

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA.**

In the matter of an application under
and in terms of Articles 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

S.C. (FR) No. 169/2024

S. Malavipathirana
No.37A, Rupasiri Mawatha, Mirihana,
Nugegoda.

Petitioner

Vs.

1. Sabaragamuwa University of Sri Lanka,
PO Box 02, Belihul Oya.

And 27 Others

Respondents

Before : A. L. Shiran Gooneratne, J.
Achala Wengappuli, J.
Menaka Wijesundera, J.

Counsel : Nigel Hatch, PC with saman Galapatthi instructed by
Isuru Perera for the Petitioner.
Ms. Ganga Wakishta Arachchi, DSG instructed by Rizni
Firdous SSA for the Respondents.

Written

Submissions : Latest Written submissions on behalf of the Petitioner on 08th September, 2025.

Latest Written submissions on behalf of the Respondents on 08th September, 2025.

Argued on : 05.08.2025

Decided on : 13.10.2025

MENAKA WIJESUNDERA J.

The Petitioner in the instant matter has sought a declaration that the 1st to the 27th respondents have violated his fundamental rights under Article 12(1) and 14(1) (g) of the Constitution by failing to face him in the post of senior lecturer Grade II with effect from 06.04.2009, in the University of Sabaragamuwa.

When this matter was supported for leave, this court has granted leave under Article 12(1) and 14(1)(g) of the Constitution against 1st to the 27th respondents.

The Petitioner in the instant matter have graduated from the University of Peradeniya obtaining a special degree in Chemistry in the year 1994. Thereafter he had obtained a MPhil from the Post Graduate Institute of Science in Peradeniya University in 2001. And also have his PhD in the same University in 2017. Thereafter, in February 2021 he had earned his Professorship.

The Petitioner is presently serving in the University of Sabaragamuwa as a Professor in the Department of Physical Sciences and Technology.

On 04.01.2009, the 1st Respondent have called for applications for the post of Senior Lecturer Grade I/II for the Department of Physical Sciences and Technology in the Faculty of Applied Sciences at the Sabaragamuwa University. The petitioner had applied to the said post.

The Petitioner applied for the position of Senior Lecturer Grade II, despite it being 160 km from his residence, with a legitimate expectation of better career prospects. Thereafter, the petitioner had been recruited by the University of Sabaragamuwa by letter dated 24.03.2009 for the post of Lecturer (Probationary) subject to the condition that he will be recruited to the post of Senior Lecturer

Grade II after obtaining the approval of the University Grants Commission which is the 27th respondent. The letter has been marked as P8.

Therefore, the petitioner states that although he assumed duties in the capacity of Lecturer (Probationary) on 06.04.2009 he had reasonable expectations to be upgraded to the post of Senior Lecturer Grade II which was the post which had been advertised. He further says that although P8 indicated to him that he would be considered to the Senior Lecturer Grade II in due course, 1st to the 27th respondents have failed to do so, despite many reminders by him, which had been marked and produced as part and parcel of the petition.

Paul Craig on ‘Administrative Law’ (6th Edition) at page 686:

“The concept of legitimate expectations should play the same general rule in this type of cases, as in relation to intra vires representations. It is a necessary, but not sufficient, condition for the representation to bind the public body. Reasonableness of reliance is a necessary condition for a legitimate expectation. It might be objected that a representee could never have a “legitimate” expectation if the representation was ultra vires. This is, however, merely a restatement of the general rule that ultra vires representations cannot ever bind, which is the very question in issue.”

The above clearly indicates that reasonableness of reliance is a necessary condition for a legitimate expectation. In the case at hand, granting of the position and acceptance of the said post of Lecturer (Probationary) by the Petitioner on 06.04.2009, with the legitimate expectation of being upgraded to the post of Senior Lecturer Grade II. No reasonable reliance can be placed on such decisions. It is to be noted that at this stage, the post of Lecturer (Probationary) was not advertised but only the post of Senior Lecturer Grade II.

In ***Ariyaratne and Others v Inspector General of Police and Others (2019) 1 Sri LR 100*** the Supreme Court held that,

“the law, as it presently stands, is that an assurance given ultra vires by a public authority, cannot found a claim of a legitimate expectation based on that assurance. But it has to be recognised that there may be many instances where a petitioner who relies on an assurance given by a public authority or one of its officials, reasonably believed that the public authority or official who gave it to him was acting lawfully and within their powers. It is also often the case that an individual who deals with a public authority will find it difficult to ascertain the extent of its powers and those of its officials. In such cases, much hardship will be done to an individual

who bona fide relies on an assurance given to him by a public authority or one of its officials and is later told the assurance he relied on and acted upon, sometime with much effort and at great cost to him, cannot be given effect to because of a flaw regarding its vires. In such instances, the principle of legality comes into conflict with the principle of certainty and, the law as it stands now, is that the illegality of the assurance will defeat the value of certainty which contends that the assurance should be given effect."

Petitioner also states that he resigned from a senior position in a public Research Institute close to his residence area with the expectation of receiving the position of Senior Lecturer Grade II and that the Head of the Department of Physical Sciences and Technology and the Dean of the faculty had endorsed all his requests made to the relevant authorities, those endorsements have said that he had contributed immensely to enhance the academic quality of the department.

The petitioner has stated that all his requests by the 2nd respondent had been virtually overlooked but on 04.10.2016 the 2nd respondent had replied to the petitioner stating that his request could not be granted because the UGC has given approval to applicant to the post of lecturer (probationary) in the first instance and not to the post of senior lecturer Grade II. Therefore, he has pleaded that from 2009 up to 2016 he had been stagnating in the capacity of lecturer (probationary) due to the inactions of the respondents.

Thereafter, in the year 2017, the head of his department had written to the 2nd respondent requesting they resolve the issue of the petitioner in a justifiable manner and have recommended to appoint an academic committee to appraise the qualifications of the petitioner, to provide recommendation to the 27th respondent for the petitioner to be placed the position of senior lecturer Grade II. Thereafter, a council sub-committee comprising of four members had been appointed to go into this matter. The sub-committee has evaluated the situation and forwarded a report. The report had recommended to the UGC to place the petitioner in the capacity of senior lecturer Grade II with effect from the date of the initial appointment considering the academic and professional qualifications of UGC circular 721. It has further recommended that the 2nd respondent must write to the UGC a mistake they have committed at the initial stage and to obtain approval of the UGC if required and not to commit any more mistakes of this nature.

The said council paper of sub-committee had been marked and produced as P19 (a) and P19 (b) to the petition.

The said report had been tabled in the council on 22nd of December 2017 and the said proceeding had been marked as P20.

Therefore, based on these recommendations of the sub-committee, petitioner has requested again by his letter dated 31.07.2018 and 12.03.2019 to the UGC to place the petitioner in the capacity of senior lecturer Grade II as the committee have pointed out the mistake done by the university. But the 1st respondent had refused to accommodate his request in view of the decision taken by the UGC by letter dated 04.10.2016.

Therefore, he says that the 1st and the 2nd respondents had deliberately and willfully neglected to act on the recommendations of the sub-committee and the council of the university. Due to this inaction of the 1st and 2nd respondent the petitioner had thereafter gone before the University Services Appeal Board in 2020. The appeal board by the order dated 26.10.2022 recommended the 1st respondent to place the petitioner in the capacity of senior lecturer Grade II with effect from the initial date of appointment.

It has to be observed that USAB at page 7 of their order has stated that UGC approval is not required to appoint the petitioner to the position of senior lecturer Grade II.

The petitioner had written to the 26th and 27th respondents requesting them to implement the recommendations of the USAB (28.4.2023, 04.08.2023, 5.10.2023 and 18.12.2023). Despite several follow-up letters sent by the petitioner, the recommendations of the USAB have not been implemented.

The petitioner stated that due to the inactions of the respondents he has lost 2 years of sabbatical leave and he had also lost his salary increments and other allowances due for the post of senior lecturer Grade II along with other foreign academic research exposures.

He further says that after he finished the PhD, in reality, he was entitled to the capacity of senior lecturer grade II when in fact he had been placed in that position from the 1st date of his appointment which is 06.04.2009.

Therefore, he had declared that the respondents have infringed his fundamental rights under Article (12) (1) and (14) (1) (g).

In **Dr. Karunananda v Open University of Sri Lanka** [(2006) 3 Sri LR 226], Shirani Bandaranayake J. noted:

“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."

The petitioner in this case does not seek to challenge a subjective academic evaluation, such as a mark or grade, but rather contests the failure of administrative authorities to act on binding internal recommendations and a statutory appellate body's directive, despite the evident error in his initial appointment process. This is not an academic judgment, but a matter of compliance with lawful administrative procedure.

