

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

*In the matter of an application for Mandate
in the nature of Writs of Certiorari and
Mandamus under and in terms of Article
140 of the Constitution.*

**CA (Writ) Application No.
593/2021**

Rev. Saliya Ashokapura Nanda.
Old Temple,
Nugawela, Maharachchimulla.

PETITIONER

1. University of Kelaniya
Kandy Road, Kelaniya
2. Snr. Prof. N.R. de Silva
Vice-Chancellor/ Member of the Council of
University of Kelaniya
3. Snr. Prof. J.M.D. Ariyaratna
Dean / Faculty of Graduate Studies
Member of the Council of University of
Kelaniya
4. Dr. P.G. Wijayarathna
Dean Faculty of Computing and
Technology
Member of the Council of University of
Kelaniya
5. Prof. M.M. Gunathilaka
Dean / Faculty of Social Sciences
Member of the Council of University of
Kelaniya
6. Snr. Prof. S.R.D. Kalingamudali
Dean / Faculty of Science
Member of the Council of University of
Kelaniya

7. Dr. P.N.D. Fernando
Dean / Faculty of Commerce &
Management Studies
Member of the Council of University of
Kelaniya
8. Dr. U.S. Senarath
Dean / Faculty of Humanities
Member of the Council of University of
Kelaniya
9. Snr. Prof. S.J. de S. Hewavisenthi
Dean / Faculty of Medicine
Member of the Council of University of
Kelaniya
10. Prof. H. Abeyagunawardena
Member of the Council of University of
Kelaniya
11. Mr. Rakhitha Abeygoonawardana
Member of the Council of University of
Kelaniya
12. Prof. Ranjith Arthanayake
Member of the Council of the University of
Kelaniya
13. Mr. S.M. Gotabaya Jayarathne
Member of the Council of the University of
Kelaniya
14. Prof. Ananda Patabandige
Member of the Council of the University of
Kelaniya
15. Prof. Rohan Rajapakse
Member of the Council of the University of
Kelaniya
16. Mr. L.E. Susantha Silva

Member of the Council of the University of
Kelaniya

17. Mr. Cyril Suduwella
Member of the Council of the University of
Kelaniya
18. Mr. Upali Wijayaweera
Member of the Council of the University of
Kelaniya
19. Prof. Nimal Perera
Member of the Council of the University of
Kelaniya
20. Mr. Sanjaya Bandara
Member of the Council of the University of
Kelaniya
21. Snr. Prof. N.A.K.P.J. Seneviratne
Member of the Council of the University of
Kelaniya
22. Ven. (Snr. Prof.) Induragare
Dhammarathana Thero
Member of the Council of the University of
Kelaniya
23. Mr. K.K.K. Dharmathilaka
Registrar/Ex-officio Secretary of the
Council of the University of Kelaniya
C/O The Registrar, University of Kelaniya,
Dalugama, Kelaniya
24. Ven. Snr. Prof. Nabiriththankakadawar
Gnararathana Thero
Member, Selection Committee for the Post
of Lecturer (Probationary), Department of
Pali and Buddhist Studies, Faculty of
Humanities, University of Kelaniya
University of Kelaniya, Kandy Road,
Kelaniya

25. Ven. Snr. Prof. Makuruppe
Dhammananda Thero
Member, Selection Committee for the Post
of Lecturer (Probationary), Department of
Pali and Buddhist Studies, Faculty of
Humanities, University of Kelaniya
University of Kelaniya, Kandy Road,
Kelaniya

26. Ven. Manapitiye Wajirabuddhi Thero
University of Kelaniya, Dalugama,
Kelaniya

RESPONDENTS

Before: M. T. MOHAMMED LAFFAR, J.

Counsel: Sanjeewa Jayawardena PC with Ranmalee Meepagala for the
Petitioner.

Navodi De Zoysa, SC for the Respondents

Argued on : 17.05.2024

Written Submissions on : 08.07.2024 (by Petitioner)

Decided on : 07.08.2024

MOHAMMED LAFFAR, J.

The Petitioner instituted this action against the University of Kelaniya (the 1st Respondent) and several other Respondents, challenging the appointment process for the position of Lecturer (Probationary) in the Department of Pali and Buddhist Studies. The Petitioner is seeking several mandates in the nature of Writ of *Mandamus* and mandates in the nature of Writ of *Certiorari* in this regard as prayed for in the Petition.

The core issue revolves around the alleged improper rejection of the Petitioner's application for this post on the grounds of being "overqualified" due to his possession of a Master's Degree and/or an MPhil.

