

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

A.R.F.S. FANOON

No.291B/2, New Mosque Road
Sainthamaruthu – 15.

PETITIONER

CA WRIT Application No.457/2022

Vs.

**1. SOUTH EASTERN UNIVERSITY OF
SRI LANKA,**

University Park,
Oluvil.

2. Prof. A. RAMEEZ,

Vice Chancellor,
South-Eastern University of Sri Lanka,
University Park,
Oluvil.

3. Dr. U. L. ABDUL MAJEED,

Dean,
Faculty of Technology,
South Eastern University of Sri Lanka,
University Park,
Oluvil.

4. Prof. M.M. FAZIL.

Dean,
Faculty of Arts & Culture,
South-Eastern University of Sri Lanka,
University Park,
Oluvil.

5. Dr. S. SAFEENA M.G.H,

Dean,
Faculty of Management & Commerce,
South-Eastern University of Sri Lanka,
University Park,
Oluvil.

6. Dr. U.L. ZAINUDEEN,

Former Dean,
Faculty of Applied Science,
South-Eastern University of Sri Lanka,
University Park,
Oluvil.

7. Prof. M.M.M.MAZAHIR,

Dean,
Faculty of Islamic Studies & Arabic
Languages,
South-Eastern University of Sri Lanka,
University Park,
Oluvil.

8. Dr. S .M. JUNAIDEEN,

Former Dean,
Faculty of Engineering,
South-Eastern University of Sri Lanka,
University Park,
Oluvil.

9. Dr. M. H. HAROON,

Former Head of Department of
Chemical Sciences,
South-Eastern University of Sri Lanka,
University Park,
Oluvil.

10. Prof. [Mrs], F.H.A. RAUF,

Professor,
South-Eastern University of Sri
Lanka,
University Park,
Oluvil.

11. Mr. K. MUHAMMED RIFTHY,

Head of the Department of
Information & Communication
Technology.
South-Eastern University of Sri
Lanka,
University Park,
Oluvil.

12. Mr. R. K. AHMED RIFAJ

KARIAPPER,

Senior Lecturer in ICT,
Department of Information &
Technology,
South-Eastern University of Sri
Lanka,
University Park,
Oluvil.

13. Dr. ANVER M. MUSTAPHA

14. **Eng. M. ABDUL CADER**
15. **Dr. T.S.R.T.R. RAJAH**
16. **Eng. N.T.M. SIRAJUDEEN**
17. **Mr. M. C. MOHAMED NAWAS**
18. **Prof. COLIN M. PEIRIS**
19. **Mr. D.M.L. BANDARANAYAKE**
20. **Mr. I. M. HANIFFA**
21. **Mr. J. M. NALEER**

22. **Prof. [Ms], HEMA MKK
PATHIRANA,**
All of Council Members,
South-Eastern University of Sri
Lanka,
University Park,
Oluvil.

23. **Mr. H. ABDUL SATHAR,**
Registrar & Secretary to the
Council,
South-Eastern University of Sri
Lanka,
University Park,
Oluvil.

24. **Mrs. A. FATHIMA SHARFANA**
No. 205A, PM Road,
Sainthamaruthu – 06.

25. **Mr. M.S.S. RAZEETH,**
NO.65b/1, Mazoormoulana Road,
Maruthamunai – 04.

26. **Mr. L. NAVEETH MOHAMED,**
No. 15, Kaataiyuru Street,
Kinniya – 02.

27. Mr. A. MOHAMED ASLAM SUJAH,
NO. 28/B, Old Post Road,
Sainthamaruthu – 09.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: U. Abdul Najeem for the Petitioner.

Nayomi Kahawita, SSC for the Respondents.

Written Submissions: By the Petitioner – Not filed

On behalf of the 25th and 27th Respondents filed on
11/11/2024

On behalf of the 1st to 23rd Respondents filed on
17/12/2025

Argued On : 21/07/2025 and 29/10/2025

Judgment on : 19/12/2025

Dr. Sumudu Premachandra J.

