

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

*In the matter of an application for writs of  
Mandamus and Certiorari in terms of Article  
140 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.*

R. V. S. P. Rajapaksha,  
206 C/ 05,  
Tiverton Road,  
Peradeniya.

Petitioner

C.A. Writ Application No: 510/2021

**Vs.**

1. University of Peradeniya  
Peradeniya.
2. Prof. M. D. Lamawansa  
Vice Chancellor,  
University of Peradeniya,  
Peradeniya.
3. Prof. W. M. T. Madhujith  
Deputy Vice Chancellor,  
University of Peradeniya,  
Peradeniya.
4. Prof. D. K. N. G. Pushpakumara  
Dean, Faculty of Agriculture,  
University of Peradeniya,

Peradeniya.

4A. Prof. K. A. S. S. Kodithuwakku

Dean, Faculty of Agriculture,  
University of Peradeniya,  
Peradeniya.

5. Dr. M. A. J. C. Marasinghe

Dean, Faculty of Allied Health Sciences,  
University of Peradeniya,  
Peradeniya.

5A. Prof. M. D. M. L. D. K. Yatawara

Dean, Faculty of applied Science,  
University of Peradeniya,  
Peradeniya.

6. Dr. E. M. P. C. S. Ekanayake

Dean, Faculty of Arts,  
University of Peradeniya,  
Peradeniya.

7. Prof. A. M. Atygalla

Dean, Faculty of Dental Sciences,  
University of Peradeniya,  
Peradeniya.

8. Prof. G. B. B. Herath

Dean, Faculty of Engineering,  
University of Peradeniya,  
Peradeniya.

8A.Dr. U. I. Dissanayake

Dean, Faculty of Engineering,  
University of Peradeniya,  
Peradeniya.

9. Prof. E. M. A. S. B. Ekanayake

Dean, Faculty of Management,  
University of Peradeniya,  
Peradeniya.

10.Prof. M. V. G. Printo

Dean, Faculty of Medicine,  
University of Peradeniya,  
Peradeniya.

11.Prof. S. R. Kodituwakku

Dean, Faculty of Science,  
University of Peradeniya,  
Peradeniya.

11A.Prof. R. G. S. E. Rajapakshe

Dean, Faculty of Science,  
  
University of Peradeniya,  
Peradeniya.

12.Dr. D. M. S. Munasinghe

Dean, Faculty of Veterinary Medicine and  
Animal Science,  
University of Peradeniya,  
Peradeniya.

12A.Prof. P. G. A. Pushpakumara

Dean, Faculty of Veterinary Medicine

and Animal Science,  
University of Peradeniya,  
Peradeniya.

13.Prof. C. S. Wickramagamage  
Senate Representative,  
Faculty of Arts,  
University of Peradeniya,  
Peradeniya.

14.Prof. R. G. S. C. Rajapakse  
Senate Representative,  
Faculty of Science,  
University of Peradeniya,  
Peradeniya.

14A.Prof. B. M. H. S. K. Banneheka  
Senate Representative,  
Faculty of Dental Sciences,  
University of Peradeniya,  
Peradeniya.

15.Ven. Niyangoda Wijithasiri

16.Prof. G. H. Pieris

16A.Prof. K. Gunawardana

17.Prof. N. A. D. S. Amaratunga

18.Dr. N. D. Samarawicrama

18A.Mr. Saliya Dharmawardhana

19.Dr. Sardha Hemapriya

20.Mr. S. Ratwarththa PC

21.Mr. J. C. Warnakula

- 22.Dr. Siril Wijesundara
- 23.Mr. Nihal Rupasinghe
- 24.Mr. U. C. Kirindigoda,
- 25.Mr. Prasanna Goonatilleke
- 26.Dr. D. M. R. B. Dissanayake
- 26A.Snr. Professor Lakshman Dissanayake
- 27.Mr. G. S. J. Dissanayake
- 28.Mr. Mahendra Wijepala

All are Council Members

Peradeniya University,  
Peradeniya.

- 29.Mrs. M. J. Dharmasiri  
Deputy Registrar (Acting Registrar,  
Ex-officio Secretary of the Council,  
General Services Division,  
University of Peradeniya.
- 30.Prof. S. B. Weerakoon  
Chairman,  
Preliminary Investigation Committee,  
Department of Civil Engineering,  
Faculty of Engineering,  
University of Peradeniya.
- 31.The Attorney General  
Attorney General's Department,  
Colombo 12.

### Respondents

32.Dr. D. M. D. V. Jayampathi  
33.Mr. Prabath Sahabandu  
34.Mr. Mohan Weerakoon  
35.Dr. R. H. S. Samarathunga

All are Council Members  
Peradeniya University,  
Peradeniya.

**Added Respondents**

**Before** : Sobhitha Rajakaruna, J.  
Dhammika Ganepola, J.

**Counsel** : Razik Zarook P. C. for the Petitioner.  
Zuhri Zain D.S.G. with Nayomi Kahawita S.S.C. for the 1<sup>st</sup> to  
3<sup>rd</sup> and 29<sup>th</sup> to 31<sup>st</sup> Respondents  
Manohara de Silva P. C. for the 4<sup>th</sup> to 28<sup>th</sup> Respondents.

**Argued on** : 19.07.2023, 20.09.2023.

**Written Submissions:** Petitioner : 15.09.2023  
**tendered on** 1<sup>st</sup> to 3<sup>rd</sup> and 29<sup>th</sup> to 31<sup>st</sup> Respondents : 30.10.2023  
4<sup>th</sup> to 28<sup>th</sup> Respondents : 27.11.2023

**Decided on** : 14.12.2023.

Dhammika Ganepola, J.

### *Stance of the Petitioner*

The Petitioner in this case was appointed to the post of Registrar of the University of Peradeniya with effect from 24.10.2020. Prior to him being appointed to the said post, the Petitioner had served in the University Administration in different capacities for more than 27 years. The Petitioner's appointment to the post of Registrar was permanent and was subject to a probation period of one year. As the matters remain such, upon an audit query bearing No.CLP/KD/J/PU/2020/41 dated 28.12.2020 conducted by the National Audit Office of the University of Peradeniya, it had been revealed that the Petitioner had employed some workers of the university for certain repair works at this private residence while the Petitioner was serving as the registrar of the university. After considering the findings of the said audit query, at the 500<sup>th</sup> council meeting of the University held on 03.01.2021 Council of the University decided to hold a preliminary investigation as per Clause 8.1.1. of Chapter XXII of the Establishment Code of the University Grant Commission (UGC) and send the Petitioner on compulsory leave with effect from 04.01.2021 as per Clause 18.7 of Chapter XXII of the above Code. The same has been informed to the Petitioner by the letter marked P5 to the Petition.

At the conclusion of the preliminary inquiry, the Preliminary Investigation Committee so appointed concluded that there exists a prima facie case to the effect that the Petitioner has acted in violation of Clause 2.1. of Chapter XXI and Section 2:2:4 and 2:2:5 of Chapter XXII of the Establishment Code of UGC. The report of the said Committee was submitted to the University Council and the same had been considered at the Council meeting held on 04.04.2021 where it was decided to seek the opinion of the Attorney General as to whether the Petitioner's services could be terminated as he is on his probationary period, or whether a formal disciplinary inquiry should be held with regard to the conduct of the Petitioner. Meanwhile, the Petitioner also appealed to the then-Vice Chancellor requesting to hold a proper disciplinary inquiry complying with the applicable laws, if any offence has been revealed at the preliminary investigation or to reinstate him. Initially, the Council of the University decided to hold a formal disciplinary inquiry against the Petitioner and said the decision was communicated to the Petitioner by the Vice Chancellor by his