It is pertinent to note at the outset that the State Counsel representing the Respondents, indicated that no statement of objections would be filed, and further indicated that no oral or written submissions would be made against the Petition, thereby leaving the Petitioner's facts uncontested. Consequently, the Petitioner argues that he is entitled to the relief sought based on the uncontroverted facts that are deemed to be admitted as presented in the Petition.

The documents marked P2(a) - P6 tendered by the Petitioner demonstrates the outstanding academic excellence achieved by the Petitioner. Further, the documents produced marked P7(a) - P7(m), demonstrate the Petitioner's work experience. It is also submitted that the two service certificates marked as P7(l) and P7(m) are issued by the 1st Respondent University itself.

It is submitted that on or about 03.09.2020, the 1st Respondent University advertised several posts in various departments in the Faculty of Humanities, including the relevant post for the Department of Pali and Buddhist Studies (marked 'P8(a)'). The Petitioner duly submitted his application (marked 'P9'), where item 11.2 allows an applicant to list postgraduate degrees. After scrutinizing the application, the Petitioner was shortlisted and informed by letter dated 29.03.2021 (marked 'P13') to present himself for the interview.

It is submitted by the Petitioner that if possessing an MPhil qualification makes an applicant overqualified for the post of Lecturer (Probationary), a serious question arises as to why the 1st Respondent University shortlisted the Petitioner and directed him to prepare a presentation for the interview. By being called for the interview, the Petitioner had a legitimate expectation of being duly assessed and marked according to the council-approved marking scheme.

On 07.04.2021, the Petitioner faced the interview before the selection committee comprising of the 2nd, 8th, 13th, 14th, 24th, and 25th Respondents. However, It is submitted that on or about 07.04.2021, the Petitioner became aware that the selection committee had recommended the 26th Respondent for the advertised post of Lecturer (Probationary).

Since the Petitioner is more qualified and experienced than the 26th Respondent, he immediately submitted an RTI Application dated 09.04.2021 (marked 'P14') and received the mark sheet of the Selection Committee (marked 'P15(a)').

It is submitted that to the Petitioner's dismay, he noted that he was listed as the 8th candidate but received no marks whatsoever due to being "overqualified for the post because of the MPhil." The Selection Committee recommended that overqualified candidates not be considered for the post of Lecturer (Probationary).

The attention of this court was also drawn to the council-approved marking scheme for the recruitment of Lecturer (Probationary) at the 470th meeting of the Council held on 09.04.2019 (at pages 109-111 of the brief). In terms of the said scheme, it is submitted by the Petitioner that the elimination of the Petitioner, based on his postgraduate qualifications are grossly illegal, unlawful and *ultra vires*.

The Petitioner claims that despite being more qualified and eligible for the position, his application was not considered, while the 26th Respondent, who was less qualified, was selected. The Petitioner argues that this decision violates the principles of natural justice and the approved marking scheme for candidate selection. The Petitioner had sent a Letter of Demand to the 2nd Respondent (marked 'P26'), requesting a review of the selection process, but this was rejected on the grounds that he did not apply for the post of Lecturer (Unconfirmed), for which he was eligible due to his qualifications.

The Petitioner states that the selection process was arbitrary, irrational, and influenced by *mala fide* considerations. He contends that similar candidates with postgraduate qualifications have been selected for probationary lecturer positions in other departments and universities, thus establishing a precedent that the Petitioner's qualifications should not have been a disqualification.

The marking scheme for the interview, as documented on Page 110 of the Petition, does not include overqualification as a disqualifying criterion. The scheme outlines various categories such as academic qualifications, presentation skills/teaching ability, research, publication and creative work, medals, scholarships and prizes at university level, and extra-curricular activities. Each of these categories has specific marks allocated, with academic qualifications accounting for a substantial portion. Specifically, higher degrees are awarded marks under academic qualifications, with an M.Phil degree, such as the one held by the Petitioner earning 15 marks. The fact that overqualification is not mentioned in the criteria implies that it should not have been used as a basis for disqualification. This oversight by the selection committee indicates a departure from the established criteria, leading to an arbitrary and unjust decision.

The Petitioner's qualification, an M.Phil degree, is clearly recognized within the marking scheme, and postgraduate degrees are positively considered with allocated marks. The selection committee's decision to identify the Petitioner as overqualified, and consequently disqualifying him, stands in contrast to the criteria outlined. By marking the Petitioner as overqualified, the committee failed to adhere to the established framework for evaluating candidates. This action was not only contrary to the marking scheme but also deprived the Petitioner of a fair assessment based on his merits. There appears to be no reason as to such a decision than mere statements.