1] The Petitioner, who holds a B.Sc. in Computer Science and Technology with Second Class Upper Division Honors and an M.Sc. in Computer Science, previously served as a Temporary Demonstrator in ICT and was among thirteen candidates interviewed on 24/11/2021 for the post of Lecturer (Probationary) in the 1st Respondent University.

2] She later became aware that the Council of the 1st Respondent University had approved the recruitment of the 24th, 25th, 26th, and 27th Respondents based on the Selection Committee's recommendations, decisions she now challenges.

3] Central to her grievance is the application of the approved marking scheme, details of the evaluation framework allocated marks for Qualification, Teaching Ability, Subject Knowledge, Communication Skills, Teaching Experience/relevant skills, and Personality & other relevance, the Petitioner asserts that she was awarded only 20% for Qualifications, despite her academic record entitling her to 25%. She further contends that the Selection Committee failed to adopt a proper marking scheme for the 15% allocated to Teaching Ability, thereby rendering the assessment process arbitrary and opaque.

4] The Petitioner further argues that the marks assigned for Subject Knowledge were distributed inconsistently and without reasonable justification. She highlights that the 26th and 27th Respondents' degree holders in Electrical and Electronic Engineering, and Computing and Information Systems, respectively, were each awarded 12%, while other candidates received significantly lower marks (05%, 08%, 08%, 11%, and 05%). She also maintains that, under the University Grants Commission (UGC) circulars, her two years of teaching-related service as a Temporary Demonstrator should have been recognized as teaching experience and should have entitled her to up to 10% (02% per year). Instead, she was awarded only 4% for a different qualification-related component. These discrepancies, she argues, demonstrate a non-transparent, arbitrary process that operated to her detriment. The Petitioner further asserts that the treatment of Research and Publications was similarly flawed, with certain candidates' publications not being properly authenticated in accordance with UGC instructions, thereby undermining the integrity of the assessment process.

5] The Petitioner ultimately challenges the selection and appointment of the 24th, 25th, and 26th Respondents as Lecturers (Probationary) in ICT, alleging that the process was tainted by bias, conflicts of interest, and violations of the Sri Lanka Qualifications Framework (SLQF) and the applicable recruitment scheme. She contends that the 26th Respondent did not possess qualifications that fully conformed with the SLQF requirements for Information and Communication Technology, yet his marks for qualifications were arbitrarily inflated.

6] She further alleges that the 25th Respondent's recommendation was improperly influenced by two Selection Committee members who were close friends, while the selection of the 24th Respondent was compromised by her close familial ties to the spouse of a prominent local politician who is also a relative of the Selection Committee's chairman. The Petitioner maintains that key Committee members, including the 2nd Respondent, failed to recuse themselves despite clear conflicts of interest. In light of these irregularities, and supported by the annexed documents, she seeks a Writ of Certiorari to quash the impugned selection process and the resulting appointments.

7] In the above premises, the Petitioner prays to;

- a. Issue notice to the Respondents
- b. Issue a direction to the 23rd respondent to submit to the Court a certified copy of the Individual marking sheets used by the members of the Selection Committee based on which the Evaluation Sheet marked P6c was prepared
- c. Issue a mandate in the nature of Writ of Certiorari quashing:
 - i. The Evaluation process and assessment of candidates as depicted in document marked as P6c adopted by the Selection Committee

consisting of the 02nd, 03rd, 11th, 12th, 18th and 22nd respondents, and

- ii. The decision made by the Council of the 1st Respondent on 27/11/2021 at its 251st meeting as stated in document marked as P6e to appoint the 24th, 25th, 26th and 27th Respondents to the Post of Lecturer [Probationary] in Information and Communication Technology in the Department of the Information and Communication Technology of the Faculty of Technology in the 1st Respondent based on the recommendation of the Selection Committee
- d. Direct the Chairman, University Grants Commission to conduct an appropriate inquiry and take suitable disciplinary action against the members of the Selection Committee and Council of the 01st Respondent who are responsible for the process adopted in the evaluation of candidates in the interview and unethical conduct in decision making process to make appointment to the Post of Lecturer [Probationary] in Information and Communication Technology in the Department of the Information and Communication Technology of the Faculty of Technology in the 1st Respondent
- e. For costs, and,
- f. For such further and other reliefs as to Your Lordships' Court shall seem meet.

