

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

In the matter of an application under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Dr. K. Kobindarajah,  
No. 130, Kannaki Amman Kovil Lake Road,  
Poompuhar, Batticaloa.

**Petitioner**

CA Writ Application No. 302/2015

**Vs.**

1. University Grants Commission,  
No. 20, Ward Place, Colombo 07.
2. Prof. Mohan De Silva, Chairman
3. Prof. P.S.M. Gunaratne
4. Prof. Malik Ranasinghe
5. (a) Prof. Kollupitiye Mahinda Sangarakkitha  
Thero
6. Prof. Hemantha Senanayake
7. Dr. Ruvaiz Haniffa.
8. Prof. Kaumrvadivel  
2nd to 8th Respondents are of;  
University Grants Commission,  
No. 20, Ward Place, Colombo 07.
9. (a) Rauff Hakeem Minister of City Planning ,  
Higher Education and Water Supply Ministry  
of University Education , No. 18, Ward Place,  
Colombo 7
10. Eastern University of Sri Lanka,  
Vantharumoolai

11. (b) F.C. Ragel  
Vice chancellor, Eastern  
University, Vantharumoolai
12. (a) Mr. V. Kanagasingham  
Rector/ Trincomalee Campus
13. (a) Dr. S. Jayasangar  
Dean /FHCS
14. (a) Mr. S. Thedchanamoorthy  
Dean/ App. Sc ,TC
15. (a) Dr. A.N.L. Arulpragasma
16. Dr. P. Sivarajah  
Dean /Agriculture
17. (a) Mrs. K. Shanthrakumar  
Dean/ FCBS,TC
18. (a) Mr. V.R. Regal  
(Sought to be substituted )  
Dean/ Commerce & Management
19. Dr. K.E. Karunakaran  
Deputy Vice Chancellor
20. (a) Dr. Mrs. M. Vinobaba  
Dean/ Science
21. Mr. A. Gnanathan  
UGC Appointed Member
22. (a) Dr. M. Pagthinathan  
Senate Nominee
23. (a) Prof. S. Thirukkanesh  
Senate Nominee
24. Prof. R. Sivakanesan  
UGC Appointed Member

25. Dr. H.R. Thabavita  
UGC Appointed Member

26. (a) Prof. M.AM. Nuhman  
Appointed Member

27. (a) Prof : K. Kandisamy  
Appointed Member

28. (a) Mr. S. Shanmugam  
Appointed Member

29. (a) Mr. A.C.M. Mussil  
Appointed Member

30. Mr. S.M. Hussain  
UGC Appointed Member

31. Dr. S. Maunaguru  
UGC Appointed Member

31. (1 a) Mr. Sunil Shantha Ranaweera

31. (ii a) Rt. Rev. Noel Emmanuel  
Appointed Member

31. (iii) Mr. M. Ravi  
Dean / Arts & Cultural

31.(iv a) Prof Nimal Perera  
Appointed Member

31.(V) Dr. K. Premakumar  
Acting dean/ Technology  
(Sought to be added )

11(a) to 31(v) Respondents;

Members Of The Council Of The  
Eastern University Of Sri Lanka,  
Vantharumoolai, Chenkalady

32. Hon. Attorney General ,  
Attorney Generals Department,  
Colombo 12

**Respondent**

**Before:** Janak De Silva J.

**&**

**N. Bandula Karunarathna J.**

**Counsel:** Faisz Musthapha, PC with Anuradhi Wickramasinghe for the petitioner

Milinda Gunathilaka, Senior DSG for the respondents

**Argued on:** 26/06/2019

**Written Submissions:** By the Petitioner on 26/08/2019.  
By the Respondent on 24/10/2019.

**Judgment on:** 16/11/2020

**N. Bandula Karunarathna J.**

In this instant case, the Petitioner is a former Vice-Chancellor of the Eastern University. The Petitioner sought re-appointment to the post of Vice-Chancellor in 2014. The Petitioner's name along with two other candidates was forwarded to H.E. the President, for appointment as Vice-Chancellor of the Eastern University. This was in 2014. However, neither the then President, nor his successor in office selected the Petitioner for appointment. In the meantime, given that no Vice-Chancellor had been appointed, the 9th Respondent Minister appointed the 11th Respondent as Competent Authority.

The Petitioner there upon filed this application by way of a Petition dated 22nd July 2015. Subsequently, the Petitioner filed an amended Petition in this application dated 15th September 2015. By the said amended Petition the Petitioner prayed for several writs of Certiorari quashing the appointment of the 11<sup>th</sup> Respondent as Competent Authority. The Petitioner also sought a writ of Mandamus relating to the appointment to the post of Vice-Chancellor. The Petitioner also prayed for a writ of Certiorari to quash the decision of the Competent Authority not to permit the Petitioner to resume duties and to deny the Petitioner his monthly salary. As more fully set out below prayer (c) is the only relief now pursued by the Petitioner. The Petitioner also prayed for three interim orders in the amended Petition of 15.09.2015;

- i. preventing the Minister from extending the term of the Competent Authority;
- ii. preventing the Governing Council from re-advertising the post of Vice-Chancellor;
- iii. a direction to the 11<sup>th</sup> Respondent to permit the Petitioner function in his substantive post as a Senior Lecturer in mathematics in the 10th Respondent University.

