks that had been given.[11] The learned Counsel for the Petitioner has submitted, and it is in fact the understanding of this Court as well, that the above Statement of the 2nd Respondent confirms that the Selection Committee too shared the concerns that the Petitioner has now presented to this Court.

[11] Vide paragraph 6(i) of the affidavit of the 2nd Respondent.

The Selection Committee has not made any adjustments to the marks given by either of the Panels, although their discomfort with the marks allotted is clearly reflected in '**R2**' and the steps that were taken thereafter, namely the appointment of the third external reviewer, and in seeking clarification from the University Grants Commission.

The response of the University Grants Commission is as follows:[12]

> "*Please note that only in the case of marks given by the subject experts an option has been given to appoint a third subject expert, where one of the two outside subject experts gives marks above the maximum threshold to a candidate and the other does not according to the table given in section 4.0 of the Establishments Circular Letter No. 4/2010 dated 19th March 2010.*
>
> *However* ***there is no provision available in the said Circular to rectify the marks given by the evaluation panel*** *appointed by the Senate to evaluate Section 1, 3.2 and 3.3 of the marking scheme for the posts of Associate Professor / Professor.*"

It is regrettable that the University Grants Commission took this narrow view, especially since '**R4**' itself confers the Selection Committee with the power to make the final decision by following the guidelines in the marking scheme. The resultant position, which would be discussed later, is that any error of the Senate Appointed Panel cannot be rectified by the Selection Committee however glaring that error may be.

[12] Letter dated 18th April 2018 annexed to the motion dated 12th December 2019, marked 'R12'.

The recommendation of the Selection Committee to appoint a Third Expert Reviewer had been approved by the Senate of the 1st Respondent. Accordingly, Professor P.A.Jayantha, Professor of Mathematics and Dean, Faculty of Science, University of Ruhuna had been appointed as the Third Expert to review Sections 2 and 3.1.

After the receipt of the report of the Third External Reviewer, the Selection Committee had met on 10th July 2018. The learned Senior State Counsel has placed before this Court the single page report of the Selection Committee marked '**R7**', according to which, the Selection Committee has taken the average of the marks assigned by Professor D.D.S.Kulatunga and Professor Jayantha and given the Petitioner the following marks:

Section	**Marks**
1	34
Section 2	65.63
Section 3	09
Total	108.63

Apart from the re-calculation of the marks given for Sections 2 and 3 – i.e. by taking the average of the marks allotted by Professor Kulatunga and Professor Jayantha – it is the view of this Court that the Selection Committee has not carried out '*the selection*' that is expected of it. This Court must reiterate that even though the Selection Committee was concerned with the non-allocation of marks due to the Petitioner by both panels, it was constrained by the decision of the University Grants Commission that there is no provision to rectify the marks given by the Senate Appointed Panel. As already noted, the University Grants Commission has failed to appreciate that Circular '**R4**' clearly

empowers the Selection Committee to reach the final decision, as evidenced by the final sentence of the final paragraph of '**R4**'.

The final position was that even though the Petitioner had obtained the aggregate marks required for appointment as Professor, he had not obtained sufficient marks for Section 3, which disentitled him from being promoted either as Associate Professor or Professor. It is in the above circumstances that the 2nd Respondent informed the Petitioner by '**P17**' of the decision of the Council that he is not eligible for promotion to the post of Associate Professor / Professor.[13]

Grievance of the Petitioner with regard to the marks allotted for Section 3

The learned Counsel for the Petitioner submitted that while he has no grievance with the marks allotted for Sections 1, 2 and 3.3, he is aggrieved with the non-allotment of marks claimed by him for Sections 3.1[14] and 3.2.[15] The Petitioner stated that even though he requested the 1st Respondent to inform him the reasons for such non allocation, and even though he has specifically raised issue in this regard in the petition, the Respondents have failed to provide, at least to this Court, the reasons why the Experts Panel and the Senate Appointed Panel had not allotted marks claimed by the Petitioner in his self assessed application.

[13] P17 has been produced by the Respondents marked 'R8'.
[14] Under Section 3.1, the Petitioner had claimed six marks for a book written by him but he had been allotted only three marks.
[15] Under Section 3.2, the Petitioner had claimed four marks for two awards but he had only been allotted two marks.

