

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

In the matter of an application for mandate in
the nature of writ of Certiorari under Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

G.D. Janani Perera,
No.116/37 - 128, Maharagama Road
Mampe, Piliyandala.

Petitioner

C.A. Writ Application No: 976/2008

Vs

1. University of Moratuwa,
Katubadda, Moratuwa.
 2. University Grants Commission,
No 20, Ward Place, Colombo 7.
- And four (04) others.

Respondents.

BEFORE : S. SRISKANDARAJAH, J.

COUNSEL : K.G.Jinasena,
for the Petitioner.

J.C.Boange,
for 3rd to 6th Respondent.

: N.Wigneswaran SC
for AG

Argued on : 21.01.2011

Decided on : 15.03.2011

S.Sriskandarajah, J.

The Petitioner joined the 1st Respondent University as a temporary clerk with effect from 13th March 1986 and was absorbed to the permanent cadre on 1st January 1987. The Petitioner presently functions as a Clerk of the University of Moratuwa attached to the Vocational Guidance Centre. The Petitioner applied for three years no pay study leave from 15th May 1997 to follow a course of study at the Roosevelt University , Chicago, United States of America. The no pay leave was approved from 1st January 1998. The Petitioner in her Petition to this court has stated that she left Sri Lanka on 1st January 1998 but she could not register herself with the said Roosevelt University for the academic year 1997 as the 1st Respondent University failed to approve her leave in time. The Petitioner further said that she had been directed to wait for the next academic year. But the Petitioner in her letter addressed to the 1st Respondent University dated 10.01.1998 had stated that she could not proceed her academic activities due to her sudden illness. The Medical certificate attached to the said letter recommends 4 weeks rest under Medical supervision from January 3rd 1998 as she has a fracture of right clavical due to a fall from a sports bicycle. The Petitioner's position was that as a result of this injury she could not enter the said University, as expected even for the academic year 1998. Thereafter the Petitioner gave up the idea of following a degree programme and engaged in self employment in Chicago. The Petitioner having stayed in USA for 34 months returned to Sri Lanka and assumed duties in the 1st Respondent University on 13th of November 2002. In the mean time the University Grants Commission by its letter dated 10.08.2001 promoted the Petitioner to the post of Clerk (Grade 1) with effect from 01.01.2001.

The 1st Respondent University called for explanation by its letter dated 20th December 2001 from the Petitioner for not completing the degree programme in spite of obtaining study leave for three years and alleged that an attempt had been made by the Petitioner to mislead the University. The 1st Respondent after considering the explanation has decided to issue a charge sheet containing five charges. On these charges the university

conducted a disciplinary inquiry and at the end of the inquiry the Petitioner was found guilty for all five charges. The decision and the punishment imposed on the Petitioner were communicated to the Petitioner by the letter of 24.04.24 marked P17. According to this letter the Petitioner was demoted to Clerk Grade II with effect from 26.04.2006 as a punishment. The Petitioner made an appeal to the University Services Appeals Board (USAB). The USAB conducted its inquiry and on 21st October 2008 it delivered its order dismissing the Petitioner's appeal.

The Petitioner in this application has sought a writ of certiorari to quash the order of the Governing Council of the 1st Respondent University to demote her position marked P17 and the Order of the USAB dismissing the Petitioner's appeal.

The Petitioner challenged the afore said orders on the ground that the disciplinary power to deal with the Petitioner is vest with the University Grants Commission in these circumstances the 1st Respondent University has no authority to issue P17 and withdraw the letter of promotion.

The University is the disciplinary authority in respect of the Petitioner in terms of the University Act No 16 of 1978 while the appointing authority is the University Grants Commission. The 1st Respondent submitted that in any event the 1st Respondent by letter dated 23.09.2005 sought the approval of the University Grants Commission for the imposition of the punishment of reduction in the rank as an alternative to the dismissal. By letter dated 21.03.2006 the University Grants Commission informed the University that the UGC at its 705th meeting decided that the University Council should take a decision with regard to this matter, since the University of Moratuwa is the disciplinary authority for the post of clerk and the demotion has been recommended as a result of a disciplinary inquiry.

The Petitioner's contention that the reference of paragraph 4.1.2 of Chapter XXII of the UGC Establishment Code in the charge sheet issued to the Petitioner have an effect on the validity of the charge sheet as the said Establishment Code has not been published by the UGC as an Ordinance or Rules under Section 18 and 137 of the Universities Act has no merit. The UGC E-Code was adopted at the 146th Meeting of the UGC held on 26.11.1983 and it has been constantly followed by all Higher Educational Institutions. Further the charge sheet is issued in a disciplinary inquiry for the person against whom the charge sheet was issued to know the charges and prepare to defend himself. In the given circumstances the Petitioner is not prejudiced by any reference to the E-Code of the UGC in the charge sheet.

The Petitioner has also complained that charge sheet had been issued without conducting a preliminary inquiry as required by law and therefore it is illegal and have no force in law. In the circumstances of this case there is no requirement to carry out a preliminary investigation. Preliminary investigations are conducted to ascertain facts and to see whether there is sufficient evidence to frame a charge against a person. In this case the facts are admitted and the only position of the Petitioner is that even though she has obtained overseas no pay leave to pursue studies she is entitle to utilise that leave for employment as there is provision to obtain no pay overseas leave either for study or for employment. The position of the University was that the Petitioner has failed in her contractual obligation with the University. Granting of leave to an employee for study or employment abroad is discretionary and the Petitioner cannot claim that study abroad is interchangeable with employment abroad. I agree with the position taken by the University. The Petitioner with good intentions would have obtained study leave to pursue study abroad but when she came to know that she is not in a position to pursue her studies she would have returned to Sri Lanka and reported for duty or obtained permission from the University to convert the no pay study leave to no pay employment leave. But without informing the University the Petitioner has spent her study leave for employment in a foreign country. The Petitioner has not made

any attempt to get covering approval even after she returned to Sri Lanka. In these circumstances the finding that the Petitioner is guilty to the charges cannot be considered as a decision arrived at with out any basis or evidence. Further the punishment imposed on the Petitioner is only a demotion and hence it cannot be considered as disproportionate to the offence committed.

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

Judge of the Court of Appeal