

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

In the matter of an application for Orders in the nature of *Writ of Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C.A. (Writ) Application
No: 0588 / 2024**

1. University of Peradeniya,
Peradeniya,
20400.

PETITIONER

Vs

1. Maithree Wickramasinghe PC
Chairman,
University Services Appeal Board,
Ward Place,
Colombo 07.

2. Prof. W.G.D Dharmarathne
Vice Chairman,
University Services Appeal Board,
Ward Place,
Colombo 07.

3. Sugath Caldera,
Member,
University Services Appeal Board,
Ward Place,
Colombo 07.

4. R.G.S. R Rajapaksha
 130, Kotakedeniya Road,
 Weligalla.
5. University Grants Commission,
 No. 20, Ward Place,
 Colombo 07.

RESPONDENTS

- Before** : Dhammika Ganepola, J.
 Adithya Patabendige, J.
- Counsel** : Shantha Jayawardena with Niroshika Wegiriya,
 Hiranya Damunupola,
 Azra Basheer & Wihangi Thissera instructed by
 Chamali Amarathunga for the Petitioner.
- Rifana Mukthar, SC for the 5th Respondent.
- Argued on** : 09.10.2025.
- Written Submission** : 29.10.2025 for the Petitioner.
- Tendered on**
- Decided on** : 12.11.2025.

Adithya Patabendige, J.

The Petitioner, University of Peradeniya, invoked the jurisdiction of this Court seeking, *inter alia*, a mandate in the nature of a *writ of certiorari* to quash the order dated 06th March 2024, of the University Services Appeals Board (hereinafter referred to as the USAB), made in Appeal No. 780, marked P45.

Although notice was duly served on the 4th Respondent who is the affected party in this Application, he has remained absent throughout the proceedings.

When this matter was taken up for argument on 09th October 2025, learned State Counsel appearing for the 5th Respondent, the University Grants Commission, informed Court that, having considered the nature of the reliefs sought by the Petitioner, there was no necessity either to file objections or to advance oral submissions. Similarly, the 1st to 3rd Respondents referring to the contents of their motion dated 11th February 2025, informed Court that they did not wish to file objections and agreed to abide by the decision of this Court.

The facts relevant to this application can be summarized as follows.

According to the document marked P1, the 4th Respondent joined the University of Wayamba as a clerk Grade III with effect from 22nd October 2000. Subsequently, an internal advertisement was published within the university system to recruit a Trainee Technical Officer to the Petitioner University, in response to which 4th Respondent applied.

It is not in dispute that the 4th Respondent was duly appointed to the said post following the prescribed procedure and he was attached to the Department of Geology of the Petitioner University. In terms of the letter of appointment dated 01st March 2005, marked P2, the above post is subject to a probationary/training period of three years. The letter of appointment further stipulated that if the training was found unsatisfactory, the Petitioner was entitled to extend the period of probation/training by further one year. It also provided that, in the event the 4th Respondent failed to achieve the required standards, he would be reverted to his previous post. The 4th Respondent in his letter dated 15th March 2005, assumed duties of the said position.

As is evident from the document dated 20th November 2009, marked P29, the 4th Respondent has made an appeal to the USAB seeking, *inter alia*, interim relief restraining the Petitioner from changing or transferring him from the post of Technical Officer, declaration that he be made permanent in the said post, a direction not to extend the probationary period and any other relief that USAB may deem fit.

Due to the unsatisfactory performance of the 4th Respondent, the Petitioner decided to revert him to his previous post with effect from 15th March 2010. Subsequently, the Petitioner issued a letter of appointment marked P23, which was not accepted by the 4th Respondent. By letter marked P25, informed the Petitioner of his position with regard to P23.

The Petitioner avers that despite several reminders, the 4th Respondent failed to report for duty resulting in a vacation of post, dated 02nd November 2010 being issued, marked P27. It is important to note that the vacation of post letter was issued on 02nd November 2010, while the petition of appeal bears the date 20th November 2009. This chronology makes it unequivocally clear that the appeal was lodged before the USAB nearly one year before the issuance of vacation of post letter. Accordingly, the said letter could not have been a factor forming the basis of the appeal.

While the said appeal was pending, the 4th Respondent filed a Fundamental Rights Application bearing No. SC (FR) 211/2010, marked P32, before the Supreme Court, seeking, *inter alia*, a declaration that his Fundamental Rights guaranteed under Articles 12 (1) and 14 (1) (g) of the Constitution had been infringed, to quash the decision terminating his services and reverting him to his previous post.

However, with the consent of all parties to the said appeal, the USAB decided to lay by the appeal until the final determination of the aforesaid Fundamental Rights Application.

It is common ground that the said Fundamental Rights Application was dismissed. However, in its judgment dated 28/11/2016, marked P37, the Supreme Court observed that such dismissal would not preclude the Petitioner University, from exercising its discretion to consider reverting the 4th Respondent to his previous post.

Subsequently, the 4th Respondent made an application to reopen his earlier appeal before the USAB on 15th June 2022, marked P38. Pursuant to the said application, he submitted an amended appeal dated 28th October 2022, marked P40. The 1st to 5th Respondents filed their answer on 22nd February 2023, marked P41. All parties thereafter filed written submissions, and consequently, the USAB delivered its order dated 06th March 2024, marked P45.

The crux of the decision of the USAB is that the second letter of appointment, marked R19, has no force or validity in law, and consequently, the letter relating to vacation of post, marked P27 is also rendered invalid.

Accordingly, the USAB directed the Petitioner to issue a fresh letter of appointment to the 4th Respondent in the post of Clerk Grade III and further decided that the 4th Respondent is entitled to the seniority and relevant increments with back wages from the date of the last drawn salary. The main contention of the Petitioner in the instant application is that the above decision marked P45 is unreasonable, irrational and *ultra vires*.

