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 Writs of Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No. 486/2015

Ven. Dr. Maduruoye Dhammissara Thero
Gampaha Wickramarachchi Ayurveda Institute,
University of Kelaniya, Yakkala

And

"Dakshinaramaya" Hokandara – South,
Hokandara.

PETITIONER

Vs

1. University of Kelaniya,
   Kelaniya.

2. Prof. Sunanda Madduma Bandara,
   Chairman of Council/ Vice Chancellor,
   University of Kelaniya, Kelaniya.

3. Prof. Lakshman Seneviratne.
4. Prof. A.H.M.H. Abayarathne.
5. Prof. N.A.K.P.J. Seneviratne.
6. Prof. (Mrs.) N.R. De Silva.
7. Dr. D.M. Semasinghe.
8. Prof. V.G. Kulasena.
9. Prof. M.J.S. Wijesinghe.
10. Prof. P.S. Wijesinghe.
11. Dr. Nanda Amarasekara.
12. Prof. Tissa Jayawardena.
13. Sirinimal Lakdusinghe.
14. Prof. Gamini Dela Bandara.
15. D.B. Wijekoon.

16. Prof. Ajitha Tennakoon.
17. Prof. J.B. Dissanayake.
18. Dr. D.B. Nihalsinghe.
19. Priyanthi Fernando.
20. Prithi Perera

    2nd – 20th Respondents are members of the Council of the University of Kelaniya.

21. Prof. Janitha Liyanage.

22. Prof. Kusuma Karunarathne.

    21st and 22nd Respondents are at No. 36, Fonseka Place, Colombo 05.

23. Prof. A.A.D. Amarasekara.

24. Prof. Sunil Ariyarathne.

25. Prof. Vinie Vitharana,
    No. 67/1, Samudrasena Road,
    Mount Lavinia.

26. Prof. Walter Marasinghe,
    No. 55/2, Samagi Mawatha,
    Mampe, Piliyandala.

27. Prof. Kulathilake Kumarasinghe

28. Prof. R.M.M. Rajapakse

    21st to 28th Respondents are members of the Selection Committee.

29. Prof. Ven Kahapola Sugatharathna

30. Prof. Ananda Wijerathne

    29th and 30th Respondents are Members of the Panel appointed by the Senate, University of Kelaniya.

31. Mr. W.M. Karunaratne
    Registrar,
    University of Kelaniya, Kelaniya.

32. Mrs. H.K. De Silva
    Senior Assistant Registrar/ Legal & Documentation,
    University of Kelaniya,
    Kelaniya.

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

RESPONDENTS

Before: **Mahinda Samayawardhena, J**
Arjuna Obeyesekere, J

Counsel: Canishka Vitharana for the Petitioner

Milinda Gunatilake, Senior Deputy Solicitor General for the 1st – 20th and 22nd – 32nd Respondents

K.G. Jinasena for the 21st Respondent

Argued on: 31st August 2020

Written Submissions: Tendered on behalf of the Petitioner on 26th September 2019 and 2nd October 2020

Tendered on behalf of the 1st – 20th and 22nd – 32nd Respondents on 16th October 2018

Tendered on behalf of the 21st Respondent on 13th August 2018 and 30th September 2020

Decided on: 16th November 2020

Arjuna Obeyesekere, J

In this application, the Petitioner is challenging the decision of the 1st Respondent, University of Kelaniya, conveyed to the Petitioner by letter dated 26th August 2015 marked '**P17**', that he has not secured sufficient marks for promotion to the post of Associate Professor / Professor.

The facts of this matter very briefly are as follows.

The Petitioner has obtained his Bachelor's Degree in Sanskrit and the Master of Philosophy from the University of Sri Jayawardenapura. The Petitioner had thereafter obtained his PhD in Sanskrit from the Vishwabharathi University, India.

In 1994, the Petitioner had been appointed to the post of Assistant Lecturer at the Gampaha Wickremaarachchi Ayurveda Institute. He states that with the amalgamation of the said Institute with the 1st Respondent, his designation was changed to Lecturer (Probationary). The Petitioner had been confirmed in the post of Lecturer, and had been promoted to the post of Senior Lecturer (Grade II) in March 2000 and subsequently to the post of Senior Lecturer (Grade I) in March 2005.

The University Grants Commission had issued Circular No. 723 dated 12th December 1997 annexed to the petition marked '**P2**', containing the approved scheme of recruitment for the posts of Associate Professor, Professor and Senior Professor in the University System. It is observed that the scheme of recruitment set out in Circular No. 723, which came into effect on 1st January 1998 seeks to ensure uniformity in the selection of persons to be promoted to the post of Associate Professor and Professor across all Universities in Sri Lanka.