Duty to give reasons

The complaint of the Petitioner can therefore be narrowed down to a failure to provide reasons for non-allotment of marks for Sections 3.1 and 3.2. The starting point in considering this complaint is to consider whether the Respondents were under a duty to provide the Petitioner with reasons for its decision.

Although traditionally, English common law does not recognise a general duty to give reasons for administrative decisions,[16] it is becoming increasingly clear that Courts consider the duty to give reasons as an indispensable part of a sound system of administrative justice. As observed in **De Smith's Judicial Review**[17], "*what were once seen as exceptions to the rule which stated that reasons were not required, are now becoming examples of the norm; while the cases where reasons are not required may be taking on the appearance of exceptions*."

The position taken by the Supreme Court in recent times is overwhelmingly in favour of the duty to give reasons. The duty to give reasons for a decision has been exhaustively dealt with by the Supreme Court in **Hapuarachchi and Others v. Commissioner of Elections and Another**[18] where it was held as follows:

> "*Accordingly, an analysis of the attitude of the Courts since the beginning of the 20th century clearly indicates that despite the fact that there is no*

[16]Regina v. Secretary of State for the Home Department, Ex parte Doody [1994] 1 AC 531.
[17]Harry Woolf, Jeffery Jowell, Andrew Le Sueur, *De Smith's Judicial Review* [6th Edition, 2007] Sweet and Maxwell, page 413.
[18][2009] (1) Sri LR 1, at page 11.

general duty to give reasons for administrative decisions, the Courts have regarded the issue in question as a matter affecting the concept of procedural fairness. Reasons for an administrative decision are essential to correct any errors and thereby to ensure that a person, who had suffered due to an unfair decision, is treated according to the standard of fairness. In such a situation without a statement from the person, who gave the impugned decision or the order, the decision process would be flawed and the decision would create doubts in the minds of the aggrieved person as well of the others, who would try to assess the validity of the decision. Considering the present process in procedural fairness vis-a-vis, right of the people, there is no doubt that a statement of reasons for an administrative decision is a necessary requirement."

In **Jayantha Liyanage vs Commissioner of Elections**[19], the Supreme Court held as follows:

"*Any act of the repository of power, whether administrative or quasi-judicial, is open to challenge if it is in conflict with the governing Act or the general principles of law of the land or is arbitrary and unreasonable that no fair minded authority could ever had made it. The recording and giving of reasons therefore ensures that the decision of the repository of power is reached according to law and not on the basis of caprice, whim or fancy. A person seeking to register his party as a recognized political party is ordinarily entitled to know the grounds on which the Commissioner of Elections has rejected his claim. If the decision of the Commissioner of Elections is subject to appeal or judicial review, the necessity to give*

[19] SC Appeal No. 96/2011; SC Minutes of 17th December 2014.

reasons is greater, for without reasons, firstly, the persons aggrieved by the decision of the Commissioner of Elections would not be in a position to formulate the legal basis on which he could challenge such decision by way of appeal or judicial review. Secondly, the appellate authority would not have any material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was within the parameters of the Commissioner of Elections."

The above position was reiterated by the Supreme Court in **Jayaweerage Sumedha Jayaweera vs Professor Dayasiri Fernando and Others**[20] where Chief Justice Sripavan held as follows:

"*Giving of reasons is an essential element of administration of justice. A right to reasons is, therefore, an indispensable part of a sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the administrative body itself. Conveying reasons is calculated to prevent unconscious, unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimize the chances of unconscious infiltration of bias or unfairness in the conclusion. The duty to adduce reasons will be regarded as fair and legitimate by a reasonable man and will discard irrelevant and extraneous considerations. Therefore, conveying reasons is one of the essentials of justice (Vide S. N. Mukherjee Vs. Union of India (1990) 4 S.CC.C. 594; A.I.R. 1990 S.C. 1984).*"

[20] SC (FR) 484/2011; SC Minutes of 16th January 2017.

It is the view of this Court that procedural fairness and good administration demands that a party who is adversely affected by a decision of an administrative body is made aware of the reasons for such a decision. Particularly where the affected party has a right of appeal or where the decision is amenable to judicial review, reasons for the adverse decision would be essential to allow such party to ascertain whether there is a justiciable flaw in the decision making process, and whether they have sufficient material to institute legal action.

Duty to give reasons – the three tiered approach

Given the facts of this application, the duty to give reasons can be split into several components and examined on a tiered basis, with all tiers however being inter-connected. The first tier would be whether the evaluators, namely the Experts Panel and the Senate Appointed Panel were under a duty to substantiate the allotment/ non-allotment of marks in their reports submitted to the Selection Committee. The second tier is whether the 1st Respondent was required to provide reasons to the Petitioner at the time it informed the Petitioner that his application has been rejected. The third and final tier is whether the 1st Respondent was under a duty to provide this Court with detailed reasons for its decision, once this Court, being satisfied that the Petitioner had established a prima facie case, issued formal notice of this application on the Respondents. Of course one would see that the reasons in the first tier should ultimately be the reasons for the second and third tiers, except where the Selection Committee has amended the marks allotted by either of the panels, in which event, the reasons of the Selection Committee

would be an additional tier, and also form part of the reasons assigned at the second and third tier.

Duty to give reasons - The first tier

This Court has already observed that the marking scheme in Circular '**P3**' has been set out in great detail, with each section being divided into several sub-sections and the marks that are to be given for each sub-section being clearly specified. Unlike in a traditional marking system, where a panel would allot marks, under '**P3**', an applicant is required to submit a self evaluated application of himself or herself, indicating to the members of the two Panels, the marks that are sought by the applicant for each sub-section and the reason why such marks are sought. This requires the evaluators to be specific with the marks that are given, and record the non-allotment of marks that have been claimed by the applicant in the self-assessment. In other words, the members of the two panels must evaluate objectively, and be specific with their evaluation.

It is the view of this Court that requiring the members of the Panels to be specific is not too much to ask, for three reasons. The first is the fact that the members of the Experts Panel, and the Senate Appointed Panel are highly qualified academics and Professors who have the required knowledge and expertise to evaluate an application for Professorship. The second is that the evaluators are not constrained by time or by the sheer volume of applications, and therefore, there is no undue hurry to conclude the evaluations in a day or two. The third reason is that an applicant, once rejected, cannot re-apply for a period of two years from the date of the first application. In the above

circumstances, it is the view of this Court that it is paramount that reasons as to why an applicant is not being allotted the marks that have been claimed in the self assessed application must be recorded by the Panels in the reports that are submitted by such Panels to the Selection Committee. An evaluation which does not follow such standards would be a sham.

This Court will now proceed to consider whether the members of the two Panels have substantiated the allotment / non-allotment of marks in their reports submitted to the Selection Committee.

Marks allotted by the Senate Appointed Panel

The Petitioner's first grievance is with regard to the marks allotted by the Senate Appointed Panel for Section 3.2 of the Circular '**P3**', titled '*Awards*', which reads as follows:

Special Academic/Professional Awards or recognized Academic/Professional Distinctions	Upto 2 points per award. 10 marks maximum

In his self assessed application, the Petitioner had sought 8 marks under Section 3.2. During the course of the argument however, the learned Counsel for the Petitioner submitted that the Petitioner will confine himself to the following awards, which, on the basis of two marks per award, would give the Petitioner an aggregate of 4 marks for Section 3.2:

1. Presidential Research Award – 2000 (document marked '**P12a**').

2. Award by University of Colombo in recognition of Excellence in Research – 2000-2001 (document marked '**P12b**').

The Presidential Research Award has been conferred on the Petitioner in recognition of his share in the authorship of an article that appeared in the 'Journal of Graph Theory' 2000. '**P12a**' goes onto state that, '*you have effectively accomplished your research and submitted it to the judgment of scientific journals, winning recognition from anonymous referees in open competition at an international level. You may thus be rightfully proud of contributing to the reputation of Science and human knowledge.*'

'**P12b**' does not specify the basis of the award.

By a letter dated 8th March 2018 marked '**R10**', the Petitioner requested the 2nd Respondent '*for information, specifically the marks allocated to me under the different headings by the above four member Committee that met on 27th September 2017* ***and the basis for such allocation of points***'. The reference here is to the Senate Appointed Panel.

Attached to the response of the 1st Respondent marked '**P15**' dated 14th May 2018, was the *available information*, namely two sheets of A4 size paper. The first contains the sub components of Sections 1, 3.2 and 3.3 with the marks given for each sub component, signed by the four members of the Panel. No reasons have been given for the allocation or non-allocation of the marks set out therein. The second sheet of paper, once again signed by the four members, contains a summary of the marks given for each of the said sections, with the observation that the '*candidate presented the topic well. He has good teaching skills. Presentation is satisfactory*'. This too does not contain any

reasons for the marks that have been allotted. Thus, it is clear that the two sheets of paper of the Senate Appointed Panel does not contain reasons as to why the marks claimed by the Petitioner in his self-assessed application has not been allotted for Sections 1, 3.2 and 3.3.

Circular '**P3**' specifically requires the '*Senate Appointed Panel while allocating marks should submit a report to the Selection Committee regarding the applicant's teaching ability, service to the University, profession, industry, national development, community etc.*' This Court is of the view that the said requirement in '**P3**' of a '***report***' cannot surely be fulfilled by merely one sentence.

According to the documents annexed to '**P15**' the Petitioner had only been allotted 2 marks for Section 3.2, even though the Petitioner had claimed 8 marks. The said documents do not contain any reasons or an explanation of the basis on which the Senate Appointed Panel allotted 2 marks for Section 3.2, nor have the Respondents pleaded if the two marks were allotted for '**P12a**' or '**P12b**', or whether the marks are for both '**P12a**' and '**P12b**'.

The learned Senior State Counsel in her oral submissions submitted that the Presidential Award and the University award are for one and the same article. This Court is willing to accept the said explanation, provided this position is correct. The difficulty that this Court has with this submission is that it is not supported by the Statement of Objections of the Respondents or by the Reports of the Senate Appointed Panel. Furthermore, the Petitioner has denied this position and submitted that *in the same year (2000), the Petitioner also published three other papers in peer reviewed foreign journals*, and that

the award for Excellence in Research (P12b) was conferred based on the above four research papers written in 2000-2001. This explanation appears to be correct, and is reflected by the fact that the Petitioner was allotted marks by the Experts Panel under Section 2.1.1. (Peer reviewed publications in refereed Journals) for the following papers published in 2000:[21]

a) The Ramsey Numbers for a Quadrilateral versus All Graphs on Six vertices – Journal of Combinatorial Mathematics and Combinatorial Computing;

b) Ramsey Number $r(C_5 G)$ for all graphs G of Order Six, ARS Combinatorica;

c) On a conjecture involving cycle-complete Graph Ramsey Numbers – the Australasian Journal of Combinatorics.

Thus, it is the view of this Court that the Senate Appointed Panel has breached its duty by failing to record the basis on which it has allotted and/or not allotted marks to the Petitioner.

Marks allotted by the Experts Panel

The second complaint of the learned Counsel for the Petitioner is with regard to Section 3.1.1, which is marked by the Experts Panel. Section 3.1.1 reads as follows:

> "*3.1 – **Dissemination of knowledge***
>
> *3.1.1 Textbooks for University Students published in the relevant field – maximum of 18 marks*
>
> *(a) Recognised Publisher – upto 6 points/book*

[21] Vide document marked 'R15'.

(b) Other Publisher – upto 3 points per book."

The Petitioner states that he has authored a text book on *Combinatorics* for the Department of Mathematics and Computer Science of the Open University, to be used by undergraduates of the Open University. The said book has been published by the Open University, and has been assigned a ISBN number. The Petitioner claims that he should be allotted 6 points for this book. Even though the specific complaint of the Petitioner on this issue is found in paragraphs 16(c) and 22 of the petition, the Statement of Objections does not contain any explanation as to why the members of the Expert Panel had only allotted an average of 2.75 marks for the said book.

As observed earlier, after the conclusion of the oral submissions, the Respondents, by way of a motion dated 12th December 2019, had submitted to this Court the marks sheet of the two Experts, marked '**R14**' and '**R15**'. Although due to objections raised by the learned Counsel for the Petitioner this Court has made an order rejecting the said documents, this Court would nonetheless proceed to consider the said documents, as this Court must satisfy itself if the decision of the Respondents in this regard is fair and reasonable.

This Court has examined the marks sheet of the First Expert, marked '**R14**', and observes that comments have been provided only for the marks allotted under Section 2.1.1. In Section 3.1 of his report '**R14**', the First Expert has allotted 3 out of 6 marks for the textbook under consideration, although the Petitioner had sought 6 marks in his self-assessed application. No justification has been given for allotting only 3 out of 6 marks, except that the book has been referred to as a *study guide*. No further explanations have been given. In

his report '**R15**', the Second Expert has not offered any explanation as to why he is only allotting 2.5 marks out of a maximum 6, nor does '**R15**' contain any reservations. Thus, no explanation has been offered, either in '**R14**' or in '**R15**' as to why the Petitioner is not entitled to receive the maximum mark of 6 for the said book.

This brings this Court to the Third Expert Reviewer. According to his report marked '**R6**', Professor Jayantha had assigned the Petitioner 54.3 marks for Section 2 and 3 marks for Section 3.1. This Court has examined '**R6**' and observes the following findings for allocating only 3 marks for the book titled '*Combinatorics*'.

> "*Evaluator finds that this textbook has content from a textbook written for A/L combined mathematics students by the applicant according to the information given in the Bibliography on page 170. Therefore 50% of marks given.*"

The Respondents have not provided this Court with any material to substantiate the above statement of the Third Expert Reviewer. It is the view of this Court that the Respondents ought to have at least filed an affidavit of Professor Jayantha, explaining the basis for the above statement, in view of this issue having been raised specifically in the petition.

In the above circumstances, this Court is of the view that the Experts Panel have failed to justify their review of the Petitioner's application with reasons.

The duty to give reasons - The second tier

The second tier at which reasons must be given is when the 1st Respondent conveys the decision of the Selection Committee to the applicant.

The 2nd Respondent, by letter dated 3rd September 2018 marked '**P17**' has informed the Petitioner that '*you have not obtained the minimum required marks for Section 3.0 of your application. Therefore the Council decided not to promote you to the post of Associate Professor / Professor.'* While this reasoning barely meets the threshold of adequacy, this Court would advocate providing the applicant with a detailed analysis of the marks obtained, at the time the decision is conveyed. Quite apart from the administrative fairness that would be achieved by doing so, such a course of action is warranted *inter alia* for the reason that an applicant is prevented from re-applying for a period of two years from the date of his previous application.

Be that as it may, it is the view of this Court that the 1st Respondent ought to have provided the Petitioner with a detailed analysis of the marks allotted to him, when the Petitioner requested such information by his letter marked '**R10**'.

The duty to give reasons - The third tier

This Court shall now consider the third tier, which is the duty to give reasons to this Court, when a decision is challenged. The expanding grounds of judicial review, particularly in the areas of irrationality and unreasonableness, illustrates the active role played by Courts in demanding accountability by

public authorities for their decisions and thereby ensuring *better quality of decisions* by public authorities. It is the view of this Court that providing reasons for decisions which adversely affect rights of individuals, would allow Courts to effectively scrutinize the decisions and detect what factors have influenced the decision maker. That would in turn better equip Courts to fulfill its function as *auditors of legality*.

It is the view of this Court that the requirement of reasons in an application for judicial review is heightened once the petitioner has satisfied Court of the existence of a prima facie case and notice has been served on the respondent. As observed by Lord Donaldson MR in **R v. Lancashire County Council, ex parte Huddleston**[22]:

> "*..when the applicant can satisfy a judge of the public law court that the facts disclosed by her are sufficient to entitle her to apply for judicial review of the decision..then it becomes the duty of the respondent to make full and fair disclosure.*"

In **R v. Civil Service Appeal Board, ex parte Cunningham**[23] Lord Donaldson MR, developed this idea further, when he held that:

> "*once the public law court has concluded that there is an arguable case that the decision is unlawful, the position is transformed. The applicant may…not be entitled to reasons, but the court is."*

[22][1986] 2 All ER 941.
[23][1991] 4 All ER 310 at 316.

Similar sentiments have been expressed by our Courts. In **Wijepala v Jayawardene**[24] Mark Fernando, J considered the necessity to give reasons, at least to this Court, and held as follows:

> "*Although openness in administration makes it desirable that reasons be given for decisions of this kind, in this case I do not have to decide whether the failure to do so vitiated the decision. However, when this Court is requested to review such a decision, if the petitioner succeeds in making out a prima facie case, then the failure to give reasons becomes crucial. If reasons are not disclosed, the inference may have to be drawn that this is because in fact there were no reasons -and so also, if reasons are suggested, they were in fact not the reasons, which actually influenced the decision in the first place*."

The same view was taken by the Supreme Court in **Karunadasa vs Unique Gem Stones Limited and Others**[25] where Mark Fernando, J held as follows**:**

> "*To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a* ***reasoned*** *consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision "may be condemned as arbitrary and unreasonable"; certainly, the Court cannot be asked to presume that they were valid reasons, for that would be to surrender its discretion. The 2nd*

[24] SC (FR) (Application) No. 89/95 – S.C. Minutes of 30.06.1995; referred to in Deepthi Kumara Gunaratne and others vs Dayananda Dissanayake, Commissioner of Elections and another; SC (FR) 56/2008; SC Minutes of 19th March 2009.

[25] [1997] (1) Sri L.R. 256, at page 263.

*respondent's failure to produce the 3rd respondent's recommendation thus justified the conclusion that there **were** no valid reasons, and that Natural Justice had not been observed*."

This Court therefore wishes to reiterate that once notices have been issued on the Respondents after Court being satisfied of the existence of a prima facie case against the Respondents, the Respondents are under a duty to give reasons for the decisions that are impugned. In paragraphs 16(c) and 21 of the petition, the Petitioner has specifically stated that he is entitled to two marks each, for each of the said awards marked '**P12a**' and '**P12b**'. Failure by the Respondents to answer this specific allegation has prompted the Petitioner to reiterate his complaint in his counter affidavit.[26] Similarly, the Petitioner has complained in paragraph 16(c) and 22 about the non –allotment of marks for the book but the Respondents have remained silent in their Statement of Objections.

This Court is of the view that in this application, the 1st Respondent was under a duty to explain to this Court the reason for the non-allocation of marks for the University award, and the allocation of only 50% of the marks for the book. The Respondents have failed to answer the specific averments in the petition with regard to the University award. The same would apply to the textbook, except that the report of Professor Jayantha, even though filed belatedly, gives some sort of an explanation. Filing of this report however is inadequate for the reason that this Court has still not been told why the other External Expert allotted 3 marks and 2.5 marks, respectively, for the said text book.

[26] Vide paragraph 8(g) – 'Despite the said two different awards received by me, namely one by the President of the Republic and the other by the Vice Chancellor, the 1st to 29th Respondents have failed in their Statement of Objections to provide an explanation as to why I have only been given 2 marks for the said awards.'

Therefore, the only conclusion that this Court can arrive at is that the Respondents have failed at the third tier, by failing to disclose to this Court in their Statement of Objections, the reasons not to allot marks claimed by the Petitioner.

Nexus between the duty to give reasons and irrationality

Where the reasons for a decision are not provided to a party against whom a decision is made, that party may seek judicial review of such decision on the basis that the decision is irrational or unreasonable. As noted above, where the Court is satisfied that a prima facie case has been made on the inference that the decision is irrational or unreasonable in the absence of reasons, the respondents have a burden to satisfy Court why such inference is not justified. The absence of reasons would support an argument that the decision maker has not afforded a fair hearing, which requires all relevant material to be taken into consideration prior to arriving at a decision. In **De Smith's Judicial Review**[27] it is observed that '*Irrationality may also sometimes be inferred from the absence of reasons.*[28] *When reasons are required, either by statute or by the growing common law requirements, or where they are provided, even though not strictly required, those reasons must be both "adequate and intelligible". They must therefore both rationally relate to the evidence in the case*[29]*, and be comprehensible in themselves.*'

[27]Harry Woolf, Jeffery Jowell, Catherine Donnelly, Ivan Hare, *De Smith's Judicial Review* [8th Edition, 2018] Sweet and Maxwell, page 605.
[28]Padfield v. Minister of Agriculture Fisheries and Food [1968] AC 997 at 1032.
[29] Re Poyser and Mills' Arbitration [1964] 2 QB 467 at 478.

In **Padfield and Others v Minister of Agriculture, Fisheries and Food and Others**,[30] although Courts did not hold that there was a general duty to give reasons, it was held that the absence of reasons may result in a finding of irrationality.

> "*If all the prima facie reasons seem to point in favour of his taking a certain course to carry out the intentions of Parliament in respect of a power which it has given him in that regard, and he gives no reason whatever for taking a contrary course, the Court may infer that he has no good reason and that he is not using the power given by Parliament to carry out its intentions*."

This Court is however mindful that the inference of irrationality and unreasonableness in the absence of reasons is not automatic, as emphasised in the following paragraph by Lord Keith in **Regina v. Secretary of State for Trade and Industry, ex parte Lornho plc**:[31]

> "*The absence of reasons for a decision where there is no duty to give them cannot itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision*."

As such, if the respondents cannot, or do not provide reasons even to Court to justify their decision, Court may, if the circumstances are such that the

[30] [1968] AC 997, at page 1053.
[31] [1989] 1 WLR 525 at 539-540.

evidence before Court points to a completely different path to what was taken by the decision maker, draw an inference that the decision was not taken for a good reason or that there was no reason for the decision and it is therefore not rational or reasonable.

Conclusion

The Petitioner is faced with an extremely unfortunate situation. He claims he should be given two marks for the University Award and an additional three marks for his book. The Senate Appointed Panel and the Experts Panel have not given reasons why they withheld the marks claimed by the Petitioner in his self assessed application. The Selection Committee has seen the injustice that would be caused to the Petitioner if the decisions of the Experts Panel and the Senate Appointed Panel were followed but have been wrongfully prevented by the University Grants Commission from rectifying the mistakes of the Experts Panel and the Senate Appointed Panel. To make matters worse, the University Grants Commission claims that the marks allotted by the Senate Appointed Panel cannot be rectified, which, as this Court has already observed, is contrary to their own Circular '**R4**'. And the final straw is the belated and misconceived argument of the Respondents that the Petitioner should have acted in terms of Section 86 of the Universities Act and filed a complaint with the University Services Appeals Board, when the complaint of the Petitioner does not come within the provisions of Section 86. Where does this leave the Petitioner, and what is his remedy?

It is the view of this Court that the remedy lies with the Selection Committee, who must discharge the obligation conferred on them by the Circulars '**P3**' and '**R4**'. Accordingly, it is the view of this Court that the final decision should be

reached by the Selection Committee following the guidelines in the marking scheme.[32]

In the above circumstances, this Court is of the view that the decision of the Senate Appointed Panel not to allot two marks for the University Award and the decision of the Experts Panel not to allot six marks for the book published by the Petitioner, are unreasonable, and that the said decision is liable to be quashed by a Writ of Certiorari.

This Court is also of the view that the Selection Committee must consider, in the light of the marking scheme contained in '**P3**':

(a) The decision of the Experts Panel and the decision and reasons assigned by the Third Expert Reviewer for the allocation of only three marks for the book on Combinatorics, and arrive at a suitable decision.

(b) The decision of the Senate Appointed Panel not to allot two marks for the University Award '**P12b**', and arrive at a suitable decision.

This Court accordingly issues a Writ of Certiorari quashing '**P17**' and '**P18**', and a Writ of Mandamus on the 1st Respondent to direct the Selection Committee to consider the application of the Petitioner in terms of Circular No. 916 marked '**P3**'. This Court makes no order with regard to costs.

Judge of the Court of Appeal

[32] Vide requirements stipulated by the University Grants Commission in 'R4'.