letter dated 01.07.2021 marked P8. Nevertheless, no such formal disciplinary inquiry was held. As the matters remain such, the Petitioner was informed by the Vice Chancellor by his letter dated 27.09.2021 marked P9 that the Council of the University at its 508<sup>th</sup> meeting held on 26.09.2021 unanimously decided not to confirm the Petitioner in the post of Registrar of the University of Peradeniya and to terminate his services with effect from 26.09.2021. The Petitioner claims that the said conduct of the Council to terminate his services without holding a formal disciplinary inquiry is arbitrary, ultra vires, and contravenes the principle of natural justice. In the aforesaid circumstances, the Petitioner invokes the jurisdiction of this Court and moves this Court to issue Writs of Certiorari against the 1<sup>st</sup> to 28<sup>th</sup> Respondents quashing their decision to terminate the services of the Petitioner by letter marked P9 and quashing their decision to send the Petitioner on compulsory leave by letter marked P5 and Writs of Mandamus directing the 1<sup>st</sup> to 28<sup>th</sup> Respondents to hold a formal disciplinary inquiry as informed by the letter marked P8 and directing the 1<sup>st</sup> to 28<sup>th</sup> Respondents to reinstate and confirm the Petitioner in the post of Registrar.

### ***Stand of the Respondents***

The Respondents contend that after considering the contents of the audit query bearing No.CLP/KD/J/PU/2020/41 dated 28.12.2020, the Council of the University appointed a committee to investigate the matter and the Petitioner was sent on compulsory leave. Further, it is contended the findings of the Preliminary Investigation Committee revealed that there exists a prima facie case against the Petitioner that the Petitioner had acted in violation of Section 2:1 of Chapter XXI of the University Establishments Code by having obtained the services of the university employees and properties for a private job and also Sections 2:2:4 and 2:2:5 of Chapter XX11 of the said Code. Consequently, the Council sought the opinion of the Attorney General as to whether a formal investigation should be conducted. The Attorney General had opined that it is prudent to hold a formal inquiry. Thereafter, the Council informed the Petitioner that a formal disciplinary inquiry will be conducted against him in respect of the alleged incident. However, thereafter at the Council meeting held on 26.09.2021, the Council had decided to terminate the services of the Petitioner who was under probation considering the gravity of the misconduct and as much as considering that the service of the Petitioner was not up to the level of satisfaction of the University. The Respondents state that the



Petitioner has, by his conduct violated and breached the confidence so reposed by the University and damaged the employer and employee relationship during his period of probation imposed upon him. The Respondents further contend that the employer is not required by law to adduce any reasons for the discontinuance of a probationer. Therefore, it is claimed that the actions of the Respondents at all times material to this application were strictly within the four corners of the law and the termination of the services of the Petitioner during the probationary period is justifiable, equitable, reasonable, was based on good faith and best interest of the University.

***The appointment of the Petitioner to the post of Registrar and termination of services.***

The Petitioner has been appointed to the post of Registrar of the University of Peradeniya with effect from 24.10.2020 as evidenced by the letter of appointment P2. As per the said letter of appointment above post is permanent and subject to a probation period of one year from the date of assumption of duties. The Petitioner has accepted the appointment in the post of Registrar on the terms and conditions specified therein placing his signature on the P2 and assumed duties in the said post from 26.10. 2020 as per the letter P2a. The services of the Petitioner have been terminated with effect from 26.09. 2021 as per the letter of termination P9.

***Termination of services during the period of probation.***

The Petitioner states that before he was appointed to the post of Registrar, he had served in University Administration in different capacities for more than 27 years. However, the appointment of the Petitioner to the post of Registrar is not a promotional post but a new appointment that was made pursuant to the paper advertisement dated 28.07.2019(11R19) published in the newspaper and the University website. In terms of Section 74 of the Universities Act where a person, whose appointment has been confirmed, is subsequently appointed otherwise than by way of a promotion, to another post, his subsequent appointment shall, in the first instance, be for a probationary period of one year, and shall thereafter be subjected to confirmation by the Governing Authority. As mentioned above in terms of the Letter of Appointment P2 said the appointment was subjected to a probation period.

In terms of the Letter of Termination of Services (P9) issued by the 2<sup>nd</sup> Respondent to the Petitioner, the services of the Petitioner were terminated during his period of probation with effect from 26.09.2021. The termination of the services of the Petitioner was mainly based on the findings of the preliminary inquiry in respect of the incident of getting university employees and property involved in repair works at the Petitioner's private residence which was revealed pursuant to a University Audit. The letter of Termination of Services P9 provides that:

"However, I hereby inform you that the Council at its 508<sup>th</sup> meeting held on 26.09.2021 having considered all the findings related to the incident of engaging University employees and using the property of the university for repair works at your private residence at the above-mentioned address which was revealed by the Government Audit Quarry bearing No. CLP/KD/J/PU/2020/41 issued by the National Audit Office on 28.12.2021 and other relevant materials placed before the Council noted that you while serving in your probationary period, have violated Section 2:1 of Chapter XXI of the Establishment Code for the UGC and HEIs of having obtained the services of the university employees and property for a private job and also have violated Sections 2:2:4 and 2:2:5 of Chapter XXII of the Establishments Code of the UGC and HEIs.

Accordingly, the Council unanimously decided.

- a) not to confirm you in the post of Registrar of this University and
- b) to terminate your services from the post, which you held in this University as the Registrar (on probation), with effect from 26.09.2021 acting upon the provisions of Section 21:3:1 of Chapter III and Section 6:1 of Chapter V of the Establishment Code and HEIs.

The Petitioner contends that although the preliminary investigation was held, and it was contended that a prima facie case had been disclosed against him, the Respondent failed to hold a formal disciplinary inquiry as required by Chapter XXII of the Establishment Code of the UGC. The Petitioner claims that it is essential to hold a formal disciplinary inquiry before the termination of his services by the Respondents as the allegations against him were based on improper conduct. It is further contended that the termination of services without having a formal disciplinary inquiry is contrary to the provisions of the Establishment Code of the UGC.

It is apparent that the said termination was affected in view of the alleged improper conduct of the Petitioner. After the revelation of the impugned misconduct of the Petitioner by the Audit Query bearing No.CLP/KD/J/PU/2020/41 dated 28.12.2020, the Council of the University has taken steps to hold a preliminary investigation and the Petitioner was placed on compulsory leave as prescribed under Sections 8:1:1 and 18: 7 of Chapter XXII of the Establishment Code of the UGC. However, as per the letter P9, the termination of services of the Petitioner was effected acting upon the provisions of Chapters III and V of the Code.

In the instant case, as the preliminary investigation report 4R4 disclosed that there exists a prima facie case in respect of the misconduct committed by the Petitioner, the Council of the University has decided to hold a formal disciplinary inquiry. The Petitioner has been informed of the above decision by the Council by its letter 01.07.2021 marked P8. However, the Council of the University suddenly deviated from its said decision and decided to terminate the services of the Petitioner without holding a formal inquiry by its letter dated 27.09.2021 marked P9.

The Respondents state that there is no legal requirement to hold a formal disciplinary inquiry for probationers within the provisions of the Establishment Code of the University. The Respondents rely on Section 21:3;1 of Chapter III and Section 6:1 of Chapter V of the Establishment Code of the UGC. The Respondents submit that as per the said Sections, a probationer can be terminated at any time without assigning any reason. Said Section 21:3;1 of Chapter III reads as follows:

***21:3:1** During the period of probation, the Commission/Governing Authority of the Higher Educational Institution as the case may be, may be resolution or otherwise terminate the appointment on probation without assigning reasons.*

However, upon a careful perusal of Chapter III of the Establishment Code of the UGC, it is evident that Chapter III of the said Code is only applicable in respect of Recruitment Procedures and Appointments of university employees.