8] The learned Senior State Counsel on behalf of the Respondent University argues that the application is largely futile, as two of the successful candidates have already resigned, and asserts that the selection process was conducted in strict compliance with the University Grants Commission (UGC) Circular No. 721 and relevant marking schemes.

9] The Respondents justify the marks awarded by detailing the specific academic and professional standing of each candidate. They contend that the Petitioner's postgraduate qualifications were not recognized because she only completed the coursework component of an M.Sc., failing to meet the "research component" requirements (minimum 15–60 credits or a full thesis) mandated by UGC Circular No. 08/2016. Furthermore, the 1st Respondent University clarifies that the Petitioner's experience as a "Temporary Demonstrator" does not qualify as "teaching experience" at the university level, citing that "Demonstrators are not teachers" under current regulations. In contrast, they highlight that the successful 24th Respondent held a "Lecturer (Probationary)" position, which was validly earned and entitled her to teaching marks.

10] Addressing the Petitioner's specific challenge against the 26th Respondent's degree in Electrical and Electronic Engineering, the University submits that this discipline falls within the broader "computing" umbrella. They rely on the Sri Lanka Qualifications Framework (SLQF) and the ACM/IEEE guidelines, which state that computing is an evolving discipline that overlaps significantly with Engineering. The Respondents argue that the selection committee exercised valid "academic judgment" in determining the relevance of the degree to the ICT department's evolving curriculum, emphasizing that such technical assessments are within the purview of educational authorities rather than the courts.

11] To support the University's autonomy, the submissions rely on established case law, specifically **Dr. Karunananda v. Open University of Sri Lanka** [2006]3SLR 225, where the court held there is "no necessity for the Courts to unnecessarily intervene in matters purely of academic nature."¹

¹ Shirani Bandaranayake, J (As she then was) , held; "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 are best dealt with by academics who are fully equipped to consider the questions in hand; however if there are allegations against decisions of academic establishments that fall under the category stipulated in terms of Article 126, 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". (3) The case of the petitioner refers to the failure of the respondents to appoint him as Professor/Assistant Professor where he had the required marks-the petitioner has not questioned the correctness of the assessment of the external experts or the examination panel, the question at issue does not

12] It is to be noted in judicial reviews that the courts are "slow and circumspect" in interfering with academic decisions unless the decisions are demonstrably illegal or arbitrary.

13] The Petitioner's main argument is that her qualification has not been properly evaluated and assessed by the interview board, and the Board was biased towards selected candidates. I note that later (bias) was not proved, and the former assessment of the qualification is within the academic purview, as the court does not sit as an academic board.

14] In Administrative Law by Wade and Forsyth, H.W.R. Wade, C.F. Forsyth, Administrative Law (11th Edition, Oxford University Press 2014) page 537., it has been mentioned that Courts will be reluctant to enter "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 questions such as what mark or class a student ought to be awarded, or whether an aegrotat was justified. (held in **Clark v. University of Lincolnshire Humberside** [2000] 1 WLR 1988. Cited with authority in **Alex Kwao v. University of Keele** [2013] EWHC 56 (Admin).

15] Further, in De Smith's Judicial Review, De Smith's Judicial Review (8th Edition, Sweet & Maxwell 2018), page 592, noted;

"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

revolve around matters relating to allocation of marks of examinations, methodology of teaching or matters regarding the curriculum, which are purely of an academic nature.

normally matters for the primary decision-maker, but the latter are within the appropriate capacity of the courts to decide.”