Circular No. 723 had been replaced by Circular No. 869 dated 30th November 2005, which came into effect on 1st December 2005.[1] Circular No. 869 itself was replaced by Circular No. 916 which came into effect on 1st October 2009, marked '**P21**'. The University Grants Commission had however offered those who had been serving as Lecturer prior to 30th November 2005, the option of having their application evaluated in terms of Circular No. 723, while those who had joined a University as a

[1] A copy of Circular No. 869 has been annexed to the petition, marked 'P20'.

lecturer after 1st December 2005 were given the option of having his/her application considered under Circular No. 869.

According to Circular No. 723, a Senior Lecturer Grade I or Grade II may be considered for promotion to the post of Associate Professor or Professor if he or she has obtained at least the minimum mark specified in the marking scheme contained in the Annex to the said Circular. The said marking scheme contained three Sections under which a candidate was marked. The Annex also specified the minimum mark that a candidate was required to obtain for each Section and the minimum aggregate mark that an applicant should obtain in order to qualify for the relevant appointment. Details of the aforementioned Sections and the minimum marks that should be obtained are set out in the following table.

Section	**Description**	**Minimum marks for Associate Professor**	**Minimum marks for Professor**
Section 1	Contribution to teaching and academic development	20	20
Section 2	Research and creative work	25	45
Section 3.1 Section 3.2	Dissemination of knowledge Contribution to University and National Development activities	10	15
Total minimum mark		65	90

In terms of Circular No. 723, an application for merit promotion should be accompanied by the following:

a) Curriculum vitae of the applicant;

b) A self assessment of the candidate's whole career specifying the contribution made in respect of each of the above Sections;

c) Two copies of the publications, research papers and other relevant documents.

The manner of evaluating each application that is received by the relevant University has also been set out in the said Circular.

Accordingly, the Senate shall appoint two External Experts in the relevant field from outside the Higher Educational Institution concerned, to evaluate the applicants' contribution under Sections 2 and 3.1 (the External Experts).

The evaluation of the contribution under Sections 1 and 3.2 is carried out by a panel appointed by the Senate consisting of the Vice Chancellor or the Dean of the relevant Faculty, and two Professors, one of whom is either from within or outside the institution concerned but has knowledge of the discipline or related discipline relating to the applicant, and the other person from another faculty of the same higher educational institution as the applicant (the Senate Appointed Panel).

The final selection shall be made by the Selection Committee based on the independent evaluation reports submitted by the External Experts and the Senate Appointed Panel. The composition of the Selection Committee has been set out in Circular No. 223 dated 30th June 1983 marked '**P10**' issued by the University Grants Commission. It must be noted that the Selection Committee does not allot marks to a candidate and would be guided by the marks allotted by the External Experts and the Senate Appointed Panel. The final decision with regard to selection would however be with the Selection Committee, and where appropriate, the Selection Committee has the power to adjust marks given by the External Experts and the Senate Appointed Panel.

I must observe at the outset that the scheme of evaluation set out in Circular No. 723 seeks to ensure that an application for a post such as Associate Professor or Professor is evaluated by those persons who have the expertise in the relevant discipline as that of the applicant or of the work carried out by the applicant. This is confirmed when one considers the fact that of the 90 marks that are required to be appointed as a Professor, approximately 60 marks must come from the External Experts. Similarly, of the 65 marks required to become an Associate Professor, approximately 35 marks would have to be allotted by the External Experts. Even with

regard to Sections 1 and 3.2, the Panel will have at least one person from the particular discipline. Therefore, any deviation from this requirement of having experts in the area of the candidate **evaluating** the application of the said candidate would be outside Circular No. 723 and can be unreasonable by the applicant.

The Petitioner had submitted his application for merit promotion to Professor / Associate Professor on 26th November 2009. According to the self assessment carried out by the Petitioner, the Petitioner had claimed that he had earned sufficient marks to be eligible to be appointed as a Professor, as evidenced by the breakdown set out below:

Section 1	Section 2	Section 3	Total
81.5 marks	156 marks	84 marks	321.5

The Petitioner states that he did not have any response with regard to his application for over one year. Having made inquiries from the Deputy Registrar of the Gampaha Wickremaarachchi Ayurveda Institute, the Petitioner had been informed that his application had been incomplete in that he had not submitted Section 1.6 of the application, and that his application had not been *properly considered.*

The Petitioner admits that he did not submit Section 1.6 of his application, but states that he refrained from doing so on instructions received from the 21st Respondent, the Director of the Gampaha Wickremaarachchi Ayurveda Institute, a claim which has been denied by the 21st Respondent. The Petitioner states that having confronted the 21st Respondent, he had lodged a complaint with the Human Rights Commission on 14th February 2011 marked '**P4**' that the 21st Respondent had deliberately prevented him from submitting a complete application. It is admitted that the complaint to the Human Rights Commission was limited to this issue.

The Human Rights Commission, having inquired into the said complaint, had informed the Petitioner by its letter dated 23rd November 2013 marked '**P5a**' that the material is insufficient to hold that the fundamental rights of the Petitioner enshrined in Articles 12(1) and 14 of the Constitution have been infringed. The Petitioner had lodged an appeal against the said decision with the Chairman of the

Human Rights Commission soon thereafter – vide '**P5a**', but the matter at the Human Rights Commission appears to have ended with the above decision.

The Petitioner had also complained to the University Grants Commission by his letter dated 30th December 2013 marked '**P6**'. I have examined '**P6**' and observe that the complaint to the University Grants Commission was much wider in scope than the complaint to the Human Rights Commission. I will advert to this complaint later on in this judgment.

On 2nd March 2015, the Petitioner had filed an appeal with the University Services Appeals Board – vide '**P12**'. In paragraph 7 of '**P12**', the Petitioner states that, '*this petition of appeal is filed against the impugned decision taken by the 1st Respondent to disallow my application and deny my promotion to the post of Professor / Associate Professor on merit.*' The said appeal had however been dismissed as the Petitioner had not filed his appeal within three months of the alleged contravention appealed against.[2]

Instead of challenging the decision of the University Services Appeals Board, the Petitioner, through an Attorney-at-Law, wrote letter dated 11th August 2015 marked '**P16**' to the 1st Respondent, complaining that he had not been communicated the decision of the Selection Committee. The Petitioner claims that it is only thereafter that he received the aforementioned letter dated 26th August 2015 marked '**P17**' informing that he has not secured sufficient marks for promotion to the post of Associate Professor / Professor.

The Petitioner thereafter filed this application, seeking *inter alia* the following relief:

(a) A Writ of Certiorari to quash the decision in '**P17**';

(b) A Writ of Mandamus directing the 1st Respondent to re-evaluate his application in terms of Circular No. 916.

The learned Counsel for the Petitioner presented five arguments before this Court.

[2] Vide Regulation 3(3) of the University Services Appeals Board Ordinance No. 1 of 1991, published in Extraordinary Gazette No. 679/12 dated 11th September 1991, marked 'P14'.

The first argument of the learned Counsel for the Petitioner is that the 1st Respondent failed to evaluate the application of the Petitioner in terms of the correct Circular. It is admitted that the Petitioner submitted his application on 26th November 2009. By that date, Circular No. 916 marked '**P21**' was effective, having come into force with effect from 1st October 2009 to replace Circular No. 869 dated 30th November 2005.

As noted earlier, '**P21**' gave an option to those applying for the post of Professor / Associate Professor to select the Circular by which they wanted their application to be determined. In terms of '**P21**' '*Those who were in service in the Higher Educational Institutions concerned as at 1st December 2005 and applying for professorial positions by promotion may be given the option to be considered in terms of Commission Circular No. 723 of 12th December 1997 upto 30th November 2009.*' As the Petitioner was in service as at 1st December 2005, the Petitioner had a choice of having his application determined by Circular No. 916 or Circular No. 723.

The covering letter by which the Petitioner submitted his application has not been submitted. However, it is clear from Part I of his self – assessed application marked '**P3**' that the Petitioner had followed the marking scheme set out in Circular No. 723. The argument of the Petitioner that he possessed the necessary marks for promotion to the post of Professor is based on the marking scheme set out in Circular No. 723. There can therefore be no doubt that the Petitioner availed himself of the opportunity to be considered in terms of Circular No. 723. I therefore do not see any merit in the first submission of the learned Counsel for the Petitioner.

The second argument of the learned Counsel for the Petitioner is that the Petitioner was not called before the Selection Committee and was thus deprived of a hearing. Although Circular No. 916 provides that, '*every applicant shall appear before the Selection Committee and make a presentation on his/her main area of research or creative work*', Circular No. 723 does not contain such a requirement. As I have already observed, the Petitioner had an option whether to be considered under Circular No. 723 or 916. The Petitioner made a choice. He cannot thereafter complain that he should have been afforded an opportunity of making a presentation before the Selection Committee. In any event, as the Petitioner had not secured sufficient marks from the Senate Appointed Panel, it would have been futile for the Petitioner

to have gone before the Selection Committee to make a presentation. Therefore, I do not see any merit in this argument.