Moreover, said Section 6:1 of Chapter V read as follows:

***6:1** the services of a person holding a temporary appointment, or a probationary appointment may be terminated by the appointing authority without reasons being assigned.*

It is observed that the application of the above-mentioned Chapter V of the said case deals with the Release, Reversion, and Termination of the Appointment of Employees of the University.

The impugned termination of services of the Petitioner was primarily based on alleged acts of improper conduct of the Petitioner. Chapter XXII of the Establishment Code of the UGC in specific provides a special procedure to be adopted in dealing with improper conduct and disciplinary procedure in respect of the employees of the university. Section 1:4 of the said Chapter XXII provides as follows:

*“All acts of improper conduct, or defaults of persons referred in sub-para 1:1 including persons on probation and persons holding temporary or casual appointments which call for punishment in any form, should be dealt with promptly in accordance with the provisions of this Chapter. Any matter not covered by these provisions should be reported to the appropriate disciplinary authority who will give the necessary directions.”* [emphasis added]

Accordingly, Chapter XXII, which deals with disciplinary procedure in specific, does not make any distinction between probationers and other employees in dealing with all acts of improper conduct or defaults of persons. Therefore, it appears that where it is revealed that a probationer has acted in an improper manner, the provisions under Chapter XXII shall equally apply to the probationers same as it does to the other university employees.

In terms of Section 8:2 of Chapter XXII of the above Code, once the Preliminary investigation is disclosed prima facie case, a statement of charges shall be furnished and called upon him to show cause why he should not be punished. Said Section 8:2 read as follows.

***8:2** If the preliminary investigation discloses a prime facie case against the suspected person, the chairman of the Commission or the principal Executive officer of the Higher Educational Institution/Institute as the case may be, will furnish him with a statement of charges against him, and called upon him to show cause why he should not be punished.*

Accordingly, it is apparent that where it is revealed by a preliminary investigation that there exists prima facie evidence that a university employee has acted in an improper manner, the Council of the University should take steps to issue a statement of charges, call upon such employee to show cause and conduct a disciplinary inquiry in respect of such alleged misconduct irrespective of whether he /she is a probationer. Since Section 1:4 of Chapter XXII of the Code does not make a distinction in respect of the applicability of provisions, including said Section 8:2 of Chapter XXII of the Code, to the probationary employees, it is apparent that a charge sheet should be issued in case where a prima facie case of improper conduct of a probationer is revealed at the respective preliminary investigation. Hence, the argument of the Respondents that there is no legal requirement to hold a formal disciplinary inquiry for probationers under the provisions of the Establishment Code of the University has no merit. In the instant case, a preliminary investigation was held against the Petitioner and a decision was taken to hold a formal disciplinary inquiry against the Petitioner based on his improper conduct.

Accordingly, I take the view that, Section 21:3;1 of Chapter III and Section 6:1 of Chapter V of the Establishment Code of the UGC should not be applied in situations where termination is based on acts of improper conduct as the special procedure is laid down in Chapter XII of the Establishment Code of the UGC to deal with such incidents. Hence, when it comes to the termination of a probationer on improper conduct or disciplinary grounds, I hold the view that the disciplinary authority should conduct a formal disciplinary inquiry if the preliminary investigation discloses a prima facie case before termination of services.

Further, it appears that with the issuance of the letter P9 which informed the Petitioner that a disciplinary inquiry will be held and with the availability of provisions under the Establishment Code of UGC that a disciplinary inquiry should be held in respect of Probationers, a legitimate expectation arises for the Petitioner to believe that a disciplinary inquiry will be held in respect of the alleged misconduct. At a formal disciplinary inquiry, the accused party gets a better opportunity to meet the charges and also to examine the witnesses of the prosecution.

Therefore, I hold that the decision of the Council of the University to terminate the services of the Petitioner cannot stand as it is illegal, irrational, and was arrived at without following the due process.

In the circumstances and reasons given above, I hold that the Petitioner is entitled to the reliefs (b) and (d) prayed for in the prayer to the Petition. I order no cost.

*Application is partly allowed.*

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal