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 under Article 140 of the Constitution of Sri Lanka.

University of Peradeniya,
Peradeniya.

C.A writ 715/2008

Petitioner.

V

1. G.W.Edirisuriya, Chairman,
2. E.M.G.Edirisinghe,Vice Chairman,
3. Anton Alrefd, Member.

1st to 3rd Respondents all of University Services Appeals Board, University Grants Commission, Colombo 7.

4. University Grants Commission, Ward Place, Colombo 7.

5. G.W. Ranaweera 17, University Quarters, Rajawatte, Peradeniya.

6. B.J. Weerasekera, 210 C, Pallegunnepana, Polgolla.

Respondents.

Counsel: J.C. Weliyamuna for the Petitioner.

J.C.Boange for 1st - 3rd Respondents.

H.N.B.Fernando, D.S.G. for the 6th Respondent

Arguments: 21-07-2011, 23-08-2011.

Written Submissions: 24-10-2011.(5th Respondent)

13-02-2012.

Judgment: 25-09-2012.

Before: Rohini Marasinghe J.

The petitioner is the University of Peradeniya hereinafter referred as the University. The 1st to 3rd respondents were the members of the University

Services Appeals Board hereinafter referred as USAB. The 4th respondent is the University Grants Commission hereinafter referred as the UGC. The 5th respondent is a Deputy Chief Security Officer of the University hereinafter referred to as appellant(as the 5th respondent was the appellant in the three Appeals mentioned in these proceedings) The 6th respondent is one Weerasekera who was appointed to the post of Chief Security Officer. The appointment of the 6th respondent was challenged by the appellant in the appeal bearing No 704. In determining the appeals the USAB quashed the appointment by its decision annexed as P20, which is the impugned decision in this case.

The case of the University as alleged by the petition was as follows:

There was no Marshal for the University for sometime. Therefore, in order to maintain better discipline the University took steps to re-open the Marshall system. In order to activate the already defunct Marshall system, the University made arrangements to have a marking scheme introduced in the selection of an applicant for appointment to the posts of *inter alia* the

Chief Marshall and for the Deputy Chief Marshall Etc. Consequently, applications were called by means of advertising in the news paper. The marking scheme applicable for such post was annexed to the present petition marked as P 2. The applications for the said post were made under the circular No 342. In pursuance to that circular the candidates eligible for application were limited to those who were already working in the employ of the University. In other words only internal candidates were eligible to apply for appointment according to that circular. As the University could not successfully select from the internal candidates, it was decided to advertise further calling for external candidates for the said post. The 5th respondent hereinafter referred as the appellant, filed the petition bearing No 657. He challenged the decision of the University to fill the said post by the facts contained in appeal 657. The appeal had been annexed to the petition as P5. (Paragraph 6 (a) (b) and (c) of the petition) However, consequent to the advertisement applications were called from external candidates. The appellant appealed to the USAB by appeal bearing No.679 challenging the

decision of the University to call for applications from external candidates. Notwithstanding these appeals, the appellant had responded to both advertisements. The appellant had sent his applications for the said posts as an internal candidate and as well as an external candidate. However, the University received the applications and interviewed the applicants irrespective the fact that the appellant had attempted to have an interim order issued unsuccessfully, to prevent the interviewing process. The appellant also had participated at the interview and he had obtained the lowest marks. There had been 11 candidates. The 6th respondent had obtained the highest marks and was selected and the Selection Committee had recommended the appointment. The appellant then filed the appeal bearing No 704 to the USAB seeking to have the said appointment quashed and to have him (the appellant) appointed to the said post as Chief Security Officer of the University. With that appeal there were three appeals before the USAB on this matter filed by the appellant against the University.

The USAB had amalgamated the three appeals and made one decision which was contained in the document annexed as P20. The University had sought a writ of certiorari to quash the decision on the basis that it is *inter alia* irrational, and ultra vires the University Act No 16 of 1978 as amended.

The power of the USAB in dealing with appeals is contained in section 86 of the said Act. Pursuant to these powers the USAB was under a duty to scrutinize the decision of the University as challenged by the appellant in those appeals. On hearing the appeals the USAB had determined that the University had frustrated a legitimate expectation of the appellant. As I understand from paragraphs 32 and 33 which the USAB quoted in the decision contained in p 20, the appellant had an unblemished career in the field of security services. His performance had been commended by the Vice Chancellor of the University. As averred in paragraph 33 of the appeal 704, the legitimate expectation of the appellant as alleged, seems to be one of substantive benefit, namely, that the University would strictly adhere to the

scheme of recruitment in force at that time and which would then result in a strong possibility of appellant being appointed as the Chief Security Officer.

The USAB in the impugned statement stated as follows:

"Legitimate expectation is a much valued legal principle of Administrative law in the Modern World, I am of the view that the appointment of the 3rd respondent has frustrated the legitimate expectation of the Appellant and accordingly I quash the appointment of the 3rd respondent as the Chief Security Officer in case No USAB 704 against the 1st and 2nd respondent University of Peradeniya and direct the respondent to appoint the Appellant as the Chief Security Officer of the 2nd Respondent University" (P20)

In dealing with the three Appeals the USAB appears to have placed reliance on paragraphs 32 and 33 in appeal 704. The paragraphs read as follows;

" I state that I bear a distinguished career in the field of Security Service and my services have always been commended by the authorities and my superiors including the predecessor of the Vice Chancellor of the 1st respondent University".(paragraph 32)

"I state that having achieved the highest qualification and having performed the duties as Acting Chief Security Officer for well over four and half years I had a legitimate expectation that if the University strictly considered the Scheme of Recruitment A8 and the new arrangements made by the newly appointed Registrar there was a strong

possibility that I would be appointed for the said post of Chief Security Officer of the 1st Respondent University"(paragraph 33)

The USAB appears to have placed reliance on the paragraphs quoted above and determined that the University had frustrated a legitimate expectation of the appellant, and on that basis appointed the appellant as CSO. It is conceded that it is irrelevant for the USAB to consider the knowledge or the ignorance of the University as to the reliance placed by the appellant upon the factors upon which the legitimacy of the expectation was founded. But it was important for the USAB to determine, *inter alia*, whether the denial or the frustration of that substantive legitimate expectation by the University was unlawful, irrational or unreasonable. **(Vide R v MAFF, ex p Hamble Fisheries [1995] 2 All E.R. 714)** In determining the Appeals the USAB seem to have decided that the key issue to be determined was the question of legitimate expectation. In reaching a determination on this fact the USAB appears to have failed to appreciate that the doctrine of legitimate expectation is only one side of the coin. In other words, legitimate

expectation is to be placed on one side of the scale and there are other factors that have to be given equal consideration from the other side of the scale. In that sense when an authority is exercising its discretion "on one side of the scale is the unfairness to an individual of the disappointment of the expectation induced by the decision maker. Other things being equal, fairness dictates that a public authority ought to abide by the important principle of legal certainty which is as we have seen a cornerstone of the rule of law. On the other side of the scale however, is the duty of the authority to pursue the public interest which is never static and may conflict withy the interest of the recipient of the legitimate expectation." **(De Smith's Judicial Review sixth edition page 629)** Therefore, there was a duty on the USAB to examine the nature of the legitimate expectation that was alleged to have been frustrated and the nature of the decision of the University now under review. Consequently, the USAB was under a duty not only to examine the individual's expectation favorably, but also the interests of the University. The USAB must also determine whether that legitimate expectation averred by the appellant was worthy of protection or whether it overrides the interest of the University to resile from it or whether the University in fact had

resiled from it unlawfully. When a dispute of this nature has arisen, the manner the court should resolve that dispute has in my view been cogently dealt in the case *re Findlay.* The case *re Findley* had suggested three possible outcomes. They may in relation to this case be suggested as follows;

1. The appeal tribunal (USAB) may decide that the public authority (University) is required to bear in mind its previous policy or other representation, giving it the weight it thinks right and no more, before deciding whether to change the course. Here the USAB is confined to reviewing the decision on *Wednesbury* grounds. (**Associated Provincial Pictures Houses Ltd. v Wednesbury Corpn,[1984] 1 KB 223.**

2. On the other hand the reviewing Board (USAB) may decide that the promise or practice induces a legitimate expectation, for example, being consulted before a particular decision is taken. Here, it is indisputable that the reviewing court will insist that an *opportunity for*

consultation to be given unless there is an overriding reason to resile from it. **(Vide Attorney General of Hong-Kong Ng Yuen Shiu [1983] 2 AC 629)** In which case the reviewing Board itself will judge the adequacy of the reason advanced for the change of policy, taking account what fairness requires.

3. Where the reviewing Board considers that a lawful promise or practice had induced a legitimate expectation of a substantial benefit as in this case, and not simply a procedural, then it will consider whether to frustrate that expectation was so unfair that to take a new and different course will amount to abuse of power. Here, once the legitimacy of the expectation has been established, the appeal tribunal will have the task of weighing the requirement of fairness against any overriding interests relied upon for change of policy.**(R v North and East Devon HA, Coughlan (CA) [2001]QB 213 at 242)**

It is clear from the impugned decision that the USAB had not dealt with any of the matters mentioned above. It had failed to identify the nature of

the legitimate expectation and the nature of the decision under Appeal. The proper approach of the USAB in this case should have been to ascertain firstly, the nature of the frustrated legitimate expectation, secondly, whether it was unlawful or irrational or unreasonable for the University to act in the manner it acted. Thirdly, what should be the standard of review when it is alleged that a substantive legitimate expectation had been frustrated. The manner the court may review decisions which appear to have frustrated a legitimate expectation had been succinctly dealt in *re Findley* and in the case of *Coughlan*. The main task of the USAB was to determine whether the decision of the University to appoint another person other that the appellant as contained in the appeal 704 was unlawful or irrational or unreasonable. If the decision to appoint some other person was a fair and a rational decision, that decision cannot be held as unlawful or irrational or unreasonable merely because it had frustrated a legitimate expectation of another individual. As Lord Taylor had said in the case of **R v Secretary of State**

for the Home Dept ex p Ruddock [1987] 2 All E.R. 518 at 531 quoted by Sedley J, in the case of MAFF ([1995] 2 All E.R. 714at 723,

"I conclude that the doctrine of legitimate expectation in essence imposes a duty to act fairly".

I have cited many judicial precedents which deal with the standard of review of decisions relating to frustration of legitimate expectations whether it is substantive or procedural.

I cannot agree with the manner the USAB had approached the three Appeals mentioned in this case. Therefore, I conclude that the decision of the USAB to quash the decision of the University was arbitrary, irrational and devoid of legitimate reason.

Therefore, the decision contained in p 20 as far as it relates to the appointment of the appellant is quashed. The reliefs prayed for in paragraphs (b) (c) and (d) are granted in favour of the petitioner.

Proceedings are terminated.

Rohini Marasinghe J
Judge of the Court of Appeal.