

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

In the matter of an application for the
issue of a mandate in the nature of a
writ of Certiorari under article 140 of the
Constitution of Sri Lanka.

University Grants Commission, No.20,
Ward Place, Colombo 07.

PETITIONER

C.A.Appeal No. 263/2011

Vs.

1. Anthar Visvavidyaleeya Vurtheeya
Samithi Maha Sammelanya, Student
Affairs Division, University of
Peradeniya, Peradeniya.
2. Inter University Services and Trade
Union, Medical Faculty, University
of Sri Jayawardenapura,
Gangodawila,
Gangodawila, Nugegoda.
3. Sri Lanka Nidahas Sevaka
Sangamaya,
Maintenance Division, University of
Colombo, Colombo 03.

4. Swadeena Podu Sevaka Sangamaya,
University of Kelaniya, Kelaniya.
5. Inter University Sub Warden Union,
University of Moratuwa, Moratuwa.
6. Peradeniya Wisvavidyaleeya
Lipikaru Ha Samanthara Shreni
Sewa Sangamaya, Accounts
Division, University of Kelaniya,
Kelaniya.
7. The Minister of Labour Relations &
Productivity Promotions, Labour
Secretariat, Narahenpita, Colombo 5.
8. The Commissioner of Labour,
Labour Secretariat, Narahenpita,
Colombo 5.
9. Mr. P. Navaratne, 570/B/01,
Ekamuthu Mawatha, Off Nugegoda
Road, Talawatugoda.

RESPONDENTS

BEFORE : S. SRISKANDARAJAH, J (P/CA)
DEEPALI WIJESUNDARA, J

COUNSEL : Manoli Jinadasa,
for the Petitioner,
Chamantha Weerakoon Unamboowa with Kumuduni Keerahella
for the 1st to 3rd and 5th Respondents.
Sobitha Rajakaruna, SSC
for the 7th and 8th Respondents

Argued on : 23.07.2012

Decided on : 22.02.2013

S.Sriskandarajah, J,

The Petitioner is a legal entity established under the Universities Act No.16 of 1978. The 7th Respondent, the Minister of Labour Relations and Productivity Promotions referred an industrial dispute between the 1st to 6th Respondents (on one part) and the Petitioner (on the other part) for arbitration before the 9th Respondent. The matter in dispute that was referred for arbitration is as follows:-

“Whether the non-granting of the three (3) increments which were extended to some grades in the non-academic staff in terms of Circular No.205 of 25/03/1997 and the Circular No.730 of 6/05/ 1998 issued by the University Grants Commission based on the B.C. Perera Salary Commission Report 1995 to other grades in the said staff is justified, and if not, to what relief they are entitled.”

The Arbitrator, after an inquiry, made an award on the following terms:-

“In the final analysis based on the aforesaid observations and findings,
I am satisfied that the Applicant Union’s claim is reasonable. Therefore,

The Respondent University Grants Commission shall implement the
Following course of action:-

- 1) Those in the clerical and above grades to be absorbed into a Management Assistants Grade in line with the Public Administration Circular of 30/12/2004, which explains the contents of the gazette Notification No.1372/23 of 24/12/2004;
- 2) The Management Assistants Grade (A9) and above, cover non-executive be merged with the existing technical grade, thereby ensuring equal status, while removing the disparities; the new grade to be termed Management-cum-Technical Grade;
- 3) Arrears of salary due to be computed and paid within 45 days of Publication of the award in the government gazette; also this award to be effective from the date of reference of this dispute; i.e., 22/09/2004.

The Petitioner contended that the finding of the learned Arbitrator is contrary to or inconsistent with the evidence led in the inquiry, and the Petitioner further stated that the Arbitrator in his award has gone out of his mandate and has given reliefs which are not specified as disputes between parties.

The evidence led at the arbitration revealed that upon agitation by Trade Unions, to give relief to various grades of University staff, B.C. Perera Salary Commission was appointed to look into the grievances of the University staff. The B.C. Perera Commission report in relation to salaries recommended 3 salary increments to be granted to the technical grades on the premise that the level of remuneration of the middle level technical group in the present structure is lower than that of the clerical and allied grades. In the public service it has been accepted that technical officers, considering the qualifications and the training required, be placed higher than the

clerical and allied service group. The said B.C. Perera Commission identified 54 categories in the technical grade who should be placed on 3 incremental steps higher in the relevant salary scales. The Petitioner, to implement this proposal published Circulars Nos.705 and 730, granted the technical grades specified in the said report 3 salary increments. When these salary increments were given, there was an allegation that the technical grades had not been properly identified for the payment of 3 increments. Thereafter the Petitioner, by its Circular No.750, suspended the granting of 3 salary increments to the technical grades until there is a proper identification of the technical grade. The technical grade staff, through their Trade Union, instituted a case before the Court of Appeal bearing No. CA Writ 987/99 and demanded that they be granted the 3 salary increments recommended by the B.C. Perera Commission. In the Court of Appeal, both the Petitioner and the Trade Union arrived at a settlement comprehensively identifying those eligible for 3 increments. By this process the technical grade staff were identified with the agreement of both parties and the case was settled accordingly. The technical grade staff, as identified before the Court of Appeal, were granted the 3 salary increments.

The granting of these 3 salary increments to the technical grade officers prompted the clerical and allied grades to agitate for salary increments and they too were demanding the salary increment granted to technical grades. To look into this issue, a Committee was appointed, headed by Professor Ratnayaka. This Committee, too, recommended that the technical grades be given 3 additional salary increments over and above the clerical and allied grades. However, the said Committee also granted the clerical and allied grades a salary revision in consideration of their representation, and this salary revision was effected by a subsequent Circular. The clerical and allied staff had not complained against this salary revision, but they have still agitating that they be given the 3 salary increments that were given to the technical grades. This is the dispute that was referred for arbitration.

In determining the dispute the Arbitrator has gone into the question that the identification of technical officers was not properly done, and he observed in his award under the heading of dividing line separating technical and non technical staff. Under the dividing line, technical and non-technical staff, the learned Arbitrator observed: from the in-depth investigation, I have found that there are a vast number of employees in the University employment, particularly - (a) holding non-technical places at the recruitment; and (b) Routing non-technical positions to the technical staff. In the circumstances it is clear that several lapses had occurred, and it is difficult to draw a line separating the two, technical and others. There are hundreds of employees falling under these two categories. A question may be asked, if an employee has no technical qualification to perform the technical assignment, then why this discrepancy - is it the qualification or the job that should be the deciding factor?

Making the above observation, the Arbitrator has miss-directed himself in the issue that is before him and has thought it fit to amalgamate the technical grade and the non-technical grade clerical staff into one category and has made an award to create a Management Assistant Grade. The reference that was made to the Arbitrator is to resolve a dispute to consider whether the B.C. Perera salary Commission Report of 1997 that recommends 3 increments to the technical grades should also be extended to others in the said staff of the University. The evidence led before the Arbitrator indicates that when the 3 increments that were recommended for the technical staff, the non-technical staff agitated for the same relief and a Commission was appointed to look into the said grievance, and Professor Ratnayake, heading a Committee, has recommended salary revision to clerical and allied grades. In this background the clerical and allied grades has once again agitated for the 3 increments that was given to the technical staff. The technical grade staff were, in fact, identified with the agreement of both parties when an application of the technical grade officers was filed in the Court of Appeal, and it was the opinion of the B.C. Perera Committee, that the technical grade staff should be placed on 3 incremental steps due to their work and qualifications, and the technical grade

staff were placed in this position after a careful study by the B.C. Perera Committee and also by the Committee headed by Professor Ratnayake. These two Committees have specifically identified the technical grade officers as a separate category and recommended that they should be granted some benefit in relation to their qualification and experience. The Arbitrator in this award has not taken these aspects into consideration and, by his award, has nullified the said definition by absorbing or merging the technical staff with the clerical grade staff, giving them equal status. The Arbitrator has based this finding in reference to a Public Administration Circular dated 30/12/2004. The Petitioner's position, right throughout is, that unless the Petitioner adopts the said Public Administration Circular, the said Public Administration Circular will not be binding or has effect to the staff of the Petitioner. As the said Circular was not adopted by the Petitioner, the Arbitrator cannot consider the said Circular as applicable to the employees of the Petitioner. In the above circumstances the Arbitrator has miss-directed himself in answering the issue before him and has arrived at a finding that would cause more industrial disputes than settling the dispute that was forwarded to him. For the above reasons I set aside the Arbitrator's Award and allow the Application of the Petitioner for a writ of certiorari without cost.

President of the Court of Appeal

Deepali Wijesundara,J

I agree,

Judge of the Court of Appeal