

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

Thannispulle Hewage Nuwan Chinthaka  
25, Kanda, Dematapassa, Bopagoda,  
Akuressa.

**PETITIONER**

C.A 152/2013 (Writ)

Vs.

1. Sabaragamuwa University of Sri Lanka,  
P. O. Box 02,  
Belihuloya.

**And 18 others**

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** Saliya Peiris for the Petitioner

N. Unamboowa D.S.G., for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> - 12<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup> - 19<sup>th</sup>  
Respondents.

**ARGUED ON:** 23.10.2013

**DECIDED ON:** 07.11.2013

**GOONERATNE J.**

The motion dated 8.10.2013 was supported on 23.10.2013 by learned counsel for the Petitioner, for restoration of interim relief, and the said motion was filed on behalf of the Petitioner to enable him to sit for the 4<sup>th</sup> year – 1<sup>st</sup> Semester Examination and submission of the continuous assessment reports of Petitioner (As stated in the said motion). The above examination is due to be held in November 2013, that being the urgency to support this motion. Initially learned counsel for Petitioner supported this application for formal notice and interim relief on 17.6.2013. Court had allowed Petitioner's application on that day and granted interim relief as per paragraph 'b' of the prayer to the Petitioner with certain modifications as follows for a limited period (operative till 01.7.2013)

- (a) To permit Petitioner to sit the examination held in June/July, 2013 during the period of suspension as in P15.
- (b) Releasing of results of the above examination will be suspended until the main application is finally decided .
- (c) If the main application is dismissed Petitioner will not be entitled to the benefit of the results.
- (d) Petitioner to abide by the order made by P15 (J.E of 1.7.2013)
- (e) Respondents to permit the Petitioner to enter the premises during the period of examination (J.E of 1.7.2013)

The objections of Respondents were to be filed on or before 19.7.2013. On 19.7.2013 court had given further time to file objections till 24.7.2013 and to file counter affidavit of the Petitioner by 7.8.2013. Stay Order to operate till 8.8.2013 (J.E of 19.7.2013). The case was fixed for argument on 13.9.2013 and stay order extended till 16.9.2013 (J.E of 8.8.2013). On 13.9.2013 since learned D.S.G for the Respondent was indisposed case had been put off for 17.9.2013 to be mentioned (vide J.E. of 13.9.2013). On 17.9.2013 case re-fixed for argument on 7.10.2013. On 7.10.2013 case had not been taken up for argument but had been put off for another date 15.10.2013 to be mentioned. On 15.10.2013 Petitioner moved to support motion of 8.10.2013 on 23.10.2013. All these details above indicates that the application proper was never argued but only motions were supported for interim orders, for the reasons stated in the said motions. Emphasis to do so as per motion dated 08.10.2013 are.

- (1) need to submit continuous Assessment Report.
- (2) Not to lose an academic year of studies, and to sit the examination in  
November.

The substantive relief sought is to quash letter P15. Letter P15 dated 3.5.2003 would temporarily suspend the studentship of the Petitioner for a period of 8 months. The order of this court made initially on 17.6.2013 gives the gist of

the Petitioner's complaint in very precise terms. As such I do not wish to state these points all over again but merely would consider whether motion of 8.10.2013 could be considered and allowed? The order P15 is to operate for a period of 8 months from 6.5.2013 and the 2<sup>nd</sup> pg of P15 refer to the several prohibition and restrictions placed on the Petitioner. The 8 month period would lapse by January 2014.

The journal entry of 01.07.2013 further explains the direction given by this court since the order of this court dated 17.06.2013 lapsed on 01.07.2013. However as stated therein court had permitted the Petitioner to sit for the examination held previously. Petitioner is to abide by order made by P15. The interim order pertaining to sitting for examination is as per prayer 'C' of the prayer to the petition and there is no other prayer regarding sitting for examinations subsequent to the date mentioned therein. Sub paragraph 'E' of the prayer to the petition is for Writ of Mandamus somewhat identical to the above prayer 'C' and refer to the same date as in prayer 'C'. The substantial matter has also not been argued though hearing of the application was fixed for argument by court on 13.9.2013 but the application was postponed due to various reasons and thereafter the Petitioner allege that the case had not been taken for argument since the bench was not properly constituted. By such a course of events

Petitioner attempt to demonstrate that case was postponed without being heard due to reasons beyond his control. In this way Petitioner contends that if he is not permitted to sit for the examination as in the motion of 08.10.2013, relief sought will be nugatory for reasons not attributable to the Petitioner.

The learned Deputy Solicitor General vehemently objected to any interim relief being granted in the manner stated in motion of 08.10.2013. It was his position both in his oral and written submissions that the other than prayer 'C' pertaining to an examination to be held in July 2013, there is no prayer contained in the Petition as regards an examination in the month of November 2013 (as per the above motion). No doubt, that position is correct and cannot be disputed. Inter alia learned D.S.G refer to the contents of the interim order issued by court and conditions stated in P15, especially suspension of studentship for a period of 8 months, and by the motion of 08.10.2013 the Petitioner is seeking to circumvent order of this court dated 17.06.2013 and 01.07.2013.

There is also much emphasis by learned Deputy Solicitor General as regards the continuous assessment reports. According to the Petitioner the submissions of the continuous assessment report is a compulsory requirement for the completion of the final examination of the Petitioner. Learned D.S.G adds to his submissions inter alia that Petitioner has failed to give specific details of the

said assessment report, i.e due dates, topics, subject etc. Further the way the motion in question has worded the 'continuous assessment report and assignment' lacks uniformity and