

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

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

Dr. B.A.D. Sujeewa Wimalasena
No.104, Hampstead Green NW,
Calgary AB, T3A 6H2,
Canada.

CA (Writ) application No: 337/2024

(Appearing through his Attorney Dr.
Anuruddhika Ganganie Jayasinghe of
163/152B, Bangalawatta, Kirillawala,
Kadawatha)

PETITIONER

-Vs-

1. University of Ruhuna,
Wellamadama,
Matara,
Sri Lanka.
2. Vice Chancellor,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
3. Deputy Vice-Chancellor,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
4. Registrar,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.

5. The Dean,
Faculty of Engineering,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
6. The Dean,
Faculty of Management and Finance,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
7. The Dean,
Faculty of Agriculture,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
8. The Dean,
Faculty of Fisheries and Marine Sciences
and Technology,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
9. The Dean,
Faculty of Humanities and Social Sciences,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
10. The Dean,
Faculty of Medicine,
University of Ruhuna.
Wellamadama, Matara,
Sri Lanka.

11. The Dean,
Faculty of Science,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
12. The Dean,
Faculty of Graduate studies,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
13. The Dean,
Faculty of Technology,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
14. The Dean,
Faculty of Allied Health Sciences,
University of Ruhuna,
Wellamadama, Matara,
Sri Lanka.
15. Ven. Bambarende Amarawansa Thero,
Council Member,
Purana Viharaya,
Bambarenada, Kottagoda.
16. Prof. Chandrani Liyanage,
Council Member,
No.61, Inland Hills,
Karapitiya,
Galle.
17. Mr. Sudath Jayasekara,
Council Member,
No. 56/2, 8th Lane,
Araliya Uyana,
Depanama,
Pannipitiya.

18. Admiral T.S.G. Samarasinghe
Council Member,
No. 613/4 B, High level Road,
Gangodawila,
Nugegoda.
19. Mr. M. Ishthihar Sufiyan
Council Member,
No.20/1, Alexandra Road,
Colombo 06.
20. Mr. K.N. Samarasinghe
Council Member,
No. 43/11,
Field view Garden,
Rajamahavihara Road,
Navinna,
Maharagama.
21. Mr. U.G.D. Chanaka Kariyawasam,
Council Member,
No.36, Light House Street,
Fort, Galle.
22. Mr. Sarath Siriwardana
Council Member,
No. 40/59,
Judges Housing Scheme,
Baddegama Road, Kotte.
23. Mr. R.C. de Zoysa
Council Member,
No. 23, Paramulla Road,
Pamburana,
Matara.
24. Mr. Kapila Manamperi
Council Member,
No. 18, Lawyers Office Complex,
Fort, Matara.

25. Mr. Thusitha P. Wanigasingha
Council Member,
No. 126, Walgama South,
Matara.

26. University Grants Commission,
No. 20,
Ward Place,
Colombo 07.

27. The Chairman,
University Grants Commission,
No. 20, Ward Place,
Colombo 07.

28. Hon. Attorney-General
Attorney-General's Department,
Hulftsdorp Street,
Colombo 12

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

Counsel: Dr. Thashira Gunathilake with Nimani Amanda and Udani Dissanayake

instructed by Hashan Gunaratne for the Petitioner.

Nayomi Kahawita, SSC for the Respondents.

Written submissions tendered on:

15.07.2025 by the Petitioner.

Argued on: 24.06.2025

Decided on: 06.08.2025

S. U. B. Karalliyadde, J.

The Petitioner to this Writ Application was a Senior Lecturer in the faculty of Engineering at the University of Ruhuna, the 1st Respondent. The Petitioner proceeded on a four-month (17.04.2023 to 16.08.2023) sabbatical leave with pay, upon obtaining the prior approval of the Council of the 1st Respondent (P2). While on sabbatical leave, the Petitioner submitted his resignation letter dated 15.05.2023 marked as P4 in compliance with the three-month notice requirement in terms of Paragraph 4:1 of The Establishments Code of The University Grants Commission and The Higher Educational Institutions / Institutes of 1984 (the Code) to resign with effect from 15.08.2023. Thereafter, by letter dated 14.06.2023 marked as P6, the Vice Chancellor of the 1st Respondent (the 2nd Respondent) informed the Petitioner that the Council of the 1st Respondent at its 436th meeting had decided that the Petitioner must either repay three months' salary or consent to the deduction of three months' salary from his University Provident Fund to accept his resignation. In reply, the Petitioner has consented to the deduction of three months' salary from his University Provident Fund at the end of the sabbatical leave (P7).

However, as the Petitioner's salary for the months of June, July, and August 2023 had not been paid, he made inquiries regarding the outstanding salary from the Assistant Bursar. On the same day, the 2nd Respondent, by email dated 11.08.2023 marked as P11, informed the Petitioner that there exists an obligation to serve a mandatory period following the completion of sabbatical leave, and if the Petitioner fails to report to work

at the end of the sabbatical leave period, a letter of vacation of post could be issued on the Petitioner. Thereafter, the Petitioner made several inquiries regarding the status of his resignation letter. By letter dated 27.11.2023 marked as P15, the 2nd Respondent informed the Petitioner that the Council of the 1st Respondent, at its 440th meeting, had decided to issue a vacation of post letter against the Petitioner with effect from 15.05.2023, on the basis that the Petitioner was not eligible to tender his resignation while on sabbatical leave and was required, under the applicable rules and regulations, to assume duties in the department prior to submitting his resignation. Thereafter, the Petitioner made a request under the Right to Information Act, No. 12 of 2016, seeking information regarding the Council decision referred to in the letter marked as P15. Pursuant to the said request, the Petitioner received a copy of the decision taken by the Council of the 1st Respondent at its 440th meeting held on 12.10.2023, marked as P22. In the decision marked as P22 it has stated that the Council of the 1st Respondent has recommended to inform all staff members on sabbatical leave who decide to resign, to resume duties immediately and then submit their resignation letters and if failed to resume duties, vacation of post notices will be issued effective from the date of submission of the resignation letter. In terms of P22, the Council has approved a two-year mandatory period of service after the sabbatical leave period is completed. Being aggrieved by the decision of the Council, the Petitioner appealed against the Council decision marked as P22 to the University Service Appeal Board. The Petitioner states that he tendered his resignation in accordance with the procedure set out under the

Code. Accordingly, argues that the Council decision marked as P22, which was communicated to him by the letter marked as P15, is erroneous in law.

Being aggrieved by the said decision of the Council of the 1st Respondent, the Petitioner has filed the instant Application, seeking the following substantive reliefs, *inter alia*,

- c) Grant and issue a mandate in the nature of a Writ of Certiorari to quash the decision of the 2nd to 25th Respondents marked P22 and its communication marked P15, respectively dated 12/10/2023 and 27/11/2023, which denied the acceptance of the resignation of the Petitioner marked P4.
- d) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 2nd to 25th Respondents of the Council to accept the resignation letter submitted by the Petitioner Marked P4.
- e) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st Respondent to pay to the Petitioner his salary for the months of June, July, and August 2023.

The contention of the Petitioner is that he followed the procedure laid down in Paragraph 4 of Chapter V of the Code by giving three months' prior notice before resignation, and there is no provision in the Code prohibiting a member of the staff from tendering resignation within two years after the completion of sabbatical leave. Therefore, the decision of the Council marked as P22 communicated to the Petitioner by the letter marked as P15 is erroneous in law and is *ultra vires*. The basis for this

argument is that it is prohibited to submit resignations while on study leave under Paragraph 4:11 of Chapter V of the Code, as it amounts to a violation of the bond between such a person and the Higher Educational institute, but there is no such prohibition for a member of the staff who applies for sabbatical leave. The Petitioner further argues that the Council, in its decision marked as P22, relies on Paragraph 36:9 of Chapter X of the Code in refusing to accept his resignation. However, it only imposes a duty on the governing authority to be satisfied when granting sabbatical leave that the member of the staff intends to continue service after completing such leave and does not create a binding obligation on the staff member to complete a mandatory service period. Paragraph 36:9 reads thus,

“Sabbatical leave shall not be granted unless the Governing Authority is satisfied that the member of staff concerned will serve the Higher Educational Institution/Commission to which he belongs for a period of at least two years on his resumption of duties after such leave.”