16] In **Dr. Jayawardena v. University of Colombo**, CA. Writ 137/2018, Decided on: 22nd June 2020, His Lordship Arjuna Obeyesekere J., considered the aforementioned principles observed as follows;

“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.”

17] Moreover, in **Abeyundara Mudiyanseelage Sarath Weera Bandara vs University of Colombo and others**, CA (Writ) Application No. 844/2010; CA Minutes of 8th June 2018., A.H.M.D. Nawaz, J. 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.”

18] In **Dr. Chelliah Elankumaran vs University of Jaffna and others**, CA (Writ) Application No. 147/2013; CA Minutes of 17th May 2019., S. U. B. Karalliyadde, J., held;

"This Court is of the view that the Selection Committee cannot merely rubber stamp the marks given by the External Experts and the Panel and that the Selection Committee must have the power to examine the marks given by each of the experts and the panel, and where necessary make adjustments..."

...Therefore, it is imperative that the right balance is struck between the two. This Court is of the view that where there are any inconsistencies which are of a non-academic nature, or any glaring errors in the marks given by the experts or the panel, the Selection Committee has the power to rectify such errors or inconsistencies."

19] In **R v. Higher Education Funding Council ex-parte Institute of Dental Surgery** (1994) 1 WLR 242, Stephen Sedley, observed;

"This is not to say for a moment that academic decisions are beyond challenge."

"The question why in isolation as it can now be seen to be, is a question of academic judgement. We would hold that where what is sought to be impugned is on the evidence, no more than an informed exercise of academic judgement, fairness alone will not require reasons to be given. 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 judgement."

20] In the case of **B.S.E.M. Perera Vs Victor Perera, Inspector General of Police and 22 Others**, considering the same matter Justice Sathya Hettige held as follows;

“...And as such I do not see that any injustice or prejudice has been caused to the petitioner at the Interview as all the candidates have been assessed by the interview board in good faith without any discrimination. I do not agree with the submission made by the learned counsel for the petitioner that the petitioners were prejudiced as marking scheme was made known to the candidates prior to the interviews...”

21] Further, in **A. T. Muditha Sahandani vs University Grants Commission and others**, C.A. Case No.WRT-286/20, DECIDED ON: 08.08.2023, WICKUM A. KALUARACHCHI, J. noted;

“It is to be noted that when there is a written examination and an interview, the person who obtained the highest marks in the written examination would not essentially be selected as the first in the interview. Sometimes the person who obtained the highest marks in the written examination may be disqualified in the interview. Therefore, the argument that the petitioner had a legitimate expectation that she would be selected in the interview has no merit.”

22] In **PERERA AND NINE OTHERS v. MONETARY BOARD OF THE CENTRAL BANK OF SRI LANKA & TWENTY-TWO OTHERS**, [1994] 1 SLR 152, Amerasinghe J: considered the selection process and observed;

“Eventually, the guiding factor is the achievement of the goals of the institution within the framework of the law. and at every stage of the selection process, from the determination of the need for the services of a particular type of officer and numbers in each class, through the determination of the relevant qualifications for eligibility, to the selection of a candidate: those who are entrusted with the task of the achievement of the goals of the institution must necessarily have a discretion because it is they who are responsible and accountable for the success or failure of the institution. In the exercise of their discretion, they have both a 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. On the question of cadre they may decide that different numbers of officers are required for each post. On the question of eligibility they may distinguish between the various qualifications and qualities.”

23] In **W.M. Namal Sanjeewa vs Neville Gunawardena Director General of Customs and others**, SC FR Application No. 244/2012, Decided on: 17-07-2020, Murdu N.B. Fernando, PC J.(As her ladyship then was)

“In my view the criterion adopted by the Respondents in selecting the best candidate was based upon legitimate, reasonable and intelligible differentia. Hence, the said classification cannot be termed discriminatory or arbitrary as contended by the Petitioner. The main object of the Respondents were to select the most suitable candidates from a number of eligible candidates and an elimination system had to be adhered to, in such a situation...”

... In the said circumstances, I am of the view that the marking scheme adopted by the interview board cannot be deemed arbitrary, capricious or defy reasoning as contented by the Petitioner. Similarly, the marking scheme cannot be deemed unreasonable, or in violation of the fundamental rights of the Petitioner as submitted by the Petitioner before this Court.”

24] In the case in hand, the 1st Respondent University is to select the best-suited candidate for the performance of specific tasks. Awarding marks for each category is for the academics; this court, as non-academics, is not to decide that. Thus, in view of the above authorities, I hold that the Petitioner has not satisfied the requirement for intervention of this court to invoke writ jurisdiction.

25] I note that Prayer “d” is prayed for “Direct the Chairman, University Grants Commission, to conduct an appropriate inquiry and take suitable disciplinary action against the members of the Selection Committee”. If an injustice is being

done, the Petitioner should act under section 86(a) of the Universities Act No. 16 of 1978. It reads as follows: 86.

“The Appeals Board shall have and may exercise the following powers, duties and functions:

(a) to conduct investigations into appointments and promotions alleged to have been made to the staff of the Commission and to Higher Educational Institutions in contravention of the schemes of recruitment and the procedures for appointment in force at the time such appointments or promotions were made or alleged to have been made and into allegations that appointments or promotions have not been made to posts when vacancies have arisen in such posts;”

26] I do not see any bar that the Petitioner was preventing from having redress under the above section. In fact, the Petitioner has an alternative remedy against the impugned decision, which she has not resorted to. Thus, the Petitioner would have directly appealed to the University Appeal Board to have an inquiry.

27] In this regard, the decision in **R v. Commissioner of Police of the Metropolis, ex parte Blackburn** [1968] 2 QB 118 reaffirmed the discretionary nature of writs and emphasized that their issuance may justifiably be declined when an adequate alternative remedy exists.

28] In **R (G) v. Governors of X School** [2011] UKSC 30; 1 AC 167. and **R (O) v. Secretary of State for the Home Department** [2016] UKSC 19; 1 WLR 1717., where the UK Supreme Court held that the Petitioners, respectively a suspended teacher and an asylum seeker, ought to have availed themselves of internal appeal procedures and statutory appellate mechanisms before turning to the courts to invoke writ jurisdiction.

29] In Sri Lanka, **in the case of Somasunderam Vanniasingham Vs. Forbes and others** 1993 (2) SLR 362. the Supreme Court held that;

“A party to an arbitration award under the Industrial Disputes Act is not required to exhaust other available remedies before he could challenge illegalities and errors on the face of the record by an application for a writ of certiorari. This is so even though he had the right to repudiate the award under section 20 (1) of the Industrial Disputes Act. A settlement order should not itself be hastily regarded as a satisfactory alternative remedy to the Court's discretionary powers of review. There is no rule requiring the exhaustion of administrative remedies.”

Per Bandaranayake J.

“As I have said there is no rule requiring alternative administrative remedies to be first exhausted without which access to review is denied. A Court is expected to satisfy itself that any administrative relief provided for by statute is a satisfactory substitute to review before withholding relief by way of review.”

30] Similarly, in **Ishak v Laxman Perera** [2003] 3 SLR 18, held that;

“where there is an alternative procedure which will provide the applicant with a satisfactory remedy the Courts will usually insist on an applicant exhausting that remedy before seeking judicial review. In doing so the Court is coming to a discretionary decision.”

31] In **Jayaweera V. Asst. Commissioner of Agrarian Services Ratnapura and Another** [1996] 2 SLR 70, the Court held;

“A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief.”

32] In line with the above authorities, this court sees that the Petitioner ought to have first gone to the University Appeal Board under 86(a) of the University Act, and thereafter vindicate her rights in this court.

33] For the foregoing reasons, the application for writ of certiorari prayed for by the petitioner is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL