

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

In the matter of an Application under
Article 140 of the Constitution for a
mandate in the nature of a Writ of
Certiorari.

1. Mohamed Haneefa Abdul,
Senior Lecturer,
Department of Arabic Language,
South Eastern University of
Sri Lanka,
Oluvil.

C.A. (Writ) Application No. 878/2010

2. Mohamed Lebbe Issadeen,
Senior Lecturer,
Department of Social Sciences,
Faculty of Arts and Culture,
South Eastern University of
Sri Lanka,
Oluvil.
3. M.F.H. Careem,
Senior Assistant Registrar,
South Eastern University of
Sri Lanka,
Oluvil.

Presently of P.O.Box No.345014,
International Academic City,
Dubai, U.A.E.

4. Atham Lebbe Thavam,,
Sinna Mowlana Road,
Akkaraipattu 01.

PETITIONERS

VS.

1. South Eastern University of
Sri Lanka,
University Park,
Olivil.
2. Dr. S.M. Mohamed Ismail,
Vice Chancellor,
South Eastern University of
Sri Lanka,
Olivil.
3. M.S.M. Jalaldeen,
Dean, Faculty of Islamic Studies
and Arabic Language.
4. S.M. Aliff,
Dean, Faculty of Arts and Culture.
5. M.B.M. Amjath,
Dean, Faculty of Management
Commerce.
6. Dr. M.I.S. Saffeena,
Dean, Faculty of Applied
Sciences.

All of South Eastern University of
Sri Lanka,
University Park,
Olivil.

7. Prof. Uma Coomaraswamy,
No.104, 2/2, Manning Place,
Colombo 6.
8. Sunil Kannangara,
Government Agent,
District Secretariat,
Ampara.
9. M.M. Abdul Kalam,
No.1B, Ocean Tower,
Station Road,
Colombo 4.
10. Anver M. Mustapha,
CIMS Campus Level 11,
1269/2/C, Cotta Road,
Rajagiriya.
11. Dr. S.L. Riyas,
Centre for Peace Studies,
170A, Haniffa Road,
Kalmunai.
12. Prof. Dayantha Wijesekera,
No. 7, Barnes Avenue,
Mount Lavinia.
13. L.R.S. Bandara,
24/83, 1, Udarigama,
Uhana.
14. Y.M. Anver Siyath,
No.72, SLFP Secretariat.
Samanthurai.

15. Dr. F.C. Ragel,
Senior Lecturer,
Faculty of Applied Sciences,
South Eastern University of
Sri Lanka,
University Park,
Oluvil.

16. Dr. A. Jahfer,
Head of the Department of
Accountancy and Finance,
Faculty of Management and
Commerce,
South Eastern University of
Sri Lanka,
University Park, Oluvil.

17. Prof Malik Ranasinghe,
Vice Chancellor,
University of Moratuwa,
Moratuwa.

18. Prof. Rohan Rajapakse,
Active Vice Chairman,
University Grants Commission,
No.20, Ward Place,
Colombo 7.

19. H. Abdul Saththar,
Thaha Lodge,
No.7A, Main Street,
Ninthavur.

RESPONDENTS.

BEFORE

S. SRISKANDARAJAH, J. (P/CA)

W.M.M. MALINIE GUNARATNE, J

COUNSEL

Manchara de Silva, P.C.
for the Petitioner.

Anusha Samaranayake, S.S.C.
for 1st, 2nd, 5th to 13th, 15th to 18th Respondents.

M.U.M. Ali Sabry, P.C.
for 19th Respondent..

Argued on 09/07/2013

Decided on 09/09/2013.

Malinie Gunaratne, J.

This is an application filed by the Petitioners against 19 Respondents seeking to challenge the appointment of the 19th Respondent as the Registrar of the South Eastern University.

It is the case of the Petitioners, by advertisement published in newspapers, applications were called for the post of Registrar of the 1st Respondent University; and to the best of their knowledge six applications including the application of the 3rd Petitioner and the 19th Respondents have been received. The 19th Respondent submits the 3rd Petitioner was not a considered candidate nor was he at least called for interview and he is not even in the country. Further submits, thus he cannot challenge the impugned appointment.

In terms of the said advertisement, the persons with the following qualifications were eligible to apply.