The Respondents contend that under UGC Circular 721 and Establishment Circular 17/2005, the Petitioner was not eligible for appointment as Senior Lecturer Grade II or as an Associate Professor, as he had not obtained a First or Second Class in his basic degree, failed to produce his BSc certificate at the time of application, and had not completed a PhD until 2017, thereby qualifying only for Lecturer (Probationary). They argue further that his acceptance of the probationary appointment without protest, reliance on a disputed document (P-08), delay of fifteen years in filing the petition, suppression of material facts, and non-joinder of necessary parties render the application misconceived and time-barred.

In contrast, the Petitioner asserts that his B.Sc. (Special) in Chemistry together with an M.Phil in Chemical Sciences satisfied the criteria under Circular 721 for appointment as Senior Lecturer Grade II, and that the University acted arbitrarily in seeking approval only for the probationary post, despite assurances of later upgrading. He highlights that in 2017, a university sub-committee and subsequently the Council confirmed his eligibility, but the Acting Vice Chancellor failed to forward this to the UGC, and that the USAB, after hearing both the University and the UGC, ordered his appointment as Senior Lecturer Grade II with effect from 2009, an order never implemented.

While the Respondents stress technical ineligibility and procedural bars, the Petitioner emphasizes the arbitrariness, contradictory positions of the UGC.

Article 12(1) of the Constitution guarantees that "All persons are equal before the law and are entitled to the equal protection of the law."

The phrase "*equality before the law*" appears in nearly all written constitutions and is derived from English law. In contrast, the term "*equal protection of the law*" first appeared in the Fourteenth Amendment to the Constitution of the United States. Both expressions are employed in the Constitution of Sri Lanka, as they are in the Indian Constitution.

Article 14 of the Indian Constitution provides: "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*" It is important to observe that, in the Indian context, this prohibition against inequality applies solely to the State. However, no such limitation exists under the Sri Lankan Constitution.

Both terms "*equality before the law*" and "*equal protection of the law*" are also found in Article 7 of the Universal Declaration of Human Rights, which states: "*All are equal before the law and are entitled without any discrimination to equal protection of the law.*" Similarly, Article 26 of the International Covenant on Civil and Political Rights contains both expressions.

The notion of *equality before the law* is regarded as a negative concept, denoting the absence of special privileges for any individual and the equal subjection of all persons to the ordinary law. On the other hand, *equal protection of the law* is considered a more affirmative concept, connoting the equal application of the law in similar circumstances.

Jennings viewed equal treatment as encompassed within the idea of equality before the law, stating: "*Equality before the law means that among equals, the law should be equal and should be equally administered, that like should be treated alike.*" The underlying aim of both expressions is clearly the attainment of equal justice.

Dicey, asserting equality before the law to be a corollary of the famous doctrine of the rule of law, emphasised that it means,

‘the supremacy or predominance of law as distinguished from mere arbitrariness (... It means again, equality before the law or equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts (... It means that in England no man is above the law but everyman, whatever his rank or condition may be, is subject to the ordinary law of the land.’

In the case of ***Perera v Cyril Ranatunga, Secretary Defence, Mark Fernando J, with Kulatunga and Wadugodapitiya JJ*** agreeing, stated:

‘To ignore the requirements of the post and the needs of the public would be to permit the unrestricted application of the ‘Peter principle’ that in a hierarchy a person will continue to be promoted until he reaches a level at which he is quite incompetent. Merit’ thus has many facets, and the relative importance or weight to be attached to each of these facets, and to merit in relation to seniority, would vary with the post and its functions, duties and responsibilities.’

The petitioner has demonstrated that he was appointed to a non-advertised position, despite applying for the post of Senior Lecturer Grade II, Multiple internal committees and the University Services Appeals Board (USAB) found that an administrative error had occurred and recommended rectification, and the respondents failed or refused to act on those findings.

This conduct reflects an unequal and arbitrary treatment, violating the petitioner’s right to equal protection under the law.

Article 14(1)(g) guarantees that: “Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.”

Article 19(1)(g) of the Indian Constitution guarantees the freedom ‘to practise any profession or to carry on any occupation, trade or business’.

