

**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 a writ of certiorari in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

A.M.Hafil
No. 68, Hapugastanna Road,
Madawala Bazaar,
Kandy.

Petitioner

C.A/WRIT/App/No.1035/2007

vs

1. Rajarata University of Sri Lanka,
Mihintala.
And fifteen (15) others

Respondents

BEFORE	:	S.SRISKANDARAJAH, J (P/CA).
COUNSEL	:	K.G.Jinasena, for the Petitioner. Vicum de Abrew SSC, for the Respondents.
Argued on	:	27.09.2010 & 30.11.2010
Decided on	:	18.01.2012

S.Sriskandarajah.I

The Petitioner is presently functioning as a Senior Lecturer (Grade II) of the Department of Physical Science of the Faculty of Applied Science of the 1st Respondent University. The Petitioner was absorbed into the cadre of the academic staff of the 1st Respondent University as a Lecturer (Probationary) with effect from 1st March 1996. He was thereafter promoted to Senior Lecturer (Grade II) with effect from 17th October 2003. He was appointed as a Head of the Department of Physical Science in the Faculty of Applied Science with effect from 1st February 2006 by the predecessor of the 2nd Respondent by his letter dated 8th February 2006.

The Respondents submitted that there were students agitation and protest to remove the Petitioner due to the Petitioner's failure to discharge his duties, powers and functions in the office of the Head of Department of Physical Sciences with due diligence and with a degree of responsibility. In support of this contention the Respondents annexed letters from the students union addressed to the Vice Chancellor as R1 to R4. The Respondent further submitted that the 96th Emergency Meeting of the Faculty Board was convened on 02.11.2006 to consider measures against the token strike organised by the students and to avoid the same. In this meeting all members of the Faculty Board had agreed on appointing an independent committee to look into the matters raised by the students to ensure justice and fairness to the Petitioner as well as to the students pursuant to the request by the Petitioner himself. The Governing Council of the 1st Respondent University based on the decision taken at the Faculty Board Meeting of 02.11.2006 had taken the following decisions.

- (a) To appoint an independent Commission to look into the allegations made by the students against Mr. A.M. Hafil, Head of Department of Physical Science.

- (b) Mr. Hafil be released temporarily from his duties as Head of the Department of Physical Science and the Dean of the Faculty to take over all the functions of the Head of the Department of Physical Science with immediate effect.

The Petitioner was informed on the 13th of November 2006 that a preliminary inquiry will be held in respect of the complaints made by the students. An Attorney at Law was appointed to conduct the preliminary inquiry. The inquiry officer had concluded that there were many serious lapses and deficiencies in the administration and management of affairs of the Department of Physical Sciences resultant from the inefficiency of the Petitioner as its head.

The Petitioner was temporarily released from his position of the Head of the Department of Physical Sciences until a formal inquiry was held. This suspension cannot be considered as removal from office. The Respondents contended that in order to avoid an adverse impact on the academic carrier of the Petitioner, the council decided to informally request the Petitioner to resign from the post of the Head of the Department. But the Petitioner having agreed to resign from the head ship, had not obliged with his own undertaking. Hence at the 113th Council Meeting held on 15th October 2007, the Council reconsidered the position relating to the Petitioner and decided to proceed with the formal inquiry.

The University Council possess the power and authority in relation to the disciplinary control of the Petitioner as provided for by Section 45(2)(xii) of the Universities Act No. 16 of 1978 as amended and under the Establishment Code of the Universities Grants Commission and the Higher Educational Institutions.

The Respondents have the legal authority to inquire into any lapses on the part of the Petitioner and the Respondents have followed all the required procedure to hold an inquiry in relation to the allegations against the Petitioner. In these circumstances the Petitioner cannot seek a writ of certiorari to quash the decision of the Governing Council of the 1st Respondent University to release temporarily the Petitioner from the Duties of the Head of the Department of Physical Sciences. Further the charges against the Petitioner were placed before the Council therefore the validity of the charges cannot be challenged.

As the Petitioner has not established any grounds to issue a writ in this application this court dismisses this application without costs.

President of the Court of Appeal