- a) A graduate who possess a PHD or a Masters Degree with research in Administration or Management or other relevant fields with not less than 12 years administrative experience, OR,
- b) A graduate with Masters Degree by examination or a Diploma in Administration or Management with not less than fourteen years Administrative experience, OR,
- (c) Internal candidates who are eligible in terms of the University Grants Commission Circular No. 657 of 19.12.1995.

The Petitioners submitted the 19th Respondent does not have the required qualifications/experience and therefore he is not eligible to apply for the post of the Registrar of the University. The 19th Respondent holds a Masters Degree by examination and he must have not less than 14 years

of administrative experience. It is the submission of the Petitioners that the 19th Respondent does not have the required 14 years of administrative experience to be appointed to the impugned post. The 1st, 2nd, 5th - 18th Respondents submitted they have considered and accepted the 19th Respondents work experience as Assistant Registrar, in addition to the work experience, as an Assistant Manager Lanka General Trading Co. Ltd. and Assistant Manager/Sales and Marketing Global Converters and Promoters Ltd. They further submitted that they accepted the 19th Respondent's period of service in the aforesaid places as satisfying requirement of 14 years of Administrative experience contained in sub paragraph (b) in P 2. The Respondent had considered and calculated the experience as follows.

Assistant Manager Sri Lanka Trading Corporation Ltd. - Three (3) years and three (3) months;

Assistant Registrar – UPDN/SECUL - Four (4) years and nine (9) months;

Senior Assistant Manager SEUL/PGIM - Six (6) years and five (5) months.
Fourteen (14) years and five (5) months.

The 19th Respondent submitted the 1st Respondent had considered the post of Assistant Manager of Sri Lanka State Trading Corporation, is an administrative experience calculating 14 years of experience. The experience gained at Global Converters and Promoters Ltd. also had considered as equivalent to administrative experience as defined in the Scheme of Recruitment.

The 19th Respondent submits, however, the said 14 years experience claimed by him is only the experience gained in the service of Assistant Registrar of University of Peradeniya, 1st Respondent University and Deputy Registrar of Post Graduate Institute of Medicine, University of Colombo. He further submits therefore the calculation of Graduate Teacher and Assistant Manager (Sales and Marketing) of Global Converters and Promoters will not arise.

Paper advertisement published in the newspaper for the post of Registrar is marked as P2 with the Petition, defined "administrative experience". It covers different types of experience. The 19th Respondent submits, on previous occasions the University Grants Commission had considered the experience in the Post of Assistant Manager of Sri Lanka State Trading Corporation as Administrative experience within the definition of administrative experience, in appointing the 19th Respondent to the post of Assistant Registrar of University of Peradeniya and other posts. Accordingly the 1st Respondent has accepted and considered the 19th Respondent's experience as equivalent to administrative experience as defined in the Scheme of Recruitment.

As the appointing authority, University Grants Commission has taken the decision to appoint the 19th Respondent to the Post of Senior Assistant Registrar. The 1st, 2nd, 5th to 18th Respondents submitted, University Grants Commission's definition of the term administrative experience was considered acceptable by them as well. The Respondents have considered the 19th Respondent's 14 years administrative experience correctly and therefore the view of the Court is, the 19th Respondent has the required 14 years administrative experience to be appointed to the

impugned post, and there is no merit in seeking to set aside the appointment of the 19th Respondent on this ground.

The Petitioners further submit, that to the best of their knowledge, the 19th Respondent has stated in his application that he holds a Masters Degree in Business Administration, become aware he has failed to complete the said degree course. The 19th Respondent's submission is that he did not submit results of a Masters Degree nor the 1st Respondent taken such qualifications in selecting for the post of Registrar. Further he submits the Petitioners have repeatedly attempted to mislead this Court submitting false facts. It is disclosed by the 19th Respondent, Consolidated mark sheet marked 19R 5A shows the said Masters Degree is not only by examination but also with two semesters projects reports. It shows the 19th Respondent has qualified for the award of Masters Degree. The 1st, 2nd, 5th to 18th Respondents submit, the required qualification is a Masters Degree or a Diploma in Administration or Management and since the 19th Respondent has a Masters Degree in Human Resource Planning and Development from the Guru Gobind Singh Indraprasatha University of India, whether or not the 19th Respondent has a Masters in Business Administration was irrelevant to his appointment. Thus the 19th Respondent is eligible to apply for the post of Registrar and not submitted any false information nor suppressed material facts.

The Petitioners further submit, in his application the 19th Respondent has willfully suppressed the fact that he served as a Graduate Trainee Teacher in 1991 and that he was served with a vacation of post notice with effect from 14.02.1991. Further submit in terms of Paragraph 18:12:1 of the Establishment Code of the University Grants

Commission, persons who have vacated their posts should not be appointed to any post in the Commission or any Higher Educational Institution without prior approval of the Commission. The 19th Respondent has admitted he was served with a Notice of Vacation of post with effect from 14.02.1991 by the Divisional Education Office of Nintavur, but subsequently been reinstated in service with effect from 13.01.1995. Further states that the said period treated as a period of approved no pay leave and after the said period he had served in the capacity of Assistant Registrar, Senior Assistant Registrar and Deputy Registrar, under the University Grants Commission. In proof thereof the relevant letters of appointment is annexed to the Petition marked as 19 R6 – 19 R8. The 19th Respondent further submits, on previous occasions, he had been considered by the University Grants Commission, as eligible to be appointed to the said posts and the said vacation of post was not an obstacle to be appointed to the said posts.

The Petitioners submit, clarification with regard to the credentials furnished by the 19th Respondent had not been sought from the Provincial Ministry of Education of the Eastern Province. But the 1st, 2nd, 5th, 8th, 10th, 13th, 15th to 18th Respondents submit, an appointment letter issued on 8th November 2010 appointing the 19th Respondent as Registrar, subject to a probationary period of one year and prior to the expiration period, the University has obtained clarifications from the Ministry of Education of the Eastern Province, marked and annexed as 2 R 2 with the affidavit filed by the Vice Chancellor. It is stated the 19th Respondent had been served a

vacation of post notice, but he had been reinstated in service as a graduate teacher, treated as no pay leave. It is the submission of the Respondents, since the 19th Respondent's services had been restored, there was no need to obtain the prior approval of the University Grants Commission. Accordingly the vacation of post necessarily does not make the 19th Respondent an ineligible candidate. He had been reinstated in service and the period of vacation of post had been considered as approved no pay leave. After the said period he had served in Universities under the University Grants Commission. In the circumstances the said notice of vacation of post is not an obstacle to the 19th Respondent to be appointed to the post of Registrar.

As the appointing authority, University Grants Commission has considered the 19th Respondent's application and decided to appoint him to the Post of Senior Registrar. Petitioners alleged the 1st Respondent University had adopted an irregular procedure in appointing the 19th Respondent to the Post of Registrar. In order to obtain a Writ of Certiorari as prayed in the Petition, the Petitioners must prove that the decision of the respondents was illegal, arbitrary and irregular procedure had been adopted. Court is ill equipped to pronounce that the decision of the University Grants Commission is arbitrary, illegal or unreasonable unless there is concrete evidence to establish that the Commission in taking such a decision has violated and acted contrary to the laws of the land.

It is the submission of the Petitioners that great prejudice would be caused to the student community of the 1st Respondent University, the staff and the entire administration of the University, if the 19th Respondent is appointed to the Post of Registrar. It is disclosed by the Respondents the 19th Respondent has presently been confirmed in his post and has been functioning as Registrar since his appointment in 2010. Petitioners have not disclosed any complaint against him of any malpractice or misconduct whilst in service in the 1st Respondent University, or after he assumed duties as well.

The Petitioners have filed this application in public interest. If an application is made in public interest, the Petitioners have to establish that they have a public interest in the relief they sought and that has to be specifically averred. The mere fact that they are Senior Lecturers or Registrars of the University and great prejudice would be caused to the student community will not be sufficient to invoke the Jurisdiction of a Court in public interest.

Lord Justice Atkin in *Re. Vs. the Electricity Commissioner* (1924) 1 K B 171 of 205, has given the circumstances in which a Writ of Certiorari will lie. Held - "Where anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially acts in excess of their legal authority, they are subject to the controlling jurisdiction of the Kings Bench Division exercised in these Writs".

The Petitioners have not submitted to Court or shown any illegality or procedural irregularity in appointing the 19th Respondent as the Registrar of the South Eastern University and for the above reasons this Court dismisses this application without costs.

Judge of the Court of Appeal

S. SRISKANDARAJAH (P/CA)

I agree

President Court of Appeal