

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

In the matter of an Application for a mandate in the nature of a Writ of *Prohibition*, a Writ of *Certiorari* and a Writ of *Mandamus* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) application No: 373/19

Prof. (Dr). Chelliah Elankumaran,
19A, Mariamman Lane,
Thirunelvely South, Jaffna

PETITIONER

-Vs-

1. The University of Jaffna, Jaffna.
2. Prof. K. Kandasamy,
Competent Authority in place of
Vice-Chancellor,
University of Jaffna, Jaffna.
- 2A Prof. S. Srisatkunarajah,
Vice-Chancellor,
University of Jaffna, Jaffna.
3. Dr. T. Mangaleswaran,
Rector/Vavuniya Campus
(Ex-Officio Member)
Vavuniya Campus, Vavuniya.
4. Prof. G. Mikunthan,
Dean/ Faculty of Graduate Studies
(Ex-Officio Member)
University of Jaffna, Jaffna.
5. Prof. J. P Jeyadevan,
Dean/ Faculty of Science
(Ex-Officio Member)
University of Jaffna, Jaffna.

6. Dr. K. Suthakar,
Dean/ Faculty of Arts (Ex- Officio Member),
University of Jaffna, Jaffna
7. Prof. T Velnamby,
Dean / Faculty Management Studies &
Commerce (Ex-Officio Member),
University of Jaffna, Jaffna.
8. Dr. S. Raviraj,
Dean/ Faculty of Medicine
(Ex- Officio Member),
University of Jaffna, Jaffna.
9. Dr. A. Pushpanathan,
Dean/ Faculty of Business Studies
(Ex-Officio Member),
Vavuniya Campus, Vavuniya.
- 9A Dr. Y. Nanthagopan,
Dean/Faculty of Business Studies
(Ex-Officio Member),
Vavuniya Campus, Vavuniya.
10. Prof. A. Atputharajah,
Dean/Faculty of Engineering
(Ex-Officio Member),
Ariviyal Nagar, Kilinochchi.
11. Rev. Fr. M. Jero Selvanayagam,
UGC Appointed Member,
St. Anthony's Church, Pasaiyoor, Jaffna.
- 11A Prof. P. Balasundrampillai,
UGC Appointed Member,
Emeritus Professor, University of Jaffna,
Jaffna.
12. Dr. T. Sathyamoorthy,
UGC Appointed Member,
Director, Teaching Hospital, Jaffna.

- 12A Prof. S. Mohanadas,
UGC Appointed Member,
Former Vice- Chancellor,
University of Jaffna, Jaffna.
13. Prof S. Sivasekaram,
UGC Appointed member.
No.2. Rheinland Place, Colombo 03.
- 13A Mr. P. Thiyagarajah,
UGC Appointed Member,
Former Member PPSC, Northern Province.
14. Mr. D. K. P. U. Gunathilake,
UGC Appointed Member,
DGM, CEB Regional Office, Jaffna.
- 14A Dr. Suren Ragavan,
UGC Appointed Member,
Former Governor, Northern Province
15. Ms. S. Abimannasingham,
Attorney-at- Law,
UGC Appointed Member,
Vetharaniyar Valavu, Uduvil.
- 15A Eng. V. Suthakar,
UGC Appointed Member,
Chief Engineer, Road Development Authority.
16. Dr. P. Lakshman,
UGC Appointed Member,
Cardiologist, Teaching Hospital, Jaffna.
- 16A Mr. M. Thiruvathavooran,
UGC Appointed Member, Attorney-at-Law,
Former Senior Assistant Bursar,
University of Jaffna, Jaffna.
17. Mr. P. Easwarathan,
UGC Appointed Member,
180/2, Sir. Pon. Ramnanathan Road, Jaffna.

- 17A Mr. P. Sutharsan.
UGC Appointed Member,
SLEAS, Assistant Director/Ministry of
Education,
Kilinochchi.
18. Mr. N. Vethanayagan,
UGC Appointed Member,
District Secretary,
District Secretariat, Jaffna.
- 18A Mr. K. Rushankan,
UGC Appointed Member,
Consultant on Educational Career,
Thirunelvely
19. Prof. J. Uyangoda,
UGC Appointed Member,
34/15, 3rd Lane, Kadawatha Road,
Kalubovila, Dehiwala.
- 19A Mr. V. Kanagasabapathy,
UGC Appointed Member,
Senior Accountant,
SL Accounting Service.
20. Dr. A. Thirumurugan,
UGC Appointed Member,
246-4/A, Temple Road, Jaffna.
21. Prof. C. Sivayoganathan,
UGC Appointed Member,
41, Initium Road, Dehiwala.
- 21A. Mr. Vithusan V. Rajaram,
UGC Appointed Member,
Assistant Secretary in Foreign Affairs.
22. Mr. Mano Sekaram,
UGC Appointed Member,
65, Walukarama Road,
Colombo 3.

22A Mr. T. Vimalan,
UGC Appointed Member,
Member, Land Reform Commission,
Northern Province

23. Mr. A. L. J. Sadique,
U.G.C Appointed member,
118/7, Abesekara Road, Dehiwala.

23A Mr. K. Sivaram,
UGC appointed Member,
Managing Director,
Private Agricultural Organization

2nd to 23rd Respondents are Members of
the Council of the University of Jaffna.

24. Mr. V. Kandeepan,
Registrar and Secretary to the Council,
University of Jaffna,
Jaffna.

25. Prof. Rev. G. Pilendran,
Dept of Christian Civilization,
University of Jaffna,
Jaffna.

26. Prof. Mrs. S. Kuganathan,
Department of Fisheries,
University of Jaffna,
Jaffna.

25th and 26th Respondents are the
Members of the Preliminary
Investigation Committee.

27. Mrs. S. Elangovan,
Attorney-at-Law,
Chairman / Tribunal,
Rasathoddam Veethy,
Jaffna.

28. Mr. R. T. Vignarajah,
Attorney-at-Law,
Member, Tribunal,
Moolai, Chulipuram.

29. Mr. P. Vigneswaran,
Former Member PPSC,
Member / Tribunal,
70/22 Arasady Road, Jaffna.

27th to 29th Respondents are the Members of
the Formal Inquiry Committee.

30. Mr. M. K. Muthukumar,
Attorney-at-Law,
Chairman / Review Panel,
Registrar's Office,
University of Jaffna,
Jaffna.

31. Mrs. S. Vijayarani,
Attorney-at-Law,
Member / Review Panel,
Registrar's Office,
University of Jaffna,
Jaffna.

32. Mrs. E. A. Yohanayagam,
Divisional Secretary,
DS Office, Nallur,
Jaffna.

30th to 32nd Respondents are Members of
the Review Panel.

33. Prof. Ms. V. Arasaratnam,
Senior Professor,
Former Vice-Chancellor,
University of Jaffna, Jaffna.

RESPONDENTS

34. Dr (Mrs) S. Sivachandran,
Acting Dean,
Faculty of Technology, Kilinochchi.
Kilinochchi Campus,
35. Dr. K. Sooriyakumar,
Dean, Faculty of Agriculture,
Kilinochchi Campus, Kilinochchi.
36. Dr. (Mrs) A. Nanthakumaran.
Dean, Faculty of Business Studies,
Vavuniya Campus, Vavuniya.
37. Dr. (Mrs) S. Srimuralitharan,
Dean, Faculty of Hindu Studies,
University of Jaffna, Jaffna.
38. Mrs. T. Thabotharan,
Dean,
Faculty of Allied Health Sciences,
University of Jaffna, Jaffna.
39. Prof. P. Ravirajan,
Senior Professor,
Senate Representative,
Department of Physics,
University of Jaffna, Jaffna.
40. Mrs. T. Raveendran,
Senior Lecturer,
Senate Representative,
Dept. of Human Resources Management,
University of Jaffna.
41. Prof. Mahinda S. Rupasinghe,
UGC Appointed Member,
Emeritus Professor,
Sabragamuva University.
42. Prof. Jegath Weerasinghe,
UGC Appointed Member,
Professor, University of Kelaniya.

43. Dr. (Mrs) Kumuthu Wijewardene,
UGC Appointed Member,
Senior Medical Officer,
Ministry of Health

(2A to 8th Respondents, 9A, 10, 11A, 12A, 13A,
14A, 15A, 16A, 17A, 18A, 19A, 20, 21A, 22A,
23A, 34th to 43rd Added Respondents, Members
of the Council of the University of Jaffna)

ADDED RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel: Farzana Jameel, PC with Thushani Machado and Shahanie Mackie

instructed by Sanjeewa Kaluarachchi for the Petitioner.

Sumathi Dharmawardena, PC ASG with A. Weerakoon, SC for the
Respondents.

Written submissions tendered on:

28.10.2024 and 26.11.2024 by the Petitioners

28.10.2024 by the Respondents.

Argued on: 20.07.2023 and 04.06.2024

Decided on: 02.06.2025

S. U. B. Karalliyadde, J.

The Petitioner was a Professor attached to the Department of Economics in the University of Jaffna (the 1st Respondent). By the letter dated 12.07.2012 (D27), he was appointed as the acting Head of the Department of Economics for one month in terms of Section 51(3) of the Universities Act, No. 16 of 1978 (the Act) as the Head of the

Department was made the Dean of the Faculty of Arts. The appointment of the Petitioner made under Section 51 (3) of the Act was extended thrice for three months. By the letters dated 04.10.2012 and 30.01.2013 (D28), he had requested from the then Vice Chancellor to make his appointment permanent for three years in terms of Section 51(1) and 51(2) of the Act. Nevertheless, the Petitioner's appointment was not made permanent for the reason that if his appointment as the Head of the Department had been made permanent, there would be unrest among the students, as there were complaints from the female students against him about the sexual harassment.

The Petitioner received the letter dated 03.06.2013 marked as P2 requesting to attend a preliminary investigation about those complaints and to record his statements. The 25th and the 26th Respondents were appointed by the University Council to conduct the preliminary investigation, but the Petitioner objected for the appointment of the 26th Respondent as he is junior in the academic service to the Petitioner and therefore is not entitled to conduct the inquiry in terms of paragraph 6.2 of Chapter XXII of the Establishment Code of the University Grants Commission and Higher Education Institutes (the Code). By the letter dated 05.06.2013 (marked as P4), the Petitioner was informed to place his objections regarding the inquiry panel before the Council, and the inquiry was postponed to 13.06.2013. Consequent to the Petitioner's request, the objections placed were tabled at the Council meeting and by the letter dated 11.06.2013 (marked as P6), the Petitioner was informed that the Council had confirmed the appointments of the 25th and 26th Respondents to the inquiry panel. Thereafter, the

preliminary investigation proceeded in the absence of the Petitioner as he did not participate in the proceedings, and the 25th and 26th Respondents submitted the preliminary investigation report marked as P8 to place before the Council meeting. The Petitioner alleges that in his absence, the preliminary investigation had been completed *ex parte* on 27.06.2013, violating the principles of natural justice. Thereafter, the charge sheet dated 23.07.2013 marked as P10 was issued alleging the abuse of power in the form of improper conduct, namely sexual harassment, against the female students. The Petitioner argues that P10 contravenes the provisions of Chapter XXII of the Code, as the charges are vague and ambiguous, and the charges do not indicate a specific offence. The Petitioner argues that an explanation of charges should be provided within 15 days from the date of the charge sheet (P10), and alleges that the relevant documents were provided to him only on 12.08.2013, despite his request to provide them. Thereafter, the Petitioner submitted his explanation on 26.08.2013 (P12). By the letter dated 30.09.2013 marked as P13, the Petitioner was informed that the Council did not accept his explanation and therefore will proceed with the formal inquiry. By the letter marked as P13, the Petitioner was interdicted with effect from 01.10.2013 and declared the university premises out of bounds from 07.10.2013.

The Council appointed the 27th to 29th Respondents to conduct the formal inquiry against the Petitioner. At the commencement of the formal inquiry, the Counsel appeared for the Petitioner raised a preliminary objection about the appointment of 25th and 26th Respondents to the preliminary investigation committee for the reason that the

25th Respondent is junior to him in the academic staff and the 26th Respondent was appointed by the then Vice Chancellor without any power to appoint him in contravention to the paragraph 1.1(b) and 1.3 of the Chapter XXII of the Code. Further, the Petitioner has taken up the position that the preliminary investigation was carried out by the 25th and 26th Respondents, without recording his statement, and therefore, the principles of natural justice were violated. However, the inquiry tribunal consisting of the 27th to 29th Respondents dismissed the preliminary objections raised by the learned Counsel appearing for the Petitioner by the order dated 26.07.2014 marked as P15(a) - VII. The Petitioner states that, thereafter, when the formal inquiry commenced on 30.08.2014, an amended charge sheet dated 30.08.2014 marked as P14, which was identical to P10, was served on him. At the formal inquiry, evidence was led by both prosecution and defence, and the formal inquiry was concluded on 01.07.2017. Thereafter, the parties were allowed, to file written submissions and the tribunal which was consisted with the 27th to 29th Respondents submitted their inquiry report dated 29.12.2017 marked as P18, where the Petitioner was found guilty to all the charges by the 27th and 28th Respondents with the partial agreement of the 29th Respondent (P18(a)). Then the Petitioner filed the Writ Application bearing No.88/2018 seeking to quash the inquiry report marked P18. While this application was pending, the 29th Respondent submitted a detailed inquiry report prepared by him, dated 15.07.2018, marked as P30, where he has concluded that the Petitioner should be exonerated from the charges against him. When this matter was taken up on 30.10.2018 in this Court,

the learned State Counsel appeared for the Respondents made an application to appoint a different committee (Review Panel) to consider the evidence already recorded and to make fresh recommendations to the Council and for the Council to come to a final determination on the said recommendations (P31). The Review Panel by the report dated 12.03.2019 marked as P34 recommended that if the Council decide to hold a fresh inquiry, it to issue a charge sheet and complete the inquiry within two months. The Petitioner, by letter dated 06.04.2019 marked as P35, objected to the said recommendations and requested to exonerate him from the charges. The 2nd Respondent, by letter dated 03.06.2019 marked as P37, informed the Petitioner that the Council at its 436th meeting accepted the recommendations of the Review Panel and the letter marked as P35 will be tabled at the next Council meeting. Thereafter, the Petitioner has withdrawn the Writ Application No.88/2018, reserving his rights to file a fresh Writ Application (P38).

The 2nd Respondent issued a charge sheet dated 09.08.2019, marked as P39, to the Petitioner based on the abuse of power and improper behaviour towards the female students. The Petitioner argues that the charges in P39, in essence, are identical to the previous charges in the charge sheet marked as P14, it has been issued without jurisdiction, and the Review panel acted beyond their scope. The Petitioner further argues that the 29th Respondent's report marked as P30 has been disregarded when framing charges, and the charge sheet contains previously disregarded findings and includes the findings of the Preliminary Investigation Committee. Furthermore, the

Petitioner's legitimate expectation that the disciplinary authority would act in terms of the Code has been violated. Therefore, the Petitioner argues that the charge sheet marked as P39 is *ultra vires*, illegal and null and void.

The Petitioner, by letter dated 18.06.2014 marked as P16, requested the Council to reinstate him in terms of the Public Administrative Circular No. 6/2004 dated 15.12.2004 (P21(a)). He has been reinstated by the letter dated 01.01.2015 marked as P17 with effect from 01.10.2013 in terms of the Circular marked as P21(a) and the Public Administrative Circular No. 6/2004(1) dated 30.12.2011 (P21(b)). According to the letter marked P17, the Petitioner has been paid his full salary and placed on compulsory leave with effect from 01.01.2015. The Petitioner argues that the reinstatement is contrary to the Circulars marked as P21(a) and P21(b) and therefore is illegal and null and void.

By this Writ application, the Petitioner invokes the Writ jurisdiction of this Court and seeks the following substantive reliefs, *inter alia*,

- b. Issue a Writ of Certiorari quashing the charge sheet produced marked P39 issued by the 2nd Respondent
- c. Issue a Writ of Certiorari quashing the Report of the Preliminary Investigation Committee produced marked P-8
- d. Issue a Writ of Certiorari quashing the appointment of the members of the Preliminary Investigation Committee

- e. Issue a Writ of Certiorari quashing the determination of the Council of the 1st Respondent (2A to 8th, 10th, 20th Respondents, 9A, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A, 19A, 21A, 22A, 23A, 34th to 43rd Added Respondents), if any, made in pursuance of the recommendations of the Review Panel (P34)
- f. Issue a Writ of Certiorari quashing the decision of the 1st Respondent to place the Petitioner on Compulsory leave and declaring the University premises out of bounds (P17);
- g. Issue a Writ of Prohibition prohibiting the 1st and/ or 2nd and/or the Council (2A to 8th, 10th, 20th Respondents, 9A,11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A, 19A,21A,22A,23A, 34th to 43rd Added Respondents) from taking further steps in pursuance of the recommendations of the Review Panel and charge sheet issued in pursuance thereof produced marked P39
- h. to issue a Writ of Mandamus directing the 1st Respondent and/or 2nd and/or the Council (2A to 8th, 10th, 20th Respondents, 9A, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A, 19A, 21A, 22A, 23A, 34th to 43rd Added Respondents) to make a determination according to law on the basis of the findings of the Review Panel (P34)
- i. to issue a Writ of Mandamus directing the 1st Respondent and/or 2nd and/or the Council (2A to 8th, 10th, 20th Respondents, 9A, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A, 19A, 21A, 22A, 23A, 34th to 43rd Added Respondents) to release his

increments withheld during the period of his compulsory leave in terms of Paragraph 14.3 of Chapter X of the Establishment Code for UGC & HEIs, marked in P11(A)

j. to issue a Writ of Mandamus directing the 1st Respondent and/or 2nd and/or the Council (2A to 8th, 10th, 20th Respondents, 9A, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A, 19A, 21A, 22A, 23A, 34th to 43rd Added Respondents) to rectify the effective date of the Petitioner's full salary and compulsory leave as 23.07.2014 and to pay the increments during Compulsory Leave

k. to issue a Writ of Mandamus directing the 1st Respondent and/or 2nd and/or the Council (2A to 8th, 10th, 20th Respondents, 9A, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A, 19A, 21A, 22A, 23A, 34th to 43rd Added Respondents) to release the half salary withheld during the period of interdiction from 01/10/2013 to 31.12.2014 and to release the two increments due on 29.11.2013 and 29.11.2014