J. Wickramaratne on ‘Fundamental Rights in Sri Lanka’ (3rd Edition) at page 941:

“A significant difference between the provisions in the Sri Lankan and Indian Constitutions is the absence of the words ‘in association with others’ in the Indian Constitution as noted by Wanasundera J in *Visvalingam v Liyanage* FRD (2) 529, 535. Thus, in Sri Lanka, citizens have a fundamental right not only to engage in any lawful occupation, trade, etc but also to form associations with others in exercising that right.”

“Article 14(1)(g) of our Constitution confers a right and not an obligation. As such, it includes the right not to carry on a trade or business.”

In the case of ***Perera v Jayawickrema [1985] 1 Sri LR 285***, the Court declared ‘Article 14(1)(g) recognises a general right in every citizen to do work of a particular kind and of his choice, it does not confer the right to hold a particular

job or to occupy a particular post of one's choice.' However, when a citizen's employment is denied to him arbitrarily, it is a violation of Article 14(1)(g).

Article 14(1)(g) would be violated also when a person is selected for an appointment, but his appointment is suspended arbitrarily. The petitioner in ***Sisira Senanayake v Land Reform Commission SC FR 190/2016*** was selected for the post of Director, Finance in the Land Reform Commission after being interviewed. He was informed of his selection; he accepted the position and resigned from the job he was holding. He was later informed that his appointment had been suspended.

Lord Denning in the case of Nagle v Feilden [1966] 1 All ER 689, 694:

“A man's right to work at his trade or profession is just as important to him as, perhaps more important than his right to property. Just as the courts will intervene to protect his rights to property, so they will also intervene to protect his right to work.”

In ***Vasudewa Nanayakkara v Choksy, Minister of Finance and others*** (SC FR 209/2007, SC Minutes of 13.10.2009), Bandaranayake J. quoted Lord Denning in *Nagle v. Feilden and others* ([1966] 1 All E.R. 689 at page 694) that:

“A man’s right to work at his trade or profession is just as important to him as, perhaps more important than, his rights of property... the courts will intervene to protect his right to work.”

In the present case, the respondents’ continued failure to recognize the petitioner’s proper designation deprived him of salary increments, sabbatical leave, professional recognition, and international academic opportunities, all of which are integral to his lawful profession.

In ***Liberty Cinema v Commissioner, Corporation of Calcutta and another*** [1959 AIR Cal 45], D.N. Sinha, J. at page 53 held that:

“An uncontrolled and arbitrary power without any restriction whatsoever cannot be granted to the executive or a non-legislative body, if it is possible by the exercise of such power to affect the rights guaranteed to a citizen to carry on trade or business.”

The same principle applies here; the respondents’ refusal to act on binding recommendations and legal directives, without any justification, amounts to an arbitrary exercise of discretion, infringing the petitioner’s freedom to engage in his profession as protected by Article 14(1)(g).

Although promotion is not a fundamental right, the petitioner was not merely seeking a discretionary promotion, rather, he was appointed under a representation that he would be regularized into a higher post, the very post that was advertised. This created a legitimate expectation, which was unreasonably denied.

In conclusion, having considered the submissions made and the documents produced, and the sequence of events that have transpired from the time of his initial appointment in 2009 to the date of filing this application, it is evident that the petitioner was subjected to administrative inaction and procedural irregularities.

The **1st** respondent had failed to act on the assurance given in letter marked P8 to place the Petitioner in the post of Senior Lecturer Grade II, and had delayed and neglected the Petitioner's career progression by failing to seek UGC approval in time. Following the decision of the USAB, the **27th** respondent had unreasonably delayed responding to the University's request dated 22.12.2022, concerning the implementation of said order. By not providing timely approval, the petitioner's access to his rightful academic position and professional entitlements had been denied.

Therefore, I declare that the **1st and 27th** respondents have collectively violated the fundamental rights of the petitioner under Article 12(1) and 14(1)(g) of the Constitution.

Hence, the 1st respondent is directed to take immediate steps to implement the Order of the University Services Appeals Board dated 26.10.2022, and to place the petitioner in the position of Senior Lecturer Grade II with effect from 06.04.2009, being the date of his initial appointment and the salary entitlements which is due for the said post.

No order is made with regard to compensation as he has been employed in a different capacity in the same institution.

JUDGE OF THE SUPREME COURT

A.L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J.

I agree.

JUDGE OF THE SUPREME COURT