The Petitioner states that the Petitioner returned to Sri Lanka from Canada on the 28th of February 2012. Upon arrival the Petitioner was granted work permit to work as the Vice-Chancellor and the Controller of Immigration informed the Petitioner that the same permit will allow the Petitioner to work in the Petitioner's substantive post as a Senior Lecturer at the same institution which enabled him to resume duties as a Senior Lecturer using the same visa. On the other hand, it was a duty of the Registrar of the university to clarify the same from the Controller of Immigration if they had any doubt about the Petitioner's ability to assume duties as a Senior Lecturer using the same Visa and the Petitioner was permitted to assume duties as a Senior Lecturer, which was the substantive post in terms of the said Visa.

The Petitioner states that as reflected by the document marked as R2, which is annexed to the objections, clearly reflect the said position that the Petitioner assumed duties as a Senior Lecturer before he assumed duties as the Vice-Chancellor. The Petitioner continued to function as a Senior Lecturer in Mathematics and served as the Second Examiner for Mathematics exams until March 2015, during which period University had paid the Petitioner a research allowance to which only academic staff were entitled, because of the Petitioner's said substantive post. Moreover, the Petitioner was paid allowances for serving as an Examiner in his substantive post as a Senior lecturer. As such, the Petitioner states that the position taken up by the Respondents that the Petitioner did not have a valid visa to function in the capacity as a Senior Lecturer in Sri Lanka, is absolutely baseless and an afterthought to justify the illegal conduct of the Respondents in preventing the Petitioner from reverting back to his substantive post of Senior Lecturer.

The Petitioner also states that there is no merit in the argument that the Petitioner had assumed duties as Vice Chancellor before assuming duties as a Senior Lecturer and that vitiates the appointment of the position of Senior Lecturer. It is submitted that the Petitioner assumed duties first in his substantive post and thereafter as Vice Chancellor as reflected by the document marked as R2, which is annexed to the objections. The Petitioner complained that he was denied the Right of obtaining 3 months' Paid Leave and the Right to hold his Substantive Post.

Further, the Petitioner states that by his letter dated 12<sup>th</sup> March 2015 he wrote to the Competent Authority of the 10<sup>th</sup> Respondent University seeking 03 months leave prior to resuming duties as a Senior Lecturer and the Competent Authority by letter dated 09<sup>th</sup> May 2015 informed the Petitioner that the Competent Authority is seeking a clarification from the UGC with regard to the same.

Thereafter, the UGC by its letter dated 24<sup>th</sup> July 2015, addressed to the Competent Authority, Professor Uma Coomarasamy had instructed to interdict the Petitioner from the post of Senior Lecturer and conduct an inquiry while paying half salary.

The Petitioner states that the letter further instructed the Competent Authority to pay the Petitioner three months special leave with full pay as per UGC Circular Letter C/99/04, for serving full term in office as the Vice-Chancellor, admitting the fact that the Petitioner's appointment and the term as Vice Chancellor was legal and that the Petitioner had duly resumed duties in his substantive position of Senior Lecturer. However, no action had been taken regarding that letter by the 11<sup>th</sup> Respondent, acting in an arbitrary, illegal and a capricious manner. The 11<sup>th</sup> Respondent's failure in adhering to the advice sought by the said respondent's own initiative demonstrates the high-handed manner in which the 11<sup>th</sup> Respondent dealt with matters.

The Petitioner further states that the Petitioner became a dual citizen with effect from 16<sup>th</sup> October 2014 prior to his tenure of office as Vice Chancellor ended on 4<sup>th</sup> March 2015 and not from 11<sup>th</sup> May 2015 as stated in the affidavit of the Respondents. Thus, the Petitioner was serving part of his term as Vice Chancellor and as a Senior Lecturer in his substantive post, as a Sri Lankan citizen.

The Petitioner says that, he had a valid visa at the time of assuming duties in his substantive post as a Senior Lecturer, in addition to that, he obtained dual citizenship whilst serving in the said capacity. The Petitioner's position is however, the Competent Authority and the other Respondents have failed to give effect to the said clarification sent by the UGC and failed to pay the Petitioner the said three months' salary or to pay the Petitioner half month's salary, in terms of the letter sent by the 1<sup>st</sup> Respondent UGC, in reply to the Competent Authority's letter seeking

a clarification. Moreover, no investigation was conducted against the Petitioner in terms of the said UGC directive.