The third argument of the learned Counsel for the Petitioner was that the Selection Committee was not properly constituted. It is admitted between the parties that the composition of the Selection Committee is governed by Circular No. 233 dated 30th June 1983, marked '**P10**', in terms of which the Selection Committee shall comprise of the following:

The Principal Executive Officer of the Institute	21st Respondent
Dean of the relevant Faculty of the University	27th Respondent
Two persons appointed by the UGC	24th Respondent 25th Respondent
Two members of the Governing Authority	22nd Respondent 26th Respondent
Two members with knowledge of the subject concerned appointed by the Senate from among its own members	23rd Respondent 28th Respondent

The Petitioner's complaint is that neither the 23rd Respondent, Professor A.A.D. Amarasekara, nor the 28th Respondent, Professor R.M.M. Rajapakse has a degree in Sanskrit, and therefore were not eligible to sit on the Selection Committee. I must state that until the Petitioner presents any material in rebuttal, I have to assume that the 23rd Respondent and the 28th Respondent were appointed to the Selection Committee since they possessed the necessary knowledge in Sanskrit.

In order to rebut this position, the Petitioner has annexed to his counter affidavit, two affidavits from the 23rd and 28th Respondents themselves, marked '**P24**' and '**P25**', respectively. While confirming that they functioned as members of the Selection Committee, the 23rd Respondent has stated that he is '*a Professor in Archaeology and do not have a first degree with Sanskrit*', while the 28th Respondent has stated that he is a '*Professor of Linguistics and do not have a first degree with Sanskrit*'.

The requirement in Circular No. 723 is **not** that the two members of the Senate who are appointed to the Selection Committee must have a degree in the relevant subject for which the application has been made but that the two members must have a knowledge of the subject concerned. In their affidavits, the 23rd and 28th Respondents have avoided the crucial issue of whether they have a knowledge of Sanskrit. Thus, in the absence of the Petitioner placing any material to the contrary, I do not see any merit in the argument of the Petitioner that the 23rd Respondent and the 28th Respondent did not have a knowledge of the subject concerned, and that the Selection Committee was not properly constituted.

Before proceeding to the next argument, I must state that the 1st Respondent had in fact appointed Professors Waragoda Premaratne and I. Thilakasiri as the two External Experts to evaluate Sections 2 and 3.1 of the marking scheme set out in Circular No. 723. These two Sections are at the heart of an applicant's knowledge of the subject, and hence, the justification to appoint two experts in the relevant field to evaluate the said Sections. While the Circular does not expect even the Experts to possess a first degree in the relevant field, but only requires them to be ***experts in the relevant field***, the Petitioner has not challenged the expertise or qualifications of Professors Waragoda Premaratne and I. Thilakasiri. Therefore, while there can be no doubt that the application of the Petitioner has been evaluated by persons with the required expertise and knowledge, what is important is that the marks allotted by these two Experts for Sections 2 and 3.1 have not been altered by the Selection Committee.

The fourth argument of the learned Counsel for the Petitioner is that the Petitioner has not been given the correct marks for Section 1. As this argument relates to the marks that the Petitioner claims he should have been given, and therefore to a matter of academic judgment, I must first lay down the parametres within which Courts have previously acted when it was faced with decisions by academic institutions, and the deference that is shown to such decisions.

As observed in **De Smith's Judicial Review**[3]:

> "*The question of the appropriate measure of deference, respect, restraint, latitude or discretionary area of judgment (to use some of the terms variously employed) which Courts should grant the primary decision maker under this head of review is one of the most complex in all of public law and goes to the heart of the principle of the separation of powers. This is because there is often a fine line between assessment of the merits of the decision (evaluation of fact and policy) and the assessment of whether the principles of "just administrative action" have been met. The former questions are normally matters for the primary decision-maker, but the latter are within the appropriate capacity of the courts to decide*."

In **Administrative Law** by Wade and Forsyth[4], 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*."[5]

In **Basavaiah (Dr.) v. Dr. H.L. Ramesh**[6] the Indian Supreme Court held as follows:

> *"We....reiterate and reaffirm the legal position that in academic matters, the courts have a very limited role particularly when no mala fides have been alleged against the experts constituting the Selection Committee. It would normally be prudent, wholesome and safe for the courts to leave the decisions to the academicians and experts. As a matter of principle, the courts should never make an endeavour to sit in appeal over the decisions of the experts. The courts must realise and appreciate its constraints and limitations in academic matters."*

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[3] Harry Woolf, Jeffery Jowell, Catherine Donnelly, Ivan Hare, *De Smith's Judicial Review* (8th Edition, Sweet & Maxwell 2018), page 592.
[4] H.W.R. Wade, C.F. Forsyth, Administrative Law (11th Edition, Oxford University Press 2014) page 537.
[5] See Clark v. University of Lincolnshire Humberside [2000] 1 WLR 1988. Cited with authority in Alex Kwao v. University of Keele [2013] EWHC 56 (Admin).
[6] (2010) 8 SCC 372 : (2010) 2 SCC (L&S) 640.

In Abeysundara Mudiyanselage Sarath Weera Bandara vs University of Colombo and others[7] this Court, having considered several English cases in this regard, 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 want of judicially manageable standards and 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 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. This is not an inflexible rule though and in R v. Higher Education Funding Council ex parte Institute of Dental Surgery*[8] *Stephen Sedley J took care to emphasize the flexibility of the rule: 'This is not to say for a moment that academic decisions are beyond challenge….. A mark, for example, awarded at an examiners' meeting where irrelevant and damaging personal factors have been allowed to enter into the evaluation of a candidate's written paper is something more than an informed exercise of academic judgment*.'"

In **Dr. Karunananda v. Open University of Sri Lanka and Others**,[9] the Supreme Court was called upon to consider whether the petitioner's fundamental rights guaranteed under Article 12(1) had been infringed by the refusal of the Open University to promote the petitioner as a Professor. Incidentally, the Circular that was the subject matter of that application is the same circular that this Court needs to consider in this application.

[7] CA (Writ) Application No. 844/2010; CA Minutes of 8th June 2018.
[8] [1994] 1 WLR 242.
[9] [2006] 3 Sri LR 225.

In the said case, the Supreme Court, in response to the argument of the University that the decision whether to confer a professorship could be executed only by persons who are qualified and placed in equal or higher standing and accordingly, an application seeking appointment as a Professor, could only be assessed by similarly qualified peers from the academic community having an 'academic mind' and that such evaluations may not be on par with the reasoning of a judicial mind, held as follows:

> "*Therefore, although there may be cautionary remarks, indicating reluctance to enter into academic judgment, I am not in agreement with the view that academic decisions are beyond challenge. There is no necessity for the Courts to unnecessarily intervene in matters "purely of academic nature," since such issues would be best dealt with by academics, who are 'fully equipped' to consider the question in hand. However, if there are allegations against decisions of academic establishments that fall under the category stipulated in terms of Article 126 of the Constitution, there are no provisions to restrain this Court from examining an alleged violation relating to an infringement or imminent infringement irrespective of the fact that the said violation is in relation to a decision of an academic establishment*."

Having considered the above material, in **Chelliah Elankumaran vs The University of Jaffna and Others**,[10] it was held that:

> "*This Court is therefore of the view that in the exercise of the jurisdiction vested in it by Article 140 of the Constitution, it can examine whether the impugned decision of the 1st Respondent is illegal, irrational or procedurally improper but would exercise extreme caution if asked to consider, for example whether the Petitioner is entitled to more marks than what has actually been given by the examiners*."

If I may summarise, the above cases support the proposition that while Courts shall give due deference to the determinations of academics, it shall not abdicate its role of examining the *vires* and reasonableness of a decision nor would a Court be subservient to such determinations or show blind reverence to their interpretations.

[10] CA (Writ) Application No. 147/2013; CA Minutes of 17th May 2019.

Let me now consider whether the Senate Appointed Panel acted unreasonably when it failed to allot the marks that the Petitioner claims he should have been given for Section 1. The test to determine the reasonableness of a decision was laid down by Lord Greene in **Associated Provincial Picture Houses Ltd v Wednesbury Corporation** when he defined unreasonableness as '*something so absurd that no sensible person could ever dream that it lay within the powers of the authority.'* [11] In **Council of Civil Service Unions vs Minister for the Civil Service**[12] Lord Diplock described irrationality by reference to **Wednesbury**, when he stated that, "*By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it*."

As I have already observed, the evaluation of Section 2 (Research and Creative Work) and Section 3.1 (Dissemination of Knowledge) is carried out by the External Experts. The Petitioner has secured the necessary marks for Sections 2 and 3, and thus, has no issue with those two Sections. The evaluation of the contribution of an applicant under Section 1 (Contribution to teaching and academic development) and Section 3.2 (University and National Development Activity) is carried out by the Senate Appointed Panel.

The marks allotted by the External Experts and the Senate Appointed Panel have been produced by the Respondents marked '**R6**'. The recommendation of the Selection Committee has been annexed thereto, and reads as follows:

> "*The Selection Committee considered the marks allocated by the Panel appointed by the Senate to evaluate Sections 1 and 3.2 of the marking scheme and the marks allocated by the two External Evaluators appointed by the Senate as per UGC Circular No. 723 and decided to take the average marks given by them in respect of Section 2 and 3.1 of the marking scheme.*
>
> *Section 1 - 13.5*
> *Section 2 - 123.75*

[11] Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948(1)KB 223]
[12] 1985 AC 374.

