

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

CA (Writ) Application No: 02/2013

G.N.Priyalanka,
No.244/1,
Idamegama,
Werellagama,
Kandy.

PETITIONER

-Vs-

Professor Athula Senaratne,
The Vice-Chancellor,
University of Peradeniya,
Peradeniya.

And 08 others.

RESPONDENTS

C.A. 02/2013 : An application for Writs of Certiorari, Prohibition
and Mandamus

Before : S. Sriskandarajah, J. (P/CA) &
P.W.D.C. Jayathilaka, J.

Counsel : : Shantha Jayawardena for the Petitioner

Decided on : 31.01.2013

S. Sriskandarajah, J. (P/CA)

Learned Counsel for the Petitioner is seeking a writ of certiorari to quash the order of the University Services Appeals Board marked as P24. By the said order, the University Services Appeals Board dismissed the appeal of the Petitioner made from the disciplinary order marked P14. By the said disciplinary order the Petitioner's increment has been suspended for one year and the Petitioner was asked to pay the value of the equipment amount into Rs. 106,400/- (One Hundred and Six Thousand Four Hundred) and the surcharge of 25%, amount into Rs.26,000/- (Twenty Six Thousand) and the total of Rs. 133,000/- (Hundred and Thirty Three Thousand) and he was warned to see that this similar occurrence will not appear in future. The material placed before the University Services Appeals Board was considered by the said Board and it has come to the finding that the decision taken by the disciplinary committee is in

order. Learned Counsel for the Petitioner submitted that the University Services Appeals Board's decision was made by the Chairman and two members and one of the members had not taken part in the said proceedings of the University Services Appeals Board and therefore the said order is invalid. As the University Services Appeals Board consists of three members and the decision could be by a majority of the members of the Board and even if one of the members descend the majority decision stands. In these circumstances, at least two members who participated in the hearing (Chairman and another member) has agreed with the final decision and therefore the decision cannot be stated as an illegal order in the given circumstances.

Learned Counsel also submitted that the Petitioner was not given an option to retain a counsel of his choice as the Establishment Code of the University Grant Commission permits an officer to be represented by an Attorney-at-Law and when the Petitioner sought permission to retain an Attorney-at-law who was a former Registrar of the said University that application was turn down and therefore counsel submitted that the Petitioner's right to a fair hearing is affected by this order and in these circumstances the said disciplinary order should be quashed and this aspect was not considered by the University Services Appeals Board.

The refusal of the Attorney-at-law of the Petitioner was on the basis that the said Attorney-at-Law was a former Registrar of that University and the Petitioner was permitted to retain an Attorney-at-law other than an officer of the University. In these circumstances, the Petitioner's submissions that his right to retain a counsel was deprived cannot be accepted.

In these circumstances, this Court refuses to issue notice.

PRESIDENT OF THE COURT OF APPEAL

P.W.D.C. Jayathilaka,J.

I agree

JUDGE OF THE COURT OF APPEAL

Cr/-