

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

In the matter of an application for mandates in the nature of Writ of Certiorari and Writ of Mandamus made under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Upul Gamini Jayasekara
No.19M, Bandarawatta
Kadawatha.

Petitioner

CA APPLICATION NO.203/2010

Vs.

1. Open University of Sri Lanka
2. Prof. Upali Vidanapathirana
Vice Chancellor
3. Dr. Janaka Liyanagama
4. Dr. G.D. Lekamge
5. Prof. W.A. Wimalaweera
6. Dr. K.B.A. Silva
7. Dr. G. Ranawaka
8. Prof. R.M.S.W. Ranasinghe
9. Prof. Kamal Bandara Guneherath
10. Mrs.P.G.P. Abeyratne
11. Prof. S. Amunugama

12. Priyanath Mayadunne
13. Prof. W.I. Siriweera
14. Prof. H.P.M. Gunasena
15. Mr. Russel de Zilwa
16. Deshamanya K.K. Ratnadasa
17. Mr. L. Nesiiah
18. Mr. Ariyawansa Ranaweera
19. Prof. S. Mohandas
1st to the 19th are of
Open University of Sri Lanka
Nawala, Nugegoda.
20. Hon. Justice G.W. Edirisuriya
Chairman,
University Services Appeals Board
21. Mr. E.M.G. Edirisinghe
Member, University Services
Appeals Board
22. Mr. Anton Alfred
Member, University Services
Appeals Board
23. (Mrs) M.S. Sivalingam
Secretary, University Services
Appeals Board
20th to 23rd are of
University Services Appeals Board
No.20, Ward Place, Colombo 07.

Respondents

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

COUNSEL : K.G.Jinasena,
for the Petitioner,
Anusha Fernando, SSC
for the 1st to 19th Respondents.

J.C.Boange
for the 20th to 23rd Respondents

Argued on : 22.02.2012

Decided on : 13.07.2012

S.Sriskandarajah.J,

The Petitioner joined the Department of Physics of the Open University of Sri Lanka as Demonstrator on a temporary basis in September 1988. In response to an advertisement published by the Open University of Sri Lanka, the Petitioner made an application for the post of Lecturer Probationary. After an interview the Petitioner was appointed for the said post with effect from 3rd July 2000. In 2002, he had completed the Certificate in Teaching in Higher Education and accreditation as a Teacher in Higher Education. The Petitioner, having obtained assistance from the Asian Development Bank, enrolled as a full time student in the University of Leicester, U.K., and pursued a research programme in the application of medical physics aimed at obtaining the post-graduate degree of Master of Physiology. Due to various factors the Petitioner could not conclude this degree. Thereafter, he returned to Sri Lanka and assumed duties in his position as a Lecturer Probationary in the Open University of Sri Lanka on the 26th of December 2007. The Petitioner submitted that on 2nd April 2008, a letter was given

by him to the 2nd Respondent, the Vice-Chancellor, requesting him to take steps to confirm the Petitioner in his capacity as a Lecturer. As there was no response to the said request, the Petitioner sent further letters inviting attention and urging the 2nd Respondent to take steps to confirm him in his position as a Lecturer in terms of the University Grants Commission (UGS) circular No.653 of 14th November 1995. The Petitioner further submitted that his request was disregarded, and the 2nd Respondent, the Vice-Chancellor, by his letter dated 2nd July 2008, terminated his services with effect from 4th July 2008.

The Petitioner, on the 2nd October 2008, made an appeal to the University Services Appeals Board under Section 86 of the University Act No.16 of 1978, as amended by Universities (Amendment Act No.1 of 1995) against the decision taken by the 1st Respondent the Open University of Sri Lanka to terminate his services. He has made a request to reinstate him and to confirm him as a Lecturer of the 1st Respondent University. The University Service Services Appeals Board dismissed the appeal of the Petitioner after affording the Petitioner a hearing. The Petitioner in this Application has sought a Writ of Mandamus to confirm the Petitioner in his service and has also sought a Writ of Certiorari to quash the order of the University Services Appeals Board and the letter of termination issued under the hand of the Vice-Chancellor of the 1st Respondent University. The Petitioner's services was terminated, as he has not obtained the required post graduate qualification by 3rd July 2008, on this date his probationary period was expired. The Petitioner was required, in terms of the scheme of recruitment contained in Circular 721, which is applicable to all recruitments after 1st December 1997, and in terms of his contract of employment to obtain the relevant post graduate qualification as a condition precedent to his confirmation. The University Services Appeals Board has considered the qualifications of the Petitioner and has observed that the M Sc. In Medical Physics from the Post Graduate Institute of Science of the University of Peradeniya, obtained by the Petitioner, is by course work and not by way of research, and that such course was only for a period of 18 months.

The Petitioner relied on the circular issued by the University Grants Commission, Circular No.653. This Circular No.653 is applicable to the Lecturer Probationary, who joined the University service prior to 1/12/1997, but those who have joined after are confirmed in their posts by the provisions in Commission Circular No 721 dated 21st November 1997. The letter of appointment of the Petitioner has also specifically stated that the Petitioner who qualified the required post graduate qualification before confirmation. In the given circumstances the Petitioner has not fulfilled the conditions stipulated in his letter of appointment, and the requirement in the scheme of recruitment for confirmation of his post. The Petitioner was given adequate notice and time to fulfill this requirement, but the Petitioner has failed to satisfy the said requirement and, in these circumstances, the action of the 1st Respondent University cannot be considered as illegal or irrational. The position of the University Services Appeals Board is also based on the above finding of the University Services Appeals Board which has correctly come to the decision that the termination of the services of the Petitioner was due to the fact that he has not fulfilled the conditions stipulated in the scheme of recruitment in obtaining the necessary post-graduate qualification in order to be confirmed. Hence, this Court is of the view that the decision of the University Services Appeals Board in the given circumstances is legal and hence this Court dismisses this Application without cost.

President of the Court of Appeal