The 4th Respondent, submitted his first appeal, marked P29, to the USAB on 20th November 2009, seeking four reliefs. He thereafter submitted an amended appeal dated 28th October 2022, marked P40, in which he sought nine reliefs. It is evident that the 4th Respondent did not seek any relief pertaining to the vacation of post either in his original petition of appeal or the amended petition of appeal.

As per paragraph 26 of the order dated 06th March 2024 of the USAB, (P 45), it identified the issues addressed in the appeal as follows;

- 1) The legality of the appointment of the appellant,
- 2) The decision to revert him back to the previous post,
- 3) The decision to issue a letter relating to vacation of post.

The paragraph 26 states thus;

“The jurisdiction of the Board is to inquire and investigate the matters contained in the Petition of Appeal and the Answer filed before us, provided it is a matter coming under the purview of Section 86. Thus, our investigation is circumscribed by the limited issue of the legality of the Appointment of the Appellant and the decision to revert him back to the previous post and the alleged decision to treat the Appellant as having vacated the post. This Appeal thus falls within our jurisdiction.”

The powers of the USAB are set out in Section 86 of the Universities Act, which provides 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.
- b) to consider appeals from employees of the Commission or any Higher Educational Institution, who have been dismissed, compulsorily retired, or otherwise punished for

misconduct, inefficiency or dereliction of duty, against such dismissal, compulsory retirement or other punishment;

- c) to consider appeals from employees of the Commission who were employees of the old University or any Higher Educational Institution, relating to compensation payable to employees of the old University under section 142 of this Act; and
- d) to convey to the Chairman of the Commission or the principal executive officer of the Higher Educational Institution concerned, as the case may be, the decisions arrived at after considering such appeals or conducting such investigations.

USAB determined that sub section (a) and (c) have no application to the appeal of the 4th Respondent. Paragraphs 28 and 29 of the impugned order are relevant in this regard, and state as follows;

28) The provisions of sub section 86 (a) and sub - section 86(c) have no application to the complaint of the Appellant. The grievance of the Appellant in his complaint to this Board necessarily invokes sub - section 86(b) read with sub - section 86(d) of the Universities Act. Sub section 86(d) of the Universities Act relates to the conveying of the decision to the chairman of the University Grant Commission or the principal executive officer of the Higher Educational Institution concerned as the case may be after conducting the relevant investigation under sub - section 86(b).

29) Accordingly, our jurisdiction to investigate into this matter would only arise if the complaint falls within sub section 86(b) of the Universities Act. This sub section grants this Board jurisdiction “to consider appeals from employees of the Commission or any Higher Educational Institution, who have been dismissed, compulsorily retired, or otherwise punished for misconduct, inefficiency or dereliction of duty, against such dismissal, compulsory retirement or other punishment.”

If Section 86(a) does not apply to the instant case, the USAB has no power of investigation under section 86(b), it possesses only appellate powers to hear an appeal. The role of an investigation is inquisitorial whereas hearing an appeal is adversarial in nature.

It is to be observed that a decision to treat an employee as having vacated of his post, where such vacation of post is a consequence of failure to report for duty without informing the authority, may in appropriate circumstances amount to a form of punishment for misconduct or dereliction of duty and thus it could fall within the appellate jurisdiction contemplated in

Section 86 (b). However, as pointed out earlier, the 4th Respondent, in neither his original petition of appeal nor the amended petition of appeal, sought any relief pertaining to the vacation of post. His primary contention was to be made permanent in the post of Technical Officer.

In exercising its appellate jurisdiction, the duty of the USAB was confined to examine whether the decision of the University to revert the 4th Respondent for the post of Clerk Grade III was lawful and justified, or alternatively, whether the 4th Respondent's claim for permanency as a Technical Officer was sustainable. The USAB, when deciding an appeal has not vested with any wider authority to grant unclaimed reliefs to a party.

It is a well settled principle of Administrative Law that a statutory authority must act strictly within the four corners of the powers conferred upon it by the enabling statute. The jurisdiction of the USAB is expressly limited by section 86 of the Universities Act to;

- a) Investigative powers regarding appointments and promotions made in contravention of recruitment schemes,
- b) Appellate powers in respect of dismissal, compulsory retirement, or punishment for misconduct, inefficiency, or dereliction of duty,
- c) Appeals from the employees of the old University or Higher Educational Institution under Section 142 of the old University Act,
- d) To convey the decisions of the USAB to the Chairman of the Commission or the principal executive officer of the Higher Educational Institution.

Thus, the jurisdiction of the USAB must be understood within the four corners of the statute. The Board can only exercise the powers expressly conferred upon it by law and no authority to adjudicate on matters beyond these statutory limits.

When the appeal was filed, there existed no grievance in relation to a vacation of post; that issue arose only subsequently, underscoring that the USAB had no occasion to exercise its appellate powers under Section 86 (b) in respect of that matter.

Accordingly, it is manifest on the face of the impugned order marked P45 that the USAB has acted *ultra vires* the powers conferred upon it by section 86 (b) of the Universities Act, since that provision confines its jurisdiction to the consideration of appeals against dismissals or

punishments and does not extend to the conduct of investigations or the granting of unclaimed reliefs.

The assumption of jurisdiction by the USAB to conduct an investigation and to grant reliefs not sought in the appeal constitutes an excess of authority and renders its order *ultra vires* and *void ab initio*.

For the foregoing reasons, this Court issues a Writ of Certiorari quashing the order of the USAB dated 6th March 2024, marked, P 45.

I shall make no order as to costs of this application.

JUDGE OF THE COURT OF APPEAL

Dhammadika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL