

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 Writs of Certiorari and
mandamus made under Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

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

Petitioner

CA APPLICATION NO. 149/2008

Vs.

1. Rajarata University of SriLanka,
Mihintale.
2. Dr. K.A. Nandasena,
The Vice Chancellor
3. Prof. Malkanthi Chandrasena
4. Dr. P.A. Weerasinghe
5. Dr. M.M. Goonasekera
6. Dr. A. Lagamuwa
7. Mr. W.P. Wijewardena
8. Dr. H.M.M.B. Senevirathne
9. Ven. N. Pangananda Thero

10. Mr. K.H.R. Wijewardhana
11. Dr. D.L. Vaidyaratne
12. Mr. Amarasena Hettige
13. Mr. S.M.M. Semasinghe
14. Mr. W.M.R.B. Wanninayake
15. Mr. Gotabhaya Jayaratne
16. Mr. Premasiri Hettiarachchi
17. Prof. K.W.S. Kularatne

All of

Rajarata University of SriLanka

Mihintale

18. Prof. B.S.B. Karunaratne
Department of Physics
University of Peradeniya
Peradeniya.
19. Dr. A.D.A.D.J.M.D.S.U. Dahanayake
241, "Sudath Wasa"
Kudaoya, Pilimathalawa.

Respondents

BEFORE : **S.Siskandarajah, J, P/CA**

COUNSEL : K.G.Jinasena with C.Rupasinghe,
for the Petitioner.

Vicum de Abrew SC,

for the Respondents.

Argued on : 23.05.2012

Decided on : 14.09.2012

S.Sriskandarajah, I

The Petitioner is functioning as a Senior Lecturer (Grade II) in the Department of Physical Science of the Faculty of Applied Science of the 1st Respondent Rajarata University of Sri Lanka. The 1st Respondent University was established in 1996 and the members of the academic staff attached to the Central Province affiliated University College were absorbed to the said University. Accordingly, the Petitioner who was a College Lecturer of the Central Province affiliated University College was absorbed as a Lecturer (probationary). The Petitioner was confirmed as Lecturer and promoted as a Senior Lecturer (Grade II) with effect from 17th October 2003. The Petitioner submitted that by letter dated 8th February 2006 he was appointed as Head of the Department of Physical Science, Faculty of Applied Science, by the 2nd Respondent's predecessor. In terms of Section 51 of the Universities Act, this appointment had been made for a period of 3 years effective from 1st February 2006.

The Petitioner submitted that in terms of the results released in 2006, the students' failure rate in the physical science was comparatively high. Therefore, the student leaders started making protests agitating to bring down the pass marks levels in order to increase the number of students passing the examination. As the Petitioner was not in favour of the said proposal of the student leaders, certain student leaders started a campaign demanding the 1st Respondent to remove the Petitioner from the post of headship of the Department of Physical Science. The Petitioner submitted that the Council of the 1st Respondent University had decided at its meeting held on 6th November 2006:

1. To appoint an independent committee to look into the Allegations made by the students against Mr. A.M. Hafil, Head of the Department of Physical Science;

2. Mr. Hafil be released temporarily from his duties as Head Of the Department of Physical Science and the Deen of the Faculty to take over all the functions of the Head of the Department of Physical Science with immediate effect.

The 1st Respondent submitted, the 5th Respondent taking over the duties of the Head of the Department pursuant of the decision of the University Council was in order to ensure continuous functioning of the Department of Physical Science without any obstruction or intervention.

The temporary release of the Petitioner from the position of the Head of the Department of Physical Science was not related to the steps taken by the 1st Respondent to fill existing vacancies at the University. The University had taken steps to publish an advertisement in the daily newspapers on 20th December 2006 calling for applications for the post of Lecturer (probationary) and Senior Lecturer (Grade I/Grade II) of the Department of Physical Science of the Faculty of Physical Science of the 1st Respondent University. After an interview and selection, the 19th Respondent was appointed as a Senior Lecturer (Grade II). The Petitioner in this Application is challenging the said appointment. The Petitioner contended that in the event the 1st Respondent University is permitted to continue with the 19th Respondent as a Senior Lecturer (Grade II) of the Department of Physical Science, Faculty of Applied Science, it amounts to bringing down the standards of the science education and the recognition of the 1st Respondent University. The Petitioner also submitted that he believes that his seniority will also be affected in the event such an appointee continues as a Senior Lecturer of the Department of Physical Science.

The Respondents had denied the claim of the Petitioner that his seniority would be affected with the appointment of the 19th Respondent. Since the 19th Respondent had been placed on the initial salary point of Rs.37,650/-, on the salary scale of U-AC3 II-

296, whereas the Petitioner who had been recruited as a Senior Lecturer in 2004 is at his 4th salary step on the same salary scale.

The Respondents also contended that the 19th Respondent was fully qualified to be appointed to the said post, and his appointment was in accordance to the scheme of recruitment based on the relevant circulars of the University. The Respondents contended that according to the establishment circular letter No.17/2005, applications as Lecturer (probationary) level should be considered only if a candidate with a doctoral degree has not applied for the post of Senior Lecturer, and Section 2 of establishment circular letter No.8/2005 does not apply for selection of Senior Lecturers. The establishment circular letter No.16 of 2005 clearly states:

“In terms of Section 2 that the establishment circular letter 8/2005 shall be applied only to the post of Lecturer (probationary) as per the establishment circular letter No.16 of 2005 under Section 3. In selecting eligible candidates for the post of Senior Lecturer, all eligible candidates shall be invited for an interview together.”

The Respondent's position is that the 19th Respondent was eminently qualified to be considered as a Senior Lecturer as per the scheme of recruitment given in circular annexed as R17 to this Application.

The fact whether the 19th Respondent is qualified to be appointed as a Senior Lecturer is a matter for the University, but on consideration of the recruitment criteria and the minimum qualifications that are specified in the relevant circulars and the recruitment procedure to recruit a Senior Lecturer, this court is of the view that the 19th Respondent had fulfilled these requirements. In these circumstances the Petitioner cannot claim that the 19th Respondent's appointment is in violation of the regulations

and of the accepted procedure. Therefore, the Petitioner cannot challenge the appointment of the 19th Respondent in these proceedings.

For the above reasons this court dismisses this application without costs.

President of the Court of Appeal