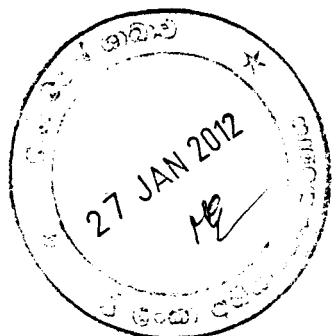


IN THE COURT OF APPEAL
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA



In the matter of an application for a mandate in the nature of Writs of *Certiorari*, *prohibition* and *Mandamus* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

- (1) Prof.M.D. Amarasinghe,
Head
Department of Botany,
Faculty of Science,
University of Kelaniya

PETITIONER

C.A. Writ Application No. 3 of 2012

Vs.

1. Prof. Sarath Amunugama
Vice Chancellor
University of Kelaniya
Kelaniya
2. Prof. D.D.S. Kulatunga Head
Department of Mathematics
University of Kelaniya
Kelaniya

RESPONDENTS

C.A. Writ Application No.03/2012

BEFORE : S. SRISKANDARAJAH, J. (P/CA)

COUNSEL : K. N. S. Kodituwkku instructed by Sampath
Vijitha Kumara for the petitioner.
Arjuna Obeysekera D.S.G. for the 1st and 2nd
respondents.

ARGUED AND

DECIDED ON : 11th January, 2012.

S. SRISKANDARAJAH, J. (P/CA)

The learned Counsel for the petitioner supported this application and moves for notice on the respondents. The main contention of the Counsel for the petitioner is that the 2nd respondent's appointment as the Dean of the Faculty of Science is not in order and therefore he has sought a writ of certiorari to quash the said appointment. The basis of his challenge is two fold. One is that an officer who has held two terms as a Head of the Department cannot hold a 3rd term as a Head of the Department. The 2nd respondent was holding a 3rd term as a Head of the Department. The basic qualification to be appointed as a Dean, that the person who is seeking the appointment should have been a Head of the Department at the time of the said appointment. But the petitioner has not submitted any rule or

regulation to the effect that a person cannot hold a 3rd term as a Head of the Department. But he submits that is a practice of the University. In these circumstances a writ will only lie to quash the said appointment as it is not a violation of a rule or regulation or statutory provision, that could be considered as an act of illegality. In these circumstances the petitioner has not established any illegality in relation to the 3rd term the respondent suppose to have been holding as a Head of the Department to qualify himself as a candidate for the Dean of the Faculty of Science.

The petitioner challenged in relation to the appointment of the 2nd respondent as Dean of the Faculty is on the basis that he was charged in the Magistrate's Court for a criminal offence, and according to the rules of the University he should have been interdicted forthwith. The learned Deputy Solicitor General who is appearing for the respondents brought it to the notice of Court that the rule 18(1) of the University Establishment Code has specifically provided where it is considered undesirable that a person employed in a Higher Educational Institution should continue to exercise the function of his office he may forthwith be interdicted from office by the Chairman of the Commission or the Principal Executive Officer of the Higher Educational Institution. The learned Deputy Solicitor General also brought it to the notice, that in relation to this matter, an internal inquiry was held and the Inquiring Officer has informed that there is insufficient material to charge the 2nd

respondent respective of the criminal case filed against him in the Magistrate's Court. After considering these facts the University as it has a discretion under rule 18(1) exercise its discretion and has not interdicted him from service. This act cannot be considered as a violation of the Rules or unreasonable in the given circumstances.

The two main grounds that were raised by the petitioner to disqualify the 2nd respondent to hold the office of the Dean of the Faculty of Science is not properly substantiated before this Court and at the same time the appointment of the 2nd respondent was made by the University Board and the University Board was also made not a party to this application and as the University Board is a necessary party to this application and as they were not made parties to this application the maintainability of this application itself is in question. Under these circumstances this Court refuses to issue notice.

PRESIDENT OF THE COURT OF APPEAL

Kwk/=