Section 3.1 - 44

Section 3.2 - 1.5

Total - 184.25

The applicant has not obtained the minimum marks required for Section 1 of the marking scheme for the promotion to the post of Associate Professor/ Professor in the Department of Basic Principles. As such, the Selection Committee does not recommend the promotion of Ven. Dr. Maduruoye Dhammissara to the post of Associate Professor/ Professor in the Department of Basic Principles."

It is therefore clear that the Selection Committee has not interfered with the marks allotted to the Petitioner by the Senate Appointed Panel, and that the grievance of the Petitioner is with the marks assigned for Section 1 by the Senate Appointed Panel.

Section 1 has the following six components.

Section		Maximum marks	Marks claimed by the Petitioner[13]	Marks allotted[14]
1.1	Contribution to teaching and academic development	3	3	2
1.2	Teaching Load	4	4	2
1.3	Preparation of Teaching materials	10	10	5
1.4	Teaching / Professional experience	10	10	4.5
1.5	Postgraduate supervision	6	0	0
1.6	Institutional Development	10	10	0
Total		43	37	13.5

[13] Vide final page of 'P3'.

[14] Vide paragraph 15.2 of the written submissions tendered by the 21st Respondent to the Human Rights Commission, marked 'P9'.

The Petitioner has submitted in his written submissions tendered on 26th September 2019 that he has no dispute with the marks allotted for Section 1.3. There is also no dispute with regard to Section 1.5 as the Petitioner admits that he has not been engaged in any supervision of Postgraduate students.

That leaves me with the complaints of the Petitioner with regard to the marks assigned for Sections 1.1, 1.2, 1.4 and 1.6.

Although the Petitioner states that he has not been given any marks for Section 1.1, he admits that he was given an aggregate of 13.5 marks for Section 1. With the Petitioner admitting that he received:

a) 2 marks for Section 1.2,

b) 5 marks for Section 1.3,

c) 4.5 marks for Section 1.4, and

d) with no marks being claimed for Section 1.5, and

e) no marks being allotted for Section 1.6, and

in the absence of any explanation as to how he was entitled to an additional 2 marks to arrive at an aggregate of 13.5 marks, one could only assume that the said 2 marks were allotted in respect of Section 1.1. Thus, the Petitioner's complaint that no marks were given for Section 1.1 does not appear to be correct.

In terms of Section 1.2 of Circular No. 723 an applicant is entitled for 0.5 marks for each year where the teaching load of the applicant was more than the norm by at least 25%. Section 1.2 goes onto state that, *'The norm should be approved by the Faculty Board and the Senate.'* Thus, it is critical that the maximum number of hours that a lecturer must teach – i.e. the norm - be determined by the Faculty Board and the Senate. In his self assessed application, the Petitioner has claimed 0.5 marks for eleven years, and capped it at the maximum of 4 marks.

The Respondents have submitted that the *norm* has not been decided by the Faculty Board and the Senate, but that the Petitioner was given two marks for Section 1.2.

The 21st Respondent had in fact stated in the written submissions filed on her behalf that the Senate Appointed Panel, of which she was a member had used their discretion and given the Petitioner 50% of the marks that could be given under Section 1.2. Without the norm having been determined, the Petitioner would not be entitled to any marks under Section 1.2. Furthermore, this Court has not been apprised whether the number of lecture hours done by the Petitioner exceeds the lecture hours done by other lecturers. In this background, the decision to give at least half the entitlement, when there is no entitlement, cannot be considered unreasonable.

In terms of Section 1.4 titled 'Teaching / Professional experience', an applicant is eligible for the following marks:

Service after being promoted as a Senior Lecturer Grade II or service in equivalent teaching position or relevant professional experience in other organization – 0.5 marks per year	08 marks
PhD. D.M/D.Litt/ equivalent or a higher degree	02 marks

It is not in dispute that the Petitioner has been promoted to the post of Senior Lecturer in March 2000. In his self assessed application '**P3**', the Petitioner has claimed full marks, with the following breakdown:

Teaching Sanskrit at Wickremaarachchi Institute 2000 March – 2009 – 10 years	05 marks
Teaching Sanskrit as a Visiting Lecturer / Guest Lecturer / Resource Person in other Institutions during the period 1994 -	08 marks
PhD – 2005	02 marks

The Petitioner has been promoted to the post of Senior Lecturer in March 2000, and his application has been submitted on 26th November 2009. He therefore cannot claim marks for ten years of service, and would be eligible for only 4.5 marks, which has been given. The Petitioner has claimed 2 marks for his PhD under Section 1.4, whereas 2 marks under Section 1.4 are allotted for teaching/lecturing at PhD level. Furthermore, the Petitioner cannot claim marks for service as a Visiting Lecturer. Section 1.4 has provided for '*service in equivalent teaching position or relevant*

professional experience in other organization' in view of the fact that in terms of Circular No. 723 candidates who are not Senior Lecturers but who possess the qualifications to become a Senior Lecturer are also entitled to apply. Furthermore, it could not have been the intention to grant more than 0.5 marks for each year of teaching experience, which is what the Petitioner is seeking to claim. Therefore, I am of the view that the decision to allocate 4.5 marks for the 9 years of experience since becoming a Senior Lecturer is reasonable.