The Petitioner further contends that Paragraph 36:9 of the Code should not be interpreted in isolation but must be read in conjunction with the other relevant provisions, particularly Paragraph 36:13 of Chapter X, which expressly provides that a member of the academic staff who avails themselves of sabbatical leave is not required to enter into any agreement or bond in respect of such leave. Accordingly, the Petitioner submits that no post-leave service obligation arises by operation of law. In support of

this position, the Petitioner relies on Paragraph 33(a) of Chapter X of the Code, which mandates the execution of an agreement to serve the Higher Educational Institution upon resumption of duties following the grant of study leave, thereby demonstrating a clear distinction in the obligations imposed in respect of sabbatical leave and study leave.

The position of the Respondents regarding this is that, in terms of Paragraph 36:9 of Chapter X of the Code, an obligatory requirement exists to serve a minimum period of two years upon the conclusion of sabbatical leave, and that this has been the established practice of the 1st Respondent. Furthermore, relying on Paragraph 22 of Chapter X of the Code, the Respondents assert that an employee is not entitled to leave once a notice of resignation has been tendered. Paragraph 22 reads thus,

“A person who has tendered his resignation from his appointment will not be entitled to any annual leave or casual leave immediately prior to termination of his appointment.”

Further, the Respondents argue that notifying the Petitioner of the notice of vacation of post by the letter marked as P15, which has conveyed the Council decision marked as P22, was done in terms of paragraphs 4:1 and 4:1:1 of Chapter V, Paragraph 36:9 of Chapter X and Paragraph 7:1 of Chapter V of the Code.

The question before this Court is whether the Council decision marked as P22 communicated to the Petitioner by the letter marked as P15 is erroneous in law as

claimed by the Petitioner. The procedure governing the submission of resignations is set out in Chapter V of the Code. In terms of Paragraph 4:1 of Chapter V, a teacher employed in a Higher Educational Institution may resign from service by giving three months' prior written notice. However, where such prior notice cannot be given, Paragraph 4:1:1 of Chapter V stipulates that the teacher is required to pay three months' salary to the Institution in lieu of a notice. Paragraph 4:1 and 4:1:1 are as follows,

4:1 A teacher employed in a Higher Educational Institution may resign his appointment upon giving three months' notice in writing to the Governing Authority of the Institution. Such notice should be sent through the Head of the Department, the Dean of the Faculty and the Principal Executive Officer of the Institution. Teachers employed in Institutes should give notice through the Principal Executive Officer of the Institute to be forwarded to the Vice-Chancellor of the University to which it is attached, for consideration by the Governing Authority.

4:1:1 Where it is not possible to give the required three months' notice, the teacher shall pay the Institution three months' salary in lieu of such notice.

The Petitioner has submitted his resignation letter marked as P4 on 15.05.2023, giving three months' prior notice. Therefore, it is evident from P4 that he has followed the correct procedure for resignation under the Code by giving three months' prior notice. Now the question arises whether it is permitted to submit a resignation while on

sabbatical leave in terms of the Code. The argument of the learned Senior State Counsel appearing for the Respondents is that, in terms of Paragraph 36:9 of Chapter X of the Code, a teacher who went on sabbatical leave must serve a two-year obligatory service period following the completion of a sabbatical leave period. The Petitioner's contention is that there is no such obligation on his part, as Paragraph 36:13 of Chapter X specifically states that there is no requirement to enter into a bond or agreement on such leave, and the obligation lies on the Respondents to be satisfied themselves that the applicant will resume duties after obtaining sabbatical leave. Nowhere in the Code expressly prohibits the submission of a resignation while on sabbatical leave. Paragraph 36:9 merely stipulates that the governing authority must be satisfied that the member of the staff intends to resume duties and continue in service for a period of two years upon the completion of the sabbatical leave. The Respondents have neither submitted any document nor has satisfied this Court as to which material facts the governing authority of the 1st Respondent has satisfied itself that the Petitioner will resume duties after the completion of his sabbatical leave. In the letter marked as P15, it is stated that, in terms of the applicable rules and regulations, the Petitioner is not eligible to tender his resignation while on sabbatical leave. The learned Senior State Counsel appearing for the Respondents attempts to establish this position by arguing that no teacher is entitled to leave after submitting his resignation under Paragraph 22 of Chapter X of the Code. However, the said Paragraph is applicable only in relation to annual and casual leave and has no application to sabbatical leave. The 1984 Code is the Code

which is applicable to the present Application. This Court further observes that by the Code published in 2023, Paragraph 36:9 of the 1984 Code has been repealed, evidently to address certain lacunae therein. Considering the above-stated facts, it is the view of this Court that there is no provision in the Code that prevents the Petitioner from submitting his resignation while on sabbatical leave. Upon careful consideration of the arguments advanced by both parties and the relevant provisions of the Code, this Court is inclined to agree with the contention of the Petitioner. Therefore, the Respondents have acted *ultra vires* their powers as there is no provision in the Code expressly prohibiting submission of resignation while on sabbatical leave.

In “Administrative Law”, by H. W. R. Wade and C.F. Forsyth (11th edn, at page 28), it states thus,

“Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e. deprived of legal effect. If it is not within the powers given by the Act, it has no legal leg to stand on.”

In *Attorney-General v. The Great Eastern Railway Co.*,¹ it was held by Lord Selborne that,

“[T]he doctrine of ultra vires ... ought to be reasonably, and not unreasonably, understood and applied, and that whatever may fairly be regarded as incidental

¹ (1880) 5 A.C. 473

to, or consequential upon, those things which the Legislature has authorized, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires.”

In the case of *Liyanage and others v. Gampaha Urban Council and others*,² where the Petitioners in that application sought a writ of certiorari and prohibition against a decision of the Gampaha Urban Council to establish a weekly fair on Market Street claiming that neither the Urban Councils Ordinance nor any other statute empowered the Urban Council to organize a fair or market on a thoroughfare, this Court held that,

“Anything purported to be done, by the Council, in excess of what is permitted by the statutory provisions will be considered as wholly invalid in law, on the application of the doctrine of ultra vires. However, in construing the relevant statutory provisions the Court will bear in mind the need to promote the general legislative purpose underlying these provisions and consider whether the impugned act is incidental to or consequential upon the express provisions. If it is so considered necessary, the impugned act will not be declared ultra vires.”

The Code does not expressly prohibit the submission of a resignation while on sabbatical leave, nor can Paragraph 36:9 be construed as incidental or consequential to such a prohibition, as there are no other provisions in the Code that imply a prohibition against resigning during sabbatical leave or an obligation to resume duties upon its

² (1991) 1 SLR 1

completion. Accordingly, this Court is of the view that the Respondents have acted ultra vires in determining that the Petitioner is obligated to resume duties upon completion of sabbatical leave and that the submission of a resignation during such leave is not permitted.

Furthermore, the Respondents rely on Paragraph 7:1 of Chapter V of the Code in justifying the Council decision in P22 and the Letter marked as P15, where the Petitioner has been served with a notice of vacation of post. Paragraph 7:1 reads thus,

“A person employed in the Commission/ Higher Educational Institution/ Institute who absents himself from duty without prior approval will be deemed to have vacated his post from the date of such absence and he should be immediately informed in writing by registered post or by any appropriate means by the disciplinary authority.”

In terms of Paragraph 7:1, if a person absents himself from duty without prior approval, it is considered that he has vacated his post. However, considering the fact that the Petitioner has adhered to the proper procedure in submitting his resignation and the fact that Respondents have erred in deciding that the Petitioner is not entitled to submit resignation while on sabbatical leave, this Court is of the view that Respondents are not entitled to issue notice of vacation of post on the Petitioner.

Furthermore, it should also be emphasised that since the Petitioner has given three months’ prior notice in his resignation letter marked as P4 in compliance with

Paragraph 4:1 of Chapter V of the Code, this Court see no reason why the Respondents should withhold the Petitioner's salary for the months of June, July and August 2023. Therefore, it is the view of this Court that the Respondents have acted *ultra vires* in not paying the Petitioner his salary for the months of June, July and August 2023.

Considering all the above-stated facts and circumstances, this Court is of the view that the decision of the Council marked as P22 communicated to the Petitioner by letter marked as P15 is *ultra vires*. Accordingly, this Court grants relief prayed for in prayers (c), (d) and (e) of the Petition. Application allowed. No costs ordered.

Application allowed

JUDGE OF THE COURT OF APPEAL