

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

In the matter of an application for
An Order in the nature of a Writ of
Certiorari under and in terms of the
Provisions of Article 140 of the
Constitution.

Jayasinghe Pelige Nimal
Jayasinghe
Medical Center
No.64, Mulatiyana Road
Kamburupitiya.

CA Writ Application No.15/2011.

PETITIONER

Vs.

1. Justice G.W. Edirisuriya
Chairman.
2. E.M.G. Edirisinghe
Vice-Chairman
3. Anton Alfred
Member.

All of above are named as
Members of and constituting
The University Services Appeal
Board.

No.20 Ward Place,
Colombo 00700.

4. University of Ruhuna
Matara
5. University Grants Commission
No.20 Ward Place,
Colombo 00700

RESPONDENTS

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**
COUNSEL : M.A.Sumanthiran with E.Tegal,
 for the Petitioner,
 J.C.Boange,
 for 1st, 2nd and 3rd Respondent

Argued on : 08.03.2012

Decided on : 15.01.2013

S.Sriskandarajah, J,

The Petitioner was appointed as the University Medical Officer at the Agriculture Faculty of the University of Ruhunu in or about July 1999. On or about the 10th of September 2007, the University took a decision to interdict the Petitioner from the said service. The Petitioner submitted that a preliminary inquiry was conducted and he made a statement on the 29th of October 2007 in relation to the matters leading to the said interdiction. The Petitioner was thereafter served with a Charge Sheet dated 3rd January 2008. The Petitioner denied all the charges levelled against him and he presented himself for the first date of formal inquiry, and the inquiry was postponed on

several dates. As a result, the Petitioner informed the Inquiring Officer by letter dated 27th May 2008 that he will not be attending the said inquiry and informed that his reply to the Charge Sheet be considered by the Inquiring Officer in coming to a finding in the matter. The Petitioner submitted, as a consequence of the Petitioner's letter to the Inquiring Officer, the payment of half wages to the Petitioner was stopped from June 2008 by letter dated 19th June 2008. Thereafter the Inquiring Officer, at the conclusion of the inquiry, found the Petitioner guilty of all three charges. Based on this finding, the Council of the University of Ruhuna, took a decision to dismiss the Petitioner from service, and the Petitioner was served with a letter to that effect on the 10th of December 2008. On the 2nd of March 2009, the Petitioner preferred an appeal against the decision to terminate his service to the University Services Appeal Board (U.S.A.B.). The Petitioner filed written submissions in response. The Respondents also had filed written submissions. Thereafter an order was made by the University Services Appeal Board and it was served on the Petitioner on the 23rd November 2010. The order specifically states that the appeal filed was received at the USAB office on 13/05/2009 has the Vice Chancellor, Deputy Vice Chancellor and all the individual Council Members as Respondents. The USAB in its order held that having carefully considered the averments made by both parties, it seems that the Appellant has failed to name the correct Respondents in appeal.

Since the Appellant had not mentioned the appointing authority, nor the authority who dismissed the Appellant, the USAB upheld the objection raised by the Respondents and dismissed the appeal. The USAB has observed that the University Grants Commission is the appointing authority, having issued the Petitioner's appointment letter, and the dismissal was by the Council of the 4th Respondent University and, as the Council is a body established under the law, the Council should have been made a party, and the Petitioner has failed to make the Council of the University of Ruhunu as a party, instead of making the said Council as a party, the Petitioner has named the individual Members of the Council of the University of Ruhuna. Hence the USAB has come to the finding

that without making the appointing authority and the authority that had terminated the services of the Petitioner it cannot make an order against them.

As the Petitioner has challenged the termination of his services by the Council of the University of Ruhuna, and as he has not made the Council as a party to the appeal, it is a fatal irregularity and, therefore, the decision of the USAB cannot be challenged by a Writ of Certiorari. Hence this Court dismisses this Application without cost.

President of the Court of Appeal