

**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 Writs of *Certiorari*,
Prohibition and *Mandamus* in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Dr. S.W.M.N.P. Karunarathna,
No.27/13, Adhagalawaththa,
Wellawa Road, Kurunegala.

CA Writ application No: 467/2021

PETITIONER

-Vs-

1. Rajarata University of Sri Lanka,
Mihinthale.
2. Dr. B.A. Kurunarathne,
Vice-Chancellor.
3. Prof A.M.J.B Adikari,
Dean,
Faculty of Agriculture,
Rajarata University of Sri Lanka.
4. Prof E.M.K.R.B Edirisinge,
Dean,
Faculty of Applied Sciences.
5. Prof W.P Wjewardhna,
Dean,
Faculty of Management Studies.
6. Dr S.D. Pilapitiya
Dean,
Faculty of Medicine & Allied Sciences.

7. Prof C. Withanachchi,
Dean,
Faculty of Social Sciences & Humanities.
8. Dr K.G.P.B. Jayathilake,
Dean,
Faculty of Technology.
9. Prof T. Mendis,
Senate Nominee.
10. Dr R.G.P.T. Jayasooriya,
Senate Nominee.
11. Ven P.N.P. Pangnanda Thero,
UGC Appointed Council Member.
12. Mr. R.M Wanninayake,
UGC Appointed Council Member.
13. Mr. M. Senevirathn,
UGC Appointed Council Member.
14. Mr. S.P.K. Gunarthne,
UGC Appointed Council Member.
15. Eng P Nanayakkara,
UGC Appointed Council Member.
16. Mr. H.M.K Herath,
UGC Appointed Council Member.
17. Mr. R.G. Jayasena,
UGC Appointed Council Member.
18. Prof W.W.D.A. Gunawardena,
UGC Appointed Council Member.
19. Mr. S.S.K. Mohotti,
UGC Appointed Council Member.

20. Mr. A.G. Karunaratna,
UGC Appointed Council Member.

21. Mr. I.R.G.D.J.K Ihalagedara,
Head,
Department of Humanities,

The 2nd to 21st Respondents of
Rajarata University of Sri Lanka,
Mihinthale.

22. Prof. K.M.P Kulasekara,
78, Ramasinha Mawatha,
Kiribathgoda.

23. Mr. N.C.S Senaka,
Deputy Registrar,
Rajarata University of Sri Lanka,
Mihinthale.

24. Mr. D.M.T.U.K Dissanayake,
192, Koratiya, Ruwanwela,
Dabagalla,
Monaragala.

25. Mrs. W.A.L.P Dilhara,
312/A. Abey Mawatha,
Ihala Walahapitiya,
Naththandiya.

26. University Grant Commission,
70, Ward Place,
Colombo 7.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel: Uditha Egalahewa, PC with Vishva Vimukthi for the Petitioner.

M. De Alwis, SC for the Respondents.

Written submissions tendered on:

03.10.2023 by the Petitioners

Argued on: 09.08.2023

Decided on: 17.01.2024

S. U. B. Karalliyadde, J.

The Petitioner has been serving as a Cultural Officer in the North Western Provincial Council since 1999. She obtained her basic degree of Bachelor of Arts specializing in History with a Second Class (Upper Division) in 1997. In 2008 she was awarded the degree of Master of Social Science (MSSc) specialising in History. She was awarded with the Doctor of Philosophy (PhD) in History, in 2017.

Rajarata University of Sri Lanka, the 1st Respondent called for Applications for the posts of Lecturer (Probationary), Lecturer (Unconfirmed) and Senior Lecturer II, in History in the Department of Humanities of the faculty of Social Sciences and Humanities by an open advertisement on 28.04.2019 (P-6). The Petitioner submitted her Application to all the said posts on 15.05.2019 (P-1 and P-2) and attended an Interview on 13.12.2020 (P-7, P-8 and P-9). At the Interview, she tendered letters issued

by the North Western Provincial Council (marked as P-10(a) and P-10(b)) as proof of her professional experience and a certificate issued by the Department of English Language Teaching of Wayamba University (marked as P-11) to prove her competency in English language. The Petitioner was the only candidate who attended the interview for the post of Senior Lecture II one of the three candidates for the post of Lecturer (Unconfirmed) and one of the twenty candidates for the post of Lecturer (Probationary). She was the only candidate with a PhD in History. The Petitioner was not selected for any of the above-mentioned posts. The 24th and the 25th Respondents were selected to the post of Lecturer (Probationary) and no selections were made to the other two posts.

