

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

In the matter of an application under
Article 140 of the Constitution for
mandates in the nature of Writ of
Certiorari and writ of Mandamus.

Nagalingam Rameshwaran
Hulipuram Centre,
Chulipuram
Jaffna.

Petitioner

C.A. Writ Application No.515/2008

Vs.

1. University of Jaffna,
Jaffna.
2. Prof. N. Shanmugalingan
Vice Chancellor
University of Jaffna
3. Prof. K. Kumaravadivel
Member
4. Prof. S. Krishnarajah
Member
5. Prof. K. Kanthasamy
Member
6. Dr. K. Sivapalan
Member

7. Prof. S. Sivalingarajah
Member
8. Dr. Mrs. S. Sivachandran,
Member
9. Prof. Vasanthi Arasaratnam
Member
10. Prof. K. Thevarajah
Member
11. Prof. S. Rajadurai
Member
12. Dr. S. Sivapalan
Member
13. S. Abimannasingham
Member
14. Dr. P. Romakeswaran
Member
15. K. Pooranachandran
Member
16. Dr. V. Sivasamy
Member
17. Prof. P. Gopalakrishna Iyer
Member
18. Prof. V. Arumugam
Member
19. Rev. Dr. J.B. Gnanapragasam
Member
20. Dr. S. Sivanadarajah
Member

21. S.X. Kulanayagam

Member

22. K. Ganesh

Member

23. Bishop S. Jabanesan

Member

24. A. Thirumurugan

Member

25. Dr. S. Kanaganathan

Member

26. Mrs.P. Selvarajan

Member

All members of the Council of
University of Jaffna, Jaffna.

27. Mr. M. Manohar

28. Mr. V. Balamurugan

29. Mr. S. Sivaruban

All of Faculty of Arts,
Arts & Design for Painting and
Sculpture, University of Jaffna, Jaffna

30. University Grants Commission

No.20, Ward Place,

Colombo 7

Respondents

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

COUNSEL : M.A.Sumantharan with J.Arulanandan
for the Petitioner.

Janak de Silva SSC with Nuwan Peris, SC
for the 1st,2nd,4th ,6th -26th Respondents.

Viran Corea,
for the 3rd and 5th Respondent

S.N.Vijithsing
for the 29th Respondent

27th and 28th Respondents are absent and unrepresented

Argument on : 02.02.2011

Decided on : 01.10.2012

S.Sriskandarajah, J,

The Petitioner submitted that the University of Jaffna published an advertisement in the "Udayan" Newspaper on 20th July 2006, calling for applications for the post of Lecturer (Probationary) in Arts & Design for Painting and Sculpture. The Petitioner applied for the said post and was called for an interview to be held at the Board Room of the University, on the 19th of March 2007 at 10.00 a.m. The Petitioner submitted, the recommendation of the Interview Panel had to be approved by the University Council to make the appointment for the said post. After the interview the appointment was not made for more than six months. The University of Jaffna re-advertised for the said post in the "Udayan" Newspaper on the 8th of August 2007, in

which advertisement, it was expressly stated, that the candidates, who had applied when it was advertised in July 2006, need not apply again.

The Petitioner submitted that by letter dated 13th February 2008 he was called by the University of Jaffna to face the interview on 26th February 2008 for the post of Lecturer (Probationary) in Arts & Design for Painting and Sculpture. The Petitioner further submitted that he performed well in the interview and awaited the practical examination which was a mandatory part of the selection process for the said post, according to the Council Minutes of the University of Jaffna. The Petitioner submitted that without a practical examination being held, for any of the candidates who faced the interview for the post of Lecturer (Probationary) in the Arts & Design for Painting and Sculpture, the University of Jaffna decided to appoint three candidates who attended the said interview, viz., Mr. M. Manohar, Mr. V. Bala Murugan and Mr. F. Sivaruban, to fill three vacancies that existed for the said post. The appointments had been made with effect from the 2nd of April 2008.

The Petitioner contended that the conduct of the University of Jaffna in the said appointment is unreasonable and arbitrary. Moreover, the failure to conduct the practical examination, which was a mandatory requirement, for the said Appointment, makes the said appointments a nullity as it is ultra vires the powers of the University Council. Hence this decision is amenable to be quashed by a Writ of Certiorari. The Petitioner in this Application is seeking a Writ of Certiorari to quash the appointment for the post of Lecturer (Probationary) for Arts & Design for Painting and Sculpture made by the University of Jaffna with effect from 2nd April 2008.

The 1st to the 26th Respondents except the 3rd and 5th Respondents submitted that the eligible Applicants in response to the advertisement made in July 2006 for the post of Lecturer (Probationary) in Arts & Design were called for interview and their suitability for the appointment was evaluated by a Selection Committee on 19/03/2007. However, the Selection Committee, at the end of the interview,

recommended holding a practical examination before the final decision is made. As no action was taken to hold a practical examination by the then administration and, in view of the delay in implementing the decision of the Selection Committee, the then Acting Vice-Chancellor instructed to re-advertise the post along with other academic vacancies in the University. Accordingly, the post of Senior Lecturer/Lecturer (Probationary) in Arts & Design was advertised in August 2007, with a note, that the Applicants who applied in response to the advertisement made in July 2006 were not required to re-apply for the post. The Respondent submitted, the suitability for the appointment of all the five candidates (four candidates from the advertisement made in July 2006 and a candidate from the advertisement made in August of 2007), were evaluated by the Selection Committee on 26/02/2008 and recommended the appointment of the 1st three candidates who scored highest marks on the evaluation of the Selection Committee. The Petitioner obtained the lowest marks at the interview.

It is the position of these Respondents that it is not mandatory to have a practical test for the selection of Lecturer (Probationary) in Arts & Design in terms of scheme of recruitment stipulated in the U.G.C. Circular No.721 of 21st November 1997. These Respondents submitted, in April 2005, when considering the recommendation of the Selection Committee for the appointment for the same post, the Council, at its 297th meeting held on 30th April 2005, had not approved the recommendation of the Selection Committee and decided to have a new method of selection to the academic staff in Performing Arts, i.e., to have a performance test following the meeting of the Selection Committee.

It is useful at this point to refer to the objection filed by the 3rd Respondent in this Application. The 3rd Respondent is a Member of the Council of University of Jaffna, in his capacity as Dean of the Faculty of Science of the University of Jaffna. The 3rd Respondent has continuously served as a Member of the University Council of the University of Jaffna for more than 12 years, and as the elected Dean of the Faculty of Science continuously for about 10 years. He is the most Senior Professor in the

University of Jaffna at present. Furthermore, he has served as the Acting Vice-Chancellor of the University of Jaffna for a continuous period of more than 18 months.

The 3rd Respondent, in his objection, has observed, in order to fill the vacancies for Probationary Lecturers in Music, Dance and Arts & Design in 2004, the recommendations of the properly constituted Selection Board based on the performance of the candidates in the interview were placed before the University Council at its 296th meeting held on 26/09/2005 for approval, it was noted that a talented vocalist with 1st Class Honours in Music (Vocal) had not been recommended by the Selection Board. The Council felt that in disciplines of Visual and Performing Arts, (Music, Dance and Arts & Designs) a Performance/Practical test had to be conducted by a Panel of Experts and that the report of the Panel of Experts to be taken into consideration by the Selection Board before the Selection Board makes its recommendation to the Council. The Council at its 296th meeting held on 26/03/2005 therefore decided that a Performance/Practical test by a Panel of Experts should be conducted for the recruitment of Lecturer (Probationary) in Music, Dance and Arts & Design in the Ramanathan Academy of Fine Arts and its report placed before the Selection Board constituted for the purpose in accordance with the regulations. The Council, at the aforesaid meeting further unanimously decided to reject (or not to approve) not only the recommendation made by the Selection Board for Music, but also the recommendations made by the Selection Board constituted for Dance and Arts & Design as all the recommendations were based on interviews alone. The Council decided to re-advertise the vacancies in all three disciplines of Music, Dance and Arts & Design and to make all future selections based on recommendations made by the Selection Board constituted for the purpose for which the Selection Board must give due weightage to the report of the Panel of Experts.

When the vacant posts at the Ramanathan Academy of Fine Arts were re-advertised in the year 2005, and the selection made in the year 2006, performance/practical tests by a Panel of Experts were conducted and based on

interviews and the performance/ practical test, the Selection Board made its recommendation.

The 3rd Respondent submitted that the vacancies in the Ramanathan Academy of Fine Arts were advertised on 20th July 2006. The closing date for receiving applications was 20th September 2006. The Selection Board met on 19th March 2007, and interview was held to the candidates present at the interview, including the Petitioner. The 3rd Respondent chaired the Selection Board meeting in his capacity as the Acting Vice-Chancellor at that time. The Selection Board, after interviewing the candidates made its recommendations to the Council, after getting the report from a Panel of Experts. This was mandated in the records and Professor S. Krishnarajah, its Co-ordinator for the Arts & Design section of the Ramanathan Academy of Fine Arts, and the present Dean of the Faculty of Arts, suggested a few names from the University of Performing Arts for the Expert Panel. Because of the situation that prevailed in Jaffna, after 11th August 2006, the academic activities of the University were suspended for more than 6 months as the University Grants Commission Circular No.846 of 14/07/2004 stipulates that the selection process should be completed within one year of the closing date for receiving applications, the aforesaid process of selecting the Lecturer (Probationary) could not be completed. Realising this situation, it was decided to re-advertise the vacancies at the Ramanathan Academy of Fine Arts and an advertisement was placed in the newspapers on 6th August 2007, and the said advertisement has specifically stated that the candidates who had applied for the relevant vacancies that were advertised in July 2006 should not apply, implying that their applications would be considered along with the new applications, if any, and the closing date was given as 15/09/2007.

Interview by the Selection Board for the post of Probationary Lecturers at the Ramanathan Academy of Fine Arts in the disciplines of Music, Dance and Arts & Design was conducted in February/March 2008 under the Chairmanship of the newly appointed Vice-Chancellor. When the recommendations of the Selection Board for the Ramanathan Academy of Fine Arts appointments were placed before the University at

its 325th meeting held on or about 29/03/2008, the approval/recommendation of the Council to the University Grants Commission was not unanimous. The 3rd Respondent informed the Council, that the recommendations made by the Selection Board for all Probationary Lecturer posts at the Ramanathan Academy of Fine Arts in Music, Dance and Arts & Design are unjustifiable as the decision of the Council should have a performance test and to take the Expert Panel's report into consideration before making recommendations to the Council in all disciplines had been ignored. When this discrepancy was pointed out by the 3rd Respondent at the Council, on the instructions of the Vice Chancellor, the Council decided to revoke the earlier decision of conducting a performance test. The 3rd Respondent submitted that he declined in respect of the decision to revoke this decision pointing out that if the Council felt it necessary to revoke its earlier decision, it should have done so before the Selection Board made its recommendations.

The position of the 1st to 26th Respondents except the 3rd Respondent is that the Selection Committee which met on 26/02/2008 to evaluate the suitability of the eligible Applicants for the post of Lecturer (Probationary) in Arts & Design decided to make recommendation without having a practical test and to place it to the Council for its approval, as is being done in other disciplines, especially considering:

- (i) that having a practical test has neither a requirement in terms of scheme of recruitment for the post of Lecturer (Probationary) nor was it included in the advertisement when calling applications;
- (ii) the earlier Council's decision to have a practical test in selecting academic staff in Performing Arts was contextual;
- (iii) the candidates had already been tested continuously on all aspects, including their practical capacities during their four year study programme before awarding the degree.

The Council, at its 325th meeting held on 29/03/2008, having accepted the above explanation, approved the recommendation of the Selection Committee to appoint the 27th to the 29th Respondents as Lecturer (Probationary) in Arts & Design.

It could be seen from the above that the scheme of recruitment for the post of Lecturer (Probationary) has not made it a requirement to have a practical test for selection, but for good reasons, as discussed above, the University Council, at its 296th meeting held on 26/03/2005, contended that a performance/practical test by a Panel of Experts should be conducted for recruiting Lecturers (Probationary) in Music, Dance and Arts & Design in the Ramanathan Academy of Fine Arts. This decision was made after careful consideration of the importance of the practical test even though the candidates had already been tested in all aspects in their practical capabilities during their 4 year study programme before awarding the degree.

This decision was implemented and recruitments were made on this basis, and this decision was not challenged at any forum. The fact that there would be a practical test for the recruitment for these posts is a fact commonly known to the relevant authorities and persons. In these circumstances, a future advertisement for the same post, even though the requirement of having a practical test is not included in the advertisement when calling for applications or that the said requirement is not included in the scheme of recruitment, the candidates who had applied for the said post would have had a legitimate expectation that there would be a practical test after an interview. There was no specific announcement that the practical test would not be held for the recruitment of the said post. In these circumstances the Petitioner is entitled to claim that he had a legitimate expectation that he would be called for a practical test after the interview.

It is not legitimate for the Council to revoke its earlier decision of conducting a performance test, at the time of considering the recommendations made by the

Selection Board for the Probationary Lecturer. The Council is not debarred from revoking its earlier decision, but a decision that affects the candidates who will be seeking appointments, should be communicated to them before calling for applications for the said post. In the present instance, the candidates who applied for the said post were not aware that the decision of the Council to have a practical test would be dispensed with, and their earlier decision would be revoked.

In the given circumstances, the Petitioner had a legitimate expectation that he will be called for a performance test and, as such, he has a right to challenge the appointments made without having a performance test after the interview. The Council cannot revoke a decision already made by the Council to conduct a performance test after the University had called for applications for the said post. In these circumstances the decision of the Council to revoke the said decision to conduct a performance test is against the legitimate expectations of the candidates including the Petitioner, as such, it violates the rights of the candidates and, hence, it is illegal and unreasonable.

Weerasooriya J in *Sirimal and others v Board of Directors of the Co-operative Wholesale Establishment and Others* (2003) 2 Sri L R 23 at 28 made his observation on the substantive legitimate expectation as follows;

“This doctrine seems to be somewhat controversial since it appears to fetter the freedom of action of the public authority. However it is equally necessary to give relief to people who have betrayed by officials after making solemn assurances on which they have placed their trust. There is no inherent conflict between legitimate expectations and the rule against fettering discretion because the decision is only fettered to the extent that the public interest does not require otherwise.”

Fairness required a public body or official to act in compliance with its public undertakings and assurances. In *Wickremratne v Jayaratne And Other* [2001]3 Sri L R 161 the court held: “The doctrine of legitimate expectation is not limited to cases involving a

legitimate expectation of a hearing before some right or expectation was affected, but is also extended to situations even where no right to be heard was available or existed but fairness required a public body or official to act in compliance with its public undertakings and assurances. Simon Brown LJ explained this aspect in *R. v. Devon Country Council, ex parte Baker and another* 1995 1All ER 73 in which the concept of legitimate expectation was used to refer to the fair procedure itself i.e. that the applicant claims to have a legitimate expectation that public authority will act fairly towards him.

In Sirimal and Others v Board of Directors of the Co – operative Wholesale Establishment and Others [2003]2 Sri L R 23 where the Supreme Court held:

“It is necessary to emphasise that published policy criteria in respect of extensions of service as found in Circular No.1-01/07 A.L.dated 14/11/95(P5) was in accordance with the provisions of the Establishment Code and the practice adopted by C.W.C, was to grant extensions up to 60 years except on medical and disciplinary grounds. If there is any departure from such policy it is imperative that those who are likely to be affected by the change ought to be given sufficient notice.”

The University Council, at its 296th meeting held on 26/03/2005, decided that a performance/practical test by a Panel of Experts should be conducted for recruiting Lecturers (Probationary) in Music, Dance and Arts & Design in the Ramanathan Academy of Fine Arts. If there is any departure from such policy it is imperative that those who are likely to be affected by the change ought to be given sufficient notice. As there was no notice to the candidates including the Petitioner at the time of forwarding the application to the said post that the Council would revoke the said decision to conduct a performance test, the said decision cannot be implemented in derogation of the Petitioners legitimate expectation.

In view of the above finding this court issues a Writ of Certiorari to quash appointments for the post of Lecturer (Probationary) in Arts & Design for Painting and Sculpture

made by the University of Jaffna on 2nd April 2008. Application for Writ of Certiorari is allowed without cost.

President of the Court of Appeal