Now I will address the reliefs sought by the Petitioner. The Petitioner seeks a Writ of Certiorari to quash the charge sheet marked P39. The Petitioner argues that P39 is *ultra vires* as it has been issued by the 2nd Respondent without a decision of the Council. In the statement of objections, the Respondents have stated that the Council at its 439th meeting decided to conduct a fresh inquiry and issued the charge sheet marked P39. It is also evident from the letter marked P37 that the Council has accepted the

recommendations of the Review Panel, and therefore, I am not inclined to accept the Petitioner's argument that P39 was issued without a decision of the Council. The Petitioner further argues that the Review Panel has acted beyond the scope of the mandate given to it. The mandate given to the Review panel has been recorded in the undertaking given by the learned State Counsel who appeared for the Respondents in the Writ Application No.88/2018, and it has been recorded in the journal entry marked as P31 as follows,

“In view of the order made by this court on 12.06.2018, learned Senior State Counsel seeks the concurrence of this Court for the 4th Respondent to appoint a different committee which will be entrusted with the task-of-considering the evidence already recorded in the already concluded inquiry held against the Petitioner and then arrive at a fresh recommendation to be made to the Council. He also states that the Council will thereafter consider the said recommendation by the new committee and then make a final decision in that regard.”

The Review Panel, in its report marked P34, has stated that though the mandate given to it is not clear, they have reviewed the whole process and the charge sheet. It is evident from P34 that the Review Panel has made the recommendations to hold a fresh inquiry after careful consideration of all the evidence placed before it from both the preliminary and formal inquiry conducted against the Petitioner. It is important to keep in mind that the Review Panel has only made recommendations to the Council, and that it was the Council that decided whether to act according to the said recommendations. Therefore,

I am of the view that the Review Panel has acted within the scope of its mandate. The Petitioner also argues that the decision to issue a charge sheet is in breach of the no-evidence rule, as the Review Panel in its report marked as P34 has stated that there is no clear evidence to find that the Petitioner is guilty of the charges. In the report marked as P34, the Review Panel has stated that even though the evidence before them does not show that the Petitioner is guilty of the charges, a mere plain reading of the statements recorded shows that there is a *prima facie* case to warrant an inquiry. Hence, the Review Panel has recommended holding a fresh inquiry. The Petitioner further argues that the entire case record of the formal inquiry has been included under the documents in the charge sheet marked as P39, while the Council has accepted the Review Panel recommendations to set aside those proceedings. Even though the said formal inquiry proceedings have been listed as a document under the charge sheet marked P39, no prejudice has been caused to the Petitioner, as the 2nd formal inquiry has been conducted on P39. Under the above stated circumstances, this Court see no merit in the argument of the Petitioner that the charge sheet is illegal and null and void. Therefore, this Court refuses to grant relief prayed for in prayer (b) of the Petition.

In the prayer (e) the Petitioner seeks a Writ of Certiorari to quash the determination of the Council if any made in pursuance of the recommendations of the Review Panel, in prayer (g) a Writ of Prohibition prohibiting the Respondents from taking further steps in pursuance of P34 and charge sheet marked P39 and in prayer (h) a Writ of Mandamus directing the Respondents to make a determination according to law based the finding

in P34. It is important to note that Prayer (e), (g) and (h) will fail on the ground of futility. In the case of *Samastha Lanka Nidahas Grama Niladhari Sangamaya v Dissanayake*,¹ it was held that, “*It is trite law that no court will issue a mandate in the nature of writ of certiorari or mandamus where to do so would be vexatious or futile.*”

Marsoof, PC. J (P/CA) (as he then was) in the case of *Ratnasiri and others v Ellawala and others*² held that;

“This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. The court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that “A writ... will not issue where it would be vexatious or futile.”

Prayer (e) fails as the Council had already decided to issue a charge sheet and conduct a fresh inquiry, acting on the Review Panel recommendations marked as P34. Prayer (g) should fail on the ground of futility as the inquiry on the charge sheet marked as P39 has already been concluded, and prayer (h) should fail as P34 is only a recommendation of the Review Panel and the Council has already acted upon it.

Now I will address my mind to the prayers (c) and (d). In prayer (c), the Petitioner is seeking a Writ of Certiorari to quash the Report of the Preliminary Investigation

¹ [2013] BLR 68.

² (2004) SLR 180.

Committee marked as P8. The ground on which the Petitioner is seeking this relief is on the fact that the preliminary investigation had been completed *ex parte* on 27.06.2013, violating the principles of natural justice. The Petitioner states that upon returning to Jaffna and resuming his duties after attending his Court case, he was made aware that the Preliminary Investigation Committee had completed the investigation *ex parte* on 27.06.2013. Therefore, this denies him being heard and therefore violates the principles of natural justice.

It is evident from the letter marked as P2 that the Preliminary investigation has been originally scheduled for 06.06.2013, and it has been re-fixed as per the Petitioner's request and postponed to 13.06.2013 (P4). It is also clearly stated in the inquiry report marked as P8 that the date of the inquiry was re-fixed on the request of the Petitioner, but he has failed to appear on the date on which it was re-fixed. The learned State Counsel appearing for the Respondents submitted to this Court that the Petitioner has obtained leave to attend the case No CA Writ 147/2013 only from 17.06.2013, and the Petitioner has avoided attending without informing the Preliminary Investigation Committee. Further, the learned State Counsel appearing for the Respondents argues that it was not a formal inquiry but a fact-finding preliminary investigation and thereafter the Petitioner has been given an opportunity to be heard and be defended at a formal inquiry. The preliminary investigation indeed is a fact-finding inquiry in terms of paragraph 8.1.1 of the Code. Paragraph 8.1.1 reads thus,

“A preliminary Investigation is purely a fact-finding process. It is meant to be search for material that may disclose an employee's guilt or provide evidence for any charges that may be framed against the person suspected of the offence. It may involve the recording of statements of witnesses, and a search for and examination of documents. Since this process is not an "inquiry", the suspect. person or his representative need not be present when statements are recorded. In fact it would be inadvisable to allow the suspect person or his representative to be present or to disclose any material to him at this stage. He should, however, be present if stores or cash etc. in his charge are verified in connection with an alleged offence, so that he could signify that the verification was done in his presence and the results accepted by him, or when productions have to be sealed in his presence, or when it is necessary to have him identified by a witness, etc. Preliminary investigations should be completed and the report furnished with the least possible delay.”

In terms of paragraph 8.1.1, the preliminary investigation involves the recording of statements of witnesses and the searching and examining of documents. It does not require the statements of the accused to be recorded under the said paragraph. Considering the above facts, I am not in agreement with the Petitioner's contention that the Preliminary Investigation Committee has denied the opportunity of the Petitioner to be heard, since he has been awarded an opportunity twice to appear before the committee. Thereafter, the Petitioner has been given an opportunity to answer the

charge sheet and to be heard at the formal inquiry tribunal. Therefore, this Court refuses to grant relief prayed for in prayer (c) of the Petition.

The Petitioner seeks a Writ of Certiorari in prayer (d) to quash the appointment of the members of the Preliminary Investigation Committee. The Petitioner seek this relief on the basis that the 26th Respondent is a junior in the academic staff to the Petitioner, and it is contrary to paragraph 6.2 of Chapter XXII of the Code. The learned State Counsel's argument regarding that is that the gravity of the offence should be taken into account in selecting the inquirers. Therefore, appointing the 26th Respondent is most reasonable and appropriate as the 26th Respondent was only 3 years junior to the Petitioner and also the most senior female academic among the others and was appointed due to cultural and gender sensitivity of the matter at hand. Further, there was no requirement to appoint members senior to the accused person. Paragraph 6.2 of Chapter XXII of the Code reads thus,

“In selecting any of the above persons for holding a disciplinary inquiry or a preliminary investigation, the gravity of the alleged offence, knowledge of the particular field of activity connected with the alleged offence, the seniority and standing of the accused person, etc. should be taken into consideration.”

It is evident from paragraph 6.2 that though the seniority of the accused person should be considered, it is also important to consider the gravity of the alleged offence. Furthermore, it is the view of this Court that even though the 26th Respondent is 3 years

junior in service to the Petitioner, both the Petitioner and the 25th Respondent are in the same standing as Professors. Therefore, I agree with the argument of the learned State Counsel that it is appropriate to appoint the 26th Respondent, considering the nature of the allegations.

Further, the Petitioner argues that the 25th Respondent has been appointed by the Vice Chancellor unilaterally outside the decision of the Council made on 23.03.2013 in contravention of paragraph 1.1(b) and 1.3 of Chapter XXII of the Code. In terms of paragraph 1.1(b), the Council is the disciplinary authority of a university, and in terms of paragraph 1.3, the disciplinary authority has the power to appoint a person or a tribunal to hold a disciplinary inquiry or a preliminary investigation. The Respondents argue that even though the 25th Respondent was appointed by the Vice Chancellor (R11(a)), subsequent to appointing the 26th Respondent by the Council (R10), no prejudice or injustice has been caused to the Petitioner by the said appointment. It is evident from R11(a) that the Vice Chancellor has appointed the 25th Respondent, and by R10, it is evident that the 26th Respondent has been appointed by the Council. However, subsequently, the Council at its 380th meeting held on 09.06.2013 has approved the appointment of the 25th and 26th Respondents to the Preliminary Investigation Committee (P6). This Court is of the view that the appointments of the 25th and 26th Respondents have been made according to the law, and therefore, this Court is not inclined to grant relief prayed for in prayer (d).

The Petitioner was interdicted initially with effect from 01.10.2013 by the letter marked as P13, and by the letter marked as P16, he has requested to be reinstated. Subsequently, by the letter marked as P17, the Petitioner has been reinstated with effect from 01.10.2013 in terms of the Circular marked as P21(a) and the Public Administrative Circular No. 6/2004(1) dated 30.12.2011 (P21(b)). However, the Petitioner has been paid his full salary and placed on compulsory leave with effect from 01.01.2015 and declared out of bounds the University premises. The Petitioner argues that the reinstatement was contrary to the Circulars marked as P21(a) and P21(b) and therefore is illegal and null and void. By prayer (f), the Petitioner seeks a Writ of Certiorari to quash the decision of the 1st Respondent in P17 to place him on Compulsory leave and declare the University premises out of bounds. In terms of paragraph 18.7 of Chapter X of the Code, if a person can be placed on compulsory leave in the interest of the investigation or inquiry that he should not exercise the functions of his office. Paragraph 18.7 reads thus,

“If the person cannot appropriately be interdicted in terms of this section, but it is in the interest of the investigation or inquiry that he should not exercise the functions of his office, he should be transferred, or placed on compulsory leave in terms of para 14 of Chapter X”

Paragraph 14.1 of chapter X reads thus,

“Where on any special grounds it is considered that it would not be in the interest of the Commission or the Higher Educational Institution/ Institute or in the public interest that any person employed in the Commission/ Higher Educational Institution/ Institute should continue to perform the functions of his office or where a person is kept away from his work place for reasons beyond his control, the Chairman of the Commission or the Principal Executive Officer of the Higher Educational Institution/ Institute may place such person on compulsory leave for such periods as the Commission or the Governing Authority of the Higher Educational Institution/ Institute as the case may be, may think fit.”

It is evident from paragraph 18.7 read with Paragraph 14.1 of the Code that the Council has the power to place the Petitioner on compulsory leave as they think fit. The argument of the Respondents about this is that the Council considered the fact that the presence of the Petitioner in the University premises may hinder the inquiry process, and therefore, the Petitioner was placed on compulsory leave to carry out the inquiry without any disturbances. In the case of *Prof. (Mrs) Rambukwella v University of Peradeniya*³ where the Petitioner in that case was relieved of her duties as the Head of the Department of Archaeology in the University of Peradeniya pending an inquiry on administrative matters, the Petitioner contended that she should be transferred or placed

³ CA Writ Application No. 379/2021 CA Minutes of 22.09.2022

on compulsory leave in terms of paragraph 18:7 of Chapter XXII of the Code, Sobhitha Rajakaruna J. observed that,

“The Para 18.7 of the said Chapter stipulates that if the person cannot be appropriately interdicted in terms of this Section, but it is in the interest of the investigation or inquiry that he should not exercise the functions of his office, he should be transferred, or placed on compulsory leave in terms of Para 14 of Chapter X.”

Considering the above facts, it is evident that the Council have the power to place the Petitioner on compulsory leave in the interest of the inquiry until they think fit. Therefore, this Court refuses to grant relief prayed for in prayer (f) as the Council has acted within its power by placing the Petitioner on compulsory leave.

The Petitioner in prayer (i) seeks a Writ of Mandamus directing the Respondents to grant his increments withheld during the period of his compulsory leave in terms of Paragraph 14.3 of Chapter X of the Code. Paragraph 14.3 reads as follows,

“Persons who are compelled to keep away from work for reasons beyond their control in terms of sub-paragraph 14.1 above shall be paid their increments for the period they were on compulsory leave.”

The Petitioner argues that the 1st Respondent has failed to release his increments during the period of his compulsory leave. Except for denying this fact in the statement of objections, the Respondents do not argue on this matter. However, in terms of the letter

marked as P17, the Petitioner was paid full salary effective from 01.01.2015. Whether the increments are included in the full salary is a disputed fact. CHOUDRI in his book on the Law of Writs and Fundamental Rights (2nd Edn, Vol 2)⁴ states that,

“The rule has been stated that mandamus will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts, or where the legal result of the facts is subject to controversy. If the right is in serious doubt, the discretionary power rests with the officer to decide whether or not he will enforce it, till the right shall have been established in some proper action, and discretion fairly exercised in such circumstances cannot be controlled by mandamus”

The Petitioner has neither placed material before this Court to prove that increments were not paid to him, nor has he proved that increments were not included in his full salary. Therefore, whether the increments were included in the full salary of the Petitioner is a disputed material fact. Furthermore, it is trite law that the public authority must have a public duty, and the Petitioner must have a legal right for the court to issue a Writ of Mandamus. In the case of *Samaraweera v Minister of Public Administration*,⁵ it was held that, *“To be enforceable by mandamus, the duty to be performed must be of a public nature and not merely of a private character.”* The Petitioner’s right to increments in the instant application is more of a private character than that of a legal

⁴ at page 381

⁵ 2003 3 Sri LR at 64

right. Considering the fact that whether the increments were included in the salary is a disputed material fact and the private nature of the Petitioner's claim, this Court is not inclined to grant the relief prayed for in the prayer (i) of the petition.

Now I will address the relief prayed for in prayers (j) and (k) together. In prayer (j), the Petitioner seeks a Writ of Mandamus directing the Respondents to rectify the effective dates of the Petitioner's full salary and compulsory leave as 23.07.2014 and to pay the increments during the Compulsory Leave period. The Petitioner argues that he is entitled to be reinstated from 23.07.2014 as the disciplinary authority is obliged to conclude the inquiry and issue the order within one year from the date of issuance of the charge sheet (23.07.2013). Therefore, it is contrary to the Circulars marked as P21(a) and P21(b). Both the Circulars are revisions to Chapter XLVIII of the Establishments Code. Sub Section 22:1:1, Chapter XLVIII, volume II of the Establishments Code has been revised by the Circular marked as P21(a) as follows,

“The Disciplinary Authority should take necessary steps to conclude the relevant inquiry and to issue the disciplinary order within a period of one year from the date of serving a charge sheet against an accused officer. Except where the charge is not in terms of Sub-Section 31:11, and except where the proceedings and the issue of disciplinary order are delayed for more than one year due to the lapse of the part of the accused officer, he should if under interdiction be reinstated in service and paid his salary from that date. Regarding the unpaid

salary up to that date, action should be taken as stated in the disciplinary order received.”

The Same Section has been once again revised by the Circular marked as P21(b) as follows,

“The Disciplinary Authority should take necessary steps to conclude the relevant inquiry and to issue the disciplinary order within a period of one year from the date of serving of a charge sheet against an accused officer. Except where the charge is not in terms of Sub – Section 31:11, and except where the proceedings and the issue of disciplinary order are delayed for more than one year due to lapse of the part of the accused officer, he should, if under interdiction, be re-instated in service and paid his salary from that date, on the discretion of the disciplinary authority, subject to the facts mentioned in the disciplinary inquiry. Regarding the unpaid salary up to that date, action should be taken as stated in the disciplinary order received.”

Both Circulars state that if the disciplinary inquiry fails to be completed within one year from the issuance of the charge sheet, the accused officer should be reinstated and paid his salary and action concerning the unpaid salary will be stated in the disciplinary order. The Petitioner has been reinstated by the letter dated 01.01.2015 marked as P17 with effect from 01.10.2013 and decided to pay his full salary with effect from 01.01.2015. It is evident from the Circulars marked as P21(a) and P21(b) that once an

officer is reinstated, he must be paid his entitled salary from the date of reinstatement.

After the Petitioner was indicted, he was entitled to only half of his salary. By P17, the Petitioner has been placed on compulsory leave with effect from 01.01.2015, and he has been granted his full salary from 01.01.2015. Therefore, it is clear that necessity does not arise to rectify the effective date of the Petitioner's full salary and compulsory leave as 23.07.2014. By prayer (k), the Petitioner seeks a Writ of Mandamus directing the Respondents to release the half salary withheld during the period of interdiction, i.e., from 10/2013 to 31.12.2014, and to release the two increments due on 29.11.2013 and 29.11.2014. As mentioned above, in terms of the Circulars marked as P21(a) and P21(b), the unpaid salary will be decided in the disciplinary order. Therefore, considering the above-stated facts, this Court is of the view that the Petitioner is not entitled to seek relief prayed for in prayers (j) and (k).

Considering all the above-stated facts and circumstances, this Court is of the view that the Petitioner is not entitled to any relief prayed for in the Petition. Therefore, this Court dismisses this Writ Application. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M. T. Mohammed Laffar, J.

I agree.

JUDGE OF THE COURT OF APPEAL