The allegation of the Petitioner is, *inter alia*, that the Panel consisted of five members had not awarded marks at the interview to which she is entitled, even though, the Panel had awarded maximum marks to her for the postgraduate qualifications relevant to the post of Lecturer (Probationary) no marks were given for her PhD and MSSc for the posts of Lecturer (Unconfirmed) and Senior Lecturer Grade II. The marking scheme used by the Interview Panel for the post of Lecturer (Probationary), Lecturer (Unconfirmed) and Senior Lecturer Grade II are tendered to Court marked as P-3, P-4 and P-5 respectively. The format of the marking scheme for all the posts was the same. The Petitioner alleges that the condition included in the marking scheme that in the case of a PhD holder the MS/MA or M Phil degree qualifications will not count when giving marks is arbitrary, unjustifiable, wrongful, illegal, irrational and contrary to the established practice of the University and that being the only PhD holder, she was

victimized as her post-graduate qualification (MSSc), was completely disregarded during the selection process. The position of the Petitioner is that since she possesses an MSSc degree in History, she is entitled to at least 10 marks under the category of “other post-graduate qualifications” under the item of No. 1(b)(ii) of the marking scheme but no marks were given in P-3 for the post of Lecturer (Probationary). Even though in terms of the University Grants Commission (the UGC) Circular No. 721 (P-16(a) and P-16(b)) the Interview Panel is duty-bound to award marks for the research work, the Petitioner alleges that the Interview Panel has not considered the experience she has for 21 years as a Cultural Officer in conducting research, preserving inscriptions, Olas, historical sites and building of historical or archaeological importance, conducting inquiries and participating field visits (vide P-10(a) and P-10(b)). The Petitioner further allege that even though she took 6 years to complete her PhD and 5 years to complete the MSSc that fact has not been considered when giving marks under item No. 2(a) of the marking scheme. The position of the Petitioner is that even though she is entitled to 20 marks under item No. 2(a) for Senior Lecturer Grade II and Lecturer (Unconfirmed) and 15 marks for Lecturer (Probationary) no marks have been given to the Petitioner. The Petitioner also alleges that the Interview Panel has not considered the material produced by her about her language proficiency and no sufficient marks have been given for her language skills under item No. 03 of the marking scheme. Another allegation of the Petitioner is that even though she is entitled to 2 marks under item No. 1(c) of the marking scheme for “Awards for academic

excellence scholarships” in respect of her attendance for an international program on Capacity Building for providing Alternative Livelihood Opportunities for the poor, sponsored by the Ministry of External Affairs, Government of India no marks have been given to her. It is the position of the Petitioner that having obtained a PhD and MSSc, with many years of research experience, some marks should have been given under item No. 3 of the marking scheme. The Petitioner further allege that even though only five members were in the Interview Panel seven members have signed the final results of the marking schemes and that fact further establishes that the final results of the selection process were manipulated, fabricated and influenced to select pre-determined candidates. The Petitioner alleges that the selection of the 24th and the 25th Respondents for the post of Lecturer (Probationary) is contrary to the provisions of the UGC Circular No. 17/2005 dated 03.11.2005 marked as P-18 where it states that,

(ii) where a candidate with a Doctoral Degree applies for the post of Senior Lecturer, application at the Lecturer (Probationary) level shall not be considered unless such Senior Lecturer applicant is first evaluated and deemed unsuitable.

The position of the Petitioner is that according to her self-evaluation, she is entitled to 102 marks for the post of Senior Lecturer II and Lecturer (Unconfirmed) and 77 marks for the post of Lecturer (Probationary) in terms of the UGC Circulars 721, 935, 996, 8/2015 and 7/2018.