The selection process demonstrated inconsistencies, particularly when compared to parallel interviews in other departments of the 1st Respondent University. Documents presented shows that higher degrees were considered positively in other departments, with overqualified candidates often being recommended for higher grades, such as Lecturer (Unconfirmed). This discrepancy highlights a lack of uniformity and fairness in the selection process across different departments. If other departments recognized and rewarded higher qualifications, the decision to disqualify the Petitioner on the basis of being overqualified appears even more arbitrary and unjust.

De Smith's Judicial Review (8th Edition, 2018 Sweet and Maxwell, p.605) reads as follows:

*"It is observed that **"Irrationality may also sometimes be inferred from the absence of reasons.** 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"."*

The concept of legitimate expectation is crucial in this context. The Petitioner was shortlisted and summoned for the interview, creating a legitimate expectation of being duly interviewed and assessed according to the prescribed marking scheme. The selection committee's deviation from the marking criteria by disqualifying the Petitioner based on overqualification violated this legitimate expectation.

In **Zamrath Vs. Sri Lanka Medical Council**, SC FR 119/2019, decided on 23rd July 2019, Dehideniya J examined the rationale underlying the doctrine of legitimate expectation and observed (at p.9) that the doctrine:

"Ensures legal certainty which is imperative as the people ought to plan their lives, secure in the knowledge of the consequences of their actions. The perception of legal certainty deserves protection, as a basic tenet of

the rule of law which this court attempts to uphold as the apex court of the country. The perception of legal certainty becomes negative when the authorities by their own undertakings and assurances have generated legitimate expectations of people and subsequently by their own conduct, infringe the so-generated expectations."

In the obiter dictum of the case **Ginigathgala Mohandiramlage Nimalisiri Vs. Colonel P.P.J. Fernando and others** (SC/FR/256/2010) Justice Priyantha Jayawardena views legitimate expectation as follows;

"The doctrine of legitimate expectation applies to situations to protect legitimate expectation I arises from establishing an expectation believing an undertaking or promise given by a public official or establishing an expectation taking into consideration of established practices of an authority. However, the said criteria should not be considered as an exhaustive list as the doctrine of legitimate expectation has a potential to develop further. Legitimate expectation can be either based on procedural propriety or on substantive protection. Procedural expectations are protected by requiring that the promised procedure be followed save in very exceptional circumstances, for instance: where national security warrants a departure from the expected procedure. However, in such instances the decision-maker must take into account all relevant considerations."

The university's failure to recognize that in this instance, the more qualified candidate was indeed the most suitable, is another critical point. The marking scheme would have favoured the Petitioner due to his higher qualification (should the respondents have granted any marks due), which aligns with the requirements and enhances the department's academic standards. By misinterpreting the criteria and failing to value the Petitioner's higher qualification appropriately, the university has missed the opportunity to select the most competent candidate for the position.

In **Dr. Kaunanada Vs. Open University of Sri Lanka and Others** (2006) 3 SLR 225) Shirani Bandaranayake J observes as follows:

"Procedural fairness, in my view, cannot be regarded as a matter which is unimportant. Procedural safeguards should be the cornerstones of individual liberty and their right to equality. Referring to the importance of procedural fairness, Justice Frankfurter in McNabb v. United States stated that the history of liberty has largely been the history of the observance of procedural safeguards. A decade later, considering an issue on the same lines, Justice Jackson in Shaughnessy v. United

States stated that "Procedural fairness and regularity are of the indispensable essence of liberty. Several substantive laws can be endured if they are fairly and impartially applied."

This Court is of the view that in any instance, being overqualified cannot be deemed a criterion for disqualification in the absence of a specific rule or criteria to that effect. Being more qualified inherently indicates a greater capacity and ability to teach and deliver to students more effectively.

In the aforesaid circumstances, the facts of the case demonstrate that the Petitioner was right in his claims. The Respondents' failure to object to the Petition and make any submissions whatsoever against the Petitioner, the arbitrary use of overqualification as a disqualification criterion, the inconsistencies in the selection process across different departments, and the breach of legitimate expectation all point to a flawed and unjust selection process. The Petitioner's higher qualification ought to have been considered an asset rather than a disqualifying factor, and the selection committee's failure to do so necessitates judicial intervention to rectify the situation. Therefore, I grant all reliefs as prayed for in prayers (b), (c), (d), (e), (f) (g), (h), (i) and (j) of the Petition.

Application allowed. No cost.

JUDGE OF THE COURT OF APPEAL