The Petitioner argues that he is entitled to revert back to his substantive post in terms of the circular marked as R7 and the letter marked as Pi9, which is annexed to the counter objections. Therefore, the Petitioner demands that he is entitled for writs to be granted against the Respondents in terms of the prayers of Petition of the Petitioner.

However, subsequent to a thorough analysis of the factual setting of this case, the following can be adduced.

The Petitioner's application for interim relief was supported on 28th September 2015 which was refused. In the meanwhile, the Petitioner filed 3 Fundamental Rights applications seeking similar reliefs to those prayed for in this Application.

The Petitioner withdrew SC/FR 397/2015 and SC/FR 461/2015. The 3rd SC/FR Application No. 24/2016 was supported and the Supreme Court refused leave, according to the documents R10 and R10A.

Subsequently, when this matter was taken up for hearing before this Court on 26th June 2019 the Petitioner's Counsel informed Court that the Petitioner would be restricting himself to prayer (c) of the amended Petition. Prayer (c) is to quash the decision of the 11<sup>th</sup> Respondent not to permit the Petitioner to report for duties as a Senior Lecturer in Mathematics and stop salaries from March 2015.

It is pertinent to note that the Petitioner had held the post of Senior Lecturer in Mathematics up to 2004. The Petitioner then vacated post, and migrated to Canada.

Subsequently, when the Petitioner was to be appointed to the post of Vice-Chancellor, the Petitioner also sought reinstatement in the post of Senior Lecturer. This request was agreed to by the 10th Respondent University, and the letter P8(a) was issued. However, as at the date of issuing the said letter P8, the Petitioner had not disclosed to the 10th Respondent University that he was a Canadian Citizen and not a Citizen of Sri Lanka.

This fact of non-disclosure of the Petitioner's Canadian Citizenship as at the date of P8, is not countered by an assertion by the Petitioner that the Petitioner did make disclosure according to paragraph 13 of the Counter Affidavit.

I further note that in paragraph 14 of the Petition the Petitioner admits that;

- a) he was a Canadian Citizen when he was appointed Vice-Chancellor;
- b) he also admits that prior to assumption of duties in Sri Lanka as Vice-Chancellor; the Petitioner obtained a Resident visa with permission to work only as Vice-Chancellor.
- c) This Resident visa was granted on 29th February 2012.
- d) The Petitioner was subsequently granted dual citizenship with officer from 16.10.2014.

The Resident Visa issued to the Petitioner is annexed to the Petition marked P10 and it expressly states that the Petitioner was permitted to work only as the Vice-Chancellor and that the Petitioner "should not engage himself in any other paid or unpaid employment other than as Vice-Chancellor.

However, the Petitioner purported to assume duties as a Senior Lecturer on 05.03.2012 after assuming duties as Vice-Chancellor on the same date. This letter is marked as P8(a).

Consequently, it is common ground that as at 05.03.2012 when the Petitioner purported to assume duties as a Senior Lecturer, he was not a Citizen of Sri Lanka, and was not permitted by this Resident visa to engage in any employment other than that of Vice-Chancellor. By circular dated 23.10.1999 the 1<sup>st</sup> Respondent, University grants Commission decided that "Vice Chancellors who complete their full term of office and revert to the substantive post in the university system, are entitled to 3 months full pay leave" according to P18/R7.

Upon ceasing to be Vice-Chancellor, the Petitioner applied for 3 months leave under the aforesaid circular by P18A. R2 annexed to the statement of objection is an extract of the UGC Establishment code chapter III. Section 18.12.02 of this chapter provides that persons who are non-citizens of Sri Lanka should not be appointed to any post in the UGC or any Higher Educational Institution, unless such non-citizens are so appointed under the authority of a lawful visa issued under the Immigrants and Emigrants Act.

It is pertinent to note that accordingly, as at the date the Petitioner was purportedly reinstated as a Senior Lecturer and when he purported to assume duties as a Senior Lecturer on 05.02.2019, the Petitioner had no legal basis on which to assume duties in such post. The purported assumption of duties as a Senior Lecturer was unlawful, since he was neither a Citizen of Sri Lanka, nor had a Visa permitting him to work as a Senior Lecturer, as at that date.

The circular R7/P18 refers to persons who revert to their substantive post in the university system. Given that the purported reinstatement of the Petitioner as a Senior Lecturer by P8, and the subsequent assumption of duties on 05.03.2012 are unlawful as the Petitioner was neither a citizen nor had a right under the Resident Visa to engage in such employment, such purported reinstatement and assumption of duties was both illegal and a nullity.

I further note that the Petitioner seeks to rely on the circular P18. However, this contemplates on a situation where a person who held a substantive post is appointed Vice-Chancellor such persons can revert to the substantive post they held previously. However, since the Petitioner's functioning as a Senior Lecturer was illegal, there was no question of him reverting to such post.

In the circumstances aforesaid, the Petitioner's application is hereby dismissed with cost.

**Judge of the Court of Appeal**

**Janak De Silva , J**

**I agree.**

**Judge of the Court of Appeal**