The position of the Respondents is that the PhD of the Petitioner is on the topic of “Education History” and it is not relevant to the syllabus of history in the Department of Humanities therefore the requirement of a PhD in “relevant field” cannot be fulfilled through the PhD awarded to the Petitioner. To substantiate that fact, a true copy of the syllabus and an affidavit of the Dean of the Faculty of Social Science and Humanities have been tendered to Court with the statement of objections marked as R-2 and R-3 respectively. The UGC Circular No. 166 which sets out the procedure for appointments and clause No. 6 of the said Circular has been tendered to Court with the statement of objections marked as R-4 and R-4(a) respectively to substantiate that position. In addition, a document issued by the Interview Panel members indicating the facts which were considered in allocating marks to the Petitioner tendered marked as R6. Responding to the argument of the Petitioner that under item 2(a) of the marking scheme for her service of 21 years as a Cultural Officer she should get marks and no marks have been given. The Respondents have taken up the position that to obtain marks under item 2(a) of the marking scheme, the applicant should serve or should have been served in an Institute recognized by the UGC which is involved with academic and research work and the Cultural Department where she is serving in could not be recognized as quality of an Institution which is recognized by the UGC. Therefore, the Respondents argue the Petitioner is not entitled to marks under item 2(a) of the marking scheme. To substantiate that position UGC Circular No. 18/2016 has been tendered to Court with the statement of objections marked as R-5. Further, the attention of the Court

has been drawn to the fact that under item 1 in the marking scheme marks have been given for the educational qualifications and the Petitioner has been given 20 marks for her basic degree. Since it is a special degree in History she has been given 10 marks and further, considering the course work in MSSc she has been given for her post-graduation qualifications (MSSc) another 10 marks total of 35 marks which the Petitioner is entitled. But no marks have been given for her PhD since her PhD does not relate to the subject fields of vacancies advertised by the University.

No marks have been given to the Portioner under item 1(c) of the marking scheme. The position of the Respondents is that under item 1(c), the Interview Panel has considered the Awards won by the applicant for academic excellence, Scholarships, Prizes, Medals, etc. during the undergraduate period and since the Petitioner has not received any such Awards, she was not entitled to any marks under item 1(c) of the marking scheme. The Petitioner has been awarded 10 marks which is the full marks an applicant could score under item 2(b) of the marking scheme.

Under item 3 of the marking scheme marks have been given for the performance of the applicant at the interview. The Petitioner has been given total marks of 4 under item 3. The position of the Interview Panel was that the subject knowledge and the quality and the standard of the presentation of the Petitioner before the Interview Panel was not up to the standards of the expected standard of a university academic staff member.

Under item 3(b), for the extra-curricular activities, the Petitioner has been given 1 mark for the performances at national level/university level/school level/others/university colours.

Under item 3(c) no marks have been given to the Petitioner for the reason that even though the Petitioner had followed language courses, she has failed to impress the Interview Panel that she can lecture in the English language. Under item 3(e) marks have been given to the personality, attitudes and subject knowledge of the applicant. Considering the fact that the subject knowledge of the Petitioner is not up to the standard expected from a University Lecturer, she has been given only 3 marks.

Two marks have been given to the Petitioner under item 3(d) for the certificates awarded to the Petitioner in respect of the other professional qualifications of the Petitioner.

The Interview Panel has considered under item 3(f) the contribution of the Petitioner in the national and institutional level and since there is no contribution of the Petitioner in the national and institutional level acceptable to the Interview panel, no marks have been given. The position of the Respondents is that even though an applicant should get 90 marks out of 180 marks to be selected for a post of Senior Level II post and 60 marks each out of 150 marks to get selected for a post of Lecturer (Unconfirmed) and Lecturer (Probationary) the Petitioner has scored only 63, 55 and 55 marks respectively at the interview.

When considering the above-stated facts, the Court can be satisfied that the Petitioner has been given 20 marks for her basic degree qualification under item 1 of the marking scheme. The position of the Respondents is that the topic of the PhD of the Petitioner is not relevant to the syllabus of History in the University and after considering the course work in the MSSc she was given 10 marks which is the highest mark an applicant could get for the post-graduation qualifications has been given to the Petitioner. To substantiate that fact, the syllabus of the History in the university and an affidavit of the Dean of the Faculty of Social Sciences and Humanities have been tendered to Court marked as R-2 and R-3 respectively. The Court has no expertise to decide whether the PhD of the Petitioner is relevant to the posts advertised. According to the Respondents, the reason for not giving marks to the Petitioner under item 2(a) of the marking scheme is that the Department in the Provincial Council which the Petitioner has been serving for 21 years is not recognized by the UGC as an Institution that involved with academic and research work like a University. Considering the above-stated facts the Court can accept the reasons given by the Respondents for not giving marks under item 2(a) of the marking scheme to the Petitioner.

Since the Petitioner had not won scholarships, awards, or medals during the undergraduate period, no marks have been given to the Petitioner under item 1(b) (ii).

The Petitioner has been given full marks under 2(a) of the marking scheme.

Under item 3 marks have been given for the performance at the interview. Under 3(a) the Petitioner has been given 4 marks out of 40 marks. The Interview Panel concluded that the communication skills and the subject knowledge of the Petitioner are not that of the standards of a University lecturer.

Further, no marks have been awarded to the Petitioner under item 3(c) for the reason that even though the Petitioner had followed English courses, the view of the Interview Panel had been that she is not confident in lecturing in the English language.

Since the Interview Panel was of the view that the subject knowledge of the Petitioner is not sufficient, only 3 marks were given to the Petitioner under item 3(c) of the marking scheme. Further, since there is no contribution of the Petitioner at the national or Institutional level no marks were given under item 3(d). This Court has no expertise to consider the marks given by the Interview Panel under item 3 of the marking scheme based on the performance of the Petitioner at the interview. When the Court has no expert knowledge about the facts involved in a Writ application, the Court is not inclined to exercise its Writ jurisdiction.

In the case of *Pereira and Nine Others Vs Monetary Board of the Central Bank of Sri Lanka and 22 others*¹, it was held that,

"Those responsible for the achievements of the objects of the institution... would classify its ancillary staff according to some method or system found on intelligible

¹ (1994) 1 SLR 152.

differentia.... at whatever level, it would be expected that persons whose services are engaged in each group or sub-group are, in terms of knowledge skill and aptitude, suited to the circumstances of employment in each class...The search for such persons is ordinarily likely to be most successful if there is an opportunity of choosing from several persons who possess requisite minimum qualities and qualifications.... the guiding factor is the achievement of the goals of the institution within the framework of the law.... In the exercise of their discretion, they have both the right and a duty to discriminate so that the objects of the institution as set out in the instrument of creation may be achieved; distinctions are regarded as permissible because they are necessary to select those who are necessary and best suited for the performance of specific tasks."

In the case of *Dr. C.J.A. Jayawardena Vs University of Colombo and 28 Others*², Arjuna Obeyesekere J. investigated whether academic issues are outside the jurisdiction of this Court. In delivering his judgement Justice Arjuna Obeyesekere observed the following:

"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

² CA (Writ) Application No. 137/2018; CA Minutes of 22 of June 2020.

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 Forsyth³, 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."

In Abeyesundara Mudiyanse Sarath Weera Bandara Vs University of Colombo and others⁴, 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 the want of judicially manageable standards and the 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

³ C.F, Forsyth, Administrative Law (11th Edition, Oxford University Press 2014), page 537.

⁴ CA (Writ) Application No. 844/2010; CA Minutes of 8th June 2018.

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."

Observing the aforementioned authorities in the case of *Dr. C.J.A. Jayawardena Vs University of Colombo and 28 Others* (supra) Arjuna Obeyesekere J. held that;

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

This Court has no expertise to assess the marks which were given to the Petitioner under items which the Interview Panel is equipped with expert knowledge. It is the view of the Court that other than the items of which the Court has no expertise, the Petitioner has been given marks which she is entitled to under the marking scheme. Furthermore, the view of the Court is that how the marks are given to the Petitioner is legal, not arbitrary and not tainted with illegality, irrationality or procedural impropriety.

The Petitioner argues that when there were only five members in the Interview Panel signing of seven members in the final of the marking schemes establishes that the final results of the selection process were manipulated, fabricated and influenced to select the pre-determined candidates. Nevertheless, the Petitioner has not explained on what basis she alleges that the signing of seven members establishes the fact that the final results of the selection process were manipulated, fabricated and influenced to select the pre-determined candidates

Under the above-stated circumstances, I hold that the Petitioner has failed to satisfy the Court that the Writs prayed for in the Petition should be issued. Therefore, the Court dismisses the 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