The Petitioner has admitted in his amended petition that he did not submit Section 1.6 of his application to the 1st Respondent, although a copy of Section 1.6 marked '**P3a**' has been submitted to this Court. While the Petitioner claims that he had duly completed Section 1.6, he admits that he did not submit it with his application at the request and on the instructions of the 21st Respondent. The fact of the matter, as far as evaluation of the Petitioner's application is concerned, is that his application did not contain Section 1.6. That being so, the Senate Appointed Panel that considered Section 1 could not have given any marks for a non-existent section.

The learned Counsel for the Petitioner has sought to argue in his written submissions that all the material pertaining to Section 1.6 was available elsewhere in his application, and that the Selection Committee had sufficient material before it to thoroughly examine and evaluate the titles coming under Section 1.6. However, I am of the view that it is not the task of the Senate Appointed Panel or the Selection Committee to engage in such an exercise. It is the duty of an applicant to submit a complete application or else, face the consequences. Hence, the Petitioner was not entitled for any marks under Section 1.6 and the decision not to allot any marks cannot be termed unreasonable.

For all of the above reasons, it is clear to me that the decision of the Senate Appointed Panel to allot the above marks for Section 1 and the decision of the Selection Committee to accept the said marks is reasonable. It is not a *decision which is so outrageous in its defiance of logic or a decision that no sensible person who had applied his mind could have arrived at*. I cannot therefore agree with the fourth argument of the learned Counsel for the Petitioner that the Petitioner has not been given the correct marks for Section 1.

That brings me to the final argument of the learned Counsel for the Petitioner, which is that the decision of the Selection Committee should have been informed to the Petitioner. While the Petitioner is entitled to be informed of the outcome of his application, for reasons which I shall now proceed to discuss, I am satisfied that the Petitioner was made aware of the decision of the Selection Committee, many years prior to '**P17**'.

The Selection Committee took its decision on 5th January 2011 - vide '**R6**', and the Petitioner complained to the Human Rights Commission on 14th February 2011 – vide '**P5**'. As I have already observed, that complaint was limited to the allegation that the 21st Respondent prevented him from attaching Section 1.6 of his application.

By letter dated 21st March 2011,[15] the 21st Respondent had provided the Human Rights Commission with the response of the Gampaha Wickramaarachchi Ayurveda Institute. Paragraph 6 of the said letter reads as follows:

> "චක්‍රලේකයේ උපදෙස් පරිදි එක් එක් කොටස් සඳහා ලබා ගත යුතු අවම ලකුණු වලින් Section 1 සඳහා ලබා ගත යුතු අවම ලකුණු මෙම සවාමීන් වහන්සේ ලබා නොගැනීම හේතුකොට ගෙන තේරීම් මණ්ඩලය විසින් මෙම උසස්වීම නිර්දේශ කොට නොමැත."

Thus, the fact that his application had been processed and that he had not secured sufficient marks for Section 1 was known to the Petitioner by the latter part of **March 2011**. The fact that the Petitioner had received the above letter is clear when one considers that he had tendered the said letter to the University Services Appeals Board. What is significant is that having been informed that he had not received sufficient marks for Section 1, the Petitioner did not request the 1st Respondent University to provide him with a detailed breakdown of the marks, nor did the Petitioner challenge the said decision at that time.

Having examined the Written Submissions dated 9th December 2012 marked '**P9**' tendered by the 21st Respondent to the Human Rights Commission, I observe that the report of the Senate Appointed Panel, containing the detailed marks given for Sections 1 and 3.2 has been annexed (vide '1වග2'). Thus, at least by **December 2012**, the Petitioner knew the marks that had been given for Section 1 of his application.[16]

[15] This letter has been marked 'A10' and annexed to the appeal submitted by the Petitioner to the University Services Appeals Board marked 'P12'.
[16] Vide paragraph 5.

In his appeal dated 20th December 2013 to the Chairman of the Human Rights Commission – vide '**P5a**'- the Petitioner has stated as follows:

> "02 වන වග උත්තරකරු (අධ්‍යක්ෂ හා කළමනාකරණ මණ්ඩලයේ සභාපති) විසින් ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව වෙත යොමු කරන ලද 2011.03.21 දිනැති කරුණු දැක්වීමේ ලිපිය මගින් පෙන්වාදි ඇත්තේ "Section I (පළමු කොටස) සඳහා ලබාගත යුතු අවම ලකුණු ලබා නොගැනීම හේතු කොට ගෙන "එකි උසස්වීම නිර්දේශ කොට නැති බවයි. ඒ සම්බන්ධයෙන් කරුණු දක්වමින් මා විසින් ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාවේ සභාපති තුමා වෙත 2011.08.18 දාතමින් යොමු කරන ලද ලිපියේ 6 වැනි අංකය යටතේ දැක්වෙන කරුණු වෙත අවධානය යොමු කරමින් මා ප්‍රකාශ කර සිටින්නේ Section I (පළමු කොටස) හි 1.1 සිට 1.4 දක්වා මා විසින් ඉදිරිපත් කර ඇති කරුණු වලට 02 වැනි වගඋත්තරකරු ලකුණු ලබාදුන්නේනම් 1.6 ට හිමි ලකුණු 10 නොමැති ව වුව ද, අදාළ උසස්වීම මා හට ලබාගත හැකි ව තිබූ බවයි"

Thus, by the Petitioner's own admission, not only was he aware by **August 2011** about the marks that were given for Section 1, he had even raised the adequacy of the marks given for Section 1 with the Human Rights Commission.

In his appeal dated 30th December 2013 to the University Grants Commission – vide '**P6**' – the Petitioner had stated as follows:

> "අදාළ උසස් වීම නොලැබී ඇත්තේ ඒ සඳහා මා විසින් ඉදිරිපත් කරන ලද අයදුම්පතේ පළමු කොටස (Section I) සඳහා ලබාගත යුතු අවම ලකුණු ප්‍රමාණය නොලැබීමෙන් බව පමණක් මාගේ පැමිණිල්ල සම්බන්ධයෙන් 2011.03.21 දිනැති අධ්‍යක්ෂතුමියගේ කරුණු දැක්වීමේ ලිපියෙන් (A4a) දැනගතිම්. ඉහත සඳහන් A4, එනම් 02 වැනි වගඋත්තරකාර පාර්ශ්වයේ ලිඛිත කරුණු දැක්වීමේ අංක 15.2.VII වගන්තිය අනුව පෙනී යන්නේ පළමු කොටස (Section I) සඳහා ලබාදී ඇත්තේ ලකුණු 13.5ක් පමණක් බවයි."

The fact that the Petitioner was clearly aware of the marks allotted to him for Section 1 is also borne out by the averments of paragraph 28 of the petition of appeal '**P12**' submitted by the Petitioner to the University Services Appeals Board.

When I consider the totality of the above material, I am satisfied that the Petitioner was fully aware of the breakdown of the marks given for each sub-section of Section 1 and that he had not secured sufficient marks for Section 1. Therefore, I see no merit in the final argument of the learned Counsel for the Petitioner.

The above conclusion gives context to the submission of the Respondents that the Petitioner is guilty of delay in invoking the jurisdiction of this Court. This argument

was on the premise that the Petitioner has invoked the jurisdiction of this Court in December 2015 challenging a decision which had in fact been taken in January 2011. The response of the Petitioner, as set out in paragraphs 8.3 – 8.8 of the written submissions tendered on 2nd October 2020 was that the *Petitioner became aware for the first time that his application was rejected for not securing sufficient marks for the promotion* only upon receiving '**P17**' on 26th August 2015, and hence, there has not been any delay. The contents of the letter dated 21st March 2011 and '**P9**', and the Petitioner's own admissions in '**P5a**', '**P6**' and '**P12**', all of which I have already adverted to, makes it abundantly clear that there has been a long delay on the part of the Petitioner in invoking the jurisdiction of this Court. This application is accordingly liable to be dismissed on the ground of delay, alone.

Although none of the Respondents have raised it, there is one other issue that I must advert to. It has been consistently held by the Supreme Court of this country that a litigant must come before Court with clean hands. When I consider the letter dated 11th August 2015 marked '**P16**' sent on behalf of the Petitioner calling upon the 1st Respondent to communicate the final decision of the Selection Committee, in the light of the aforementioned material referred to in the preceding paragraphs, it is clear to me that '**P16**' was a ruse adopted by the Petitioner to elicit a reply from the 1st Respondent, thereby enabling the Petitioner to invoke the jurisdiction of this Court without having to face an objection that he is guilty of *laches*.

In the above circumstances, I see no legal basis to grant the relief prayed for by the Petitioner. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal