

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

CA Application No. 859/09.

Prof. Arjuna Parakrama,
Kadrambe Estate, Doratiyawa, Kurunegala.

Petitioner.

Vs.

1. University of Peradeniya, Peradeniya,
 2. Prof. S.B.S. Abayakoon, Vice Chancellor,
 3. Prof. H. Abeygunawardena, Former Vice Chancellor,
 4. Prof. A. Wickremasinghe,
 5. Dr. K. Samarasinghe,
 6. Dr. ASP Abhayaratne,
 7. Prof. EADP Amaratunga,
 8. Prof. W.M.S.B. Weerakoon,
 9. Dr. A.G. Buthpitiya.
 10. Prof. SHP: Karunaratne,
 11. Prof. P. Abeynaike.
 12. Prof. C.D.A. Goonasekera.
 13. Prof. N.V.I. Rathnatunga.
 14. Prof. R.I. Wijeweera.
 15. Prof. D. Hewawitharana.
 16. Prof. A.D.P. Kalansooriya.
 17. Prof. K.N.O. Dharmadasa.
 18. Dr. K. Gunewardene.
 19. Dr. D. Medagedene.
 20. Mr. W.M. Jayawardene.
 21. Dr. P. Ramanujam,
 22. Dr. S.B. Ekanayake.
 23. Mr. D. Mathi Yugarajah.
- All of the University Council.

Respondents.

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

In the matter of an application for orders
under Article 140 of the Constitution.

C.A. (Writ) Application No. 859/09

BEFORE

: Anil Gooneratne J.

Deepali Wijesundera J.

COUNSEL

: Dr. Almeida Gunaratne PC with
Shihan Ananda, Thilak Wijesinghe
and Kishali Pinto Jayawardene
for the Petitioner.

Chaya Sri Nammuni S.C. for all
the Respondents.

ARGUED ON

: 11th July, 2013.

DECIDED ON

: 30th August, 2013

Deepali Wijesundera J.

The petitioner has preferred this application against the respondents for a writ of Certiorari to quash the decision made by them and conveyed to the petitioner by documents marked as **P7** and **P12** and for a writ of Mandamus directing the 1st, 2nd, 4th to 28th respondents to accept the petitioners letter of withdrawal marked as **P8** and also for a writ of prohibition to prevent the respondents from filling the post of Professor of English at the Peradeniya University.

The petitioner was appointed as the Professor of English of the 1st respondent University and assumed duties in March 2004. Due to ill health the petitioner has decided to resign from this post and sent a letter addressed to the 3rd respondent dated 01/07/2009 giving three month notice. This letter is marked as **P6**. The 3rd respondent has written directly to the petitioner accepting his resignation dated 14/07/2007 marked **P7**. By letter dated 25/09/2009 and marked as **P8**, the petitioner has withdrawn this letter of resignation. This letter was hand delivered to the 2nd respondent by a colleague of the petitioner, since the petitioner was sick. The said colleague has given an affidavit to this effect marked as **P82**. The 2nd respondent has accepted the letter from the said person without any protest. After a month since there was no reply the petitioner has written again to the 2nd respondent on 22/10/2009 marked **P9**.

The 2nd respondent has informed the petitioner by **P12** that his letter of resignation was accepted at the 379th Council Meeting held on 29/08/09 and that his letter of withdrawal was addressed to the 2nd respondent and not to the proper channel, therefore it could not be

entertained at that stage. He was not given the University Council Meeting minutes though he asked for them but managed to get them later. This is marked as **P12B** which states that his letter of withdrawal can be considered only if It is given on or before the 1st of October 2009.

The learned Presidents Counsel for the petitioner submitted that the decision of the University Council was taken without even considering **P8** which clearly states that the petitioner wishes to withdraw his letter of resignation. **P8** was sent to the 1st respondent University within the stipulated time of 3 months. The petitioner stated that the Vice Chancellor to whom **P8** was sent did not bring it to the attention of the University Council that such a letter was received by him therefore **P12** clearly constitutes an error on the face of it and for the same reason it constitutes a mala fide decision.

The learned counsel for the respondent's argument was that the resignation letter was not addressed to the Governing Authority which is the University Council as required by clause 4:1 of the Establishment Code therefor it could not be accepted.

The resignation letter of the petitioner (**P8**) is addressed to the Vice Chancellor and sent to him through the Dean and Head of the Department directly. The Vice Chancellor has accepted it and sent a letter (**P7**) directly to the petitioner. The petitioner's letter of withdrawal marked **P8** was thereafter sent directly to the Vice Chancellor which the respondents argued was not sent through the proper channels. But this argument is contradicted by **P12B** which is the minutes of the 379th

meeting of the University Council held on the 29th of August 2009 which states thus:

**379.10.6.1 Resignation from the Post of Professor of English
Prof. A. Parakrama, Department of English, Faculty
Of Arts (Council Paper C/09/07/379/10.6.1)**

The Council considered the above memorandum and noted that Prof. A. Parakrama, Professor of English, faculty of Arts tendered his resignation from the Post through proper channels and the Vice-Chancellor had already accepted his resignation with effect from 01.10.2009 subject to the covering approval of the Council. Therefore, the Council endorsed the approval granted by the Vice-Chancellor subject to recovery of outstanding dues, if any and other conditions laid down in the letter under reference. It was revealed that Prof. A. Parakrama had indicated his willingness to withdraw his letter of resignation. The Council was of the view that the Council could consider his request, only if he withdraw his letter of resignation on or before 01.10.2009.

P12 informs the petitioner that his letter of resignation cannot be accepted due to not been sent through the Head of Department but at the same time informs him that :

“ Your resignation has been accepted with effect from 1st October 2009 by the Vice Chancellor in his letter dated 14th July 2009 and you have been informed accordingly.”

This letter which is marked as P7 is directly addressed to the petitioner and not through the Head of Department and the Dean of the Faculty. The positions taken by the respondents in addressing correspondence clearly contradict each other. This amounts to an error on the face of P12.

Clause 4:1 of the code lays down the special procedure for a resignation but there is no such specific mode for a withdrawal of a resignation. The only argument put forward in this regard by the respondent is that it has to go through the proper channel which is not stated anywhere. By this argument which has no merit the students of the 1st respondent, University has been deprived of a teacher in English, who are hard to find these days.

When considering documents produced as P6, P7, P8, P12 and P12B it appears that the respondents have acted irrationally. It is presumed that public authorities are never empowered to exercise their powers irrationally therefore irrational action by a public authority is considered to be ultra vires.

In Lord Diplock's formal statement on Judicial review (Wade Administrative Law describes irrationality 9th Ed. Pg. 1001) describes irrationality in the following manner.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (Associated Provincial Picture Houses Ltd. V. Wednesbury Corporation (1948) 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped

*to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this, role, resort I think is today no longer needed to viscount **Radeliffe's ingenious explanation in Edwards v. Bairstow (1956) AC 14** of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own feet as an accepted ground on which a decision may be attacked by judicial review.*

After carefully considering the submissions of both parties and the documents marked and the case law cited this court decides to allow the application of the petitioner Prayers (b) and (c) of the petition are allowed.

JUDGE OF THE COURT OF APPEAL.

Anil Gooneratne J.

I agree.

JUDGE OF THE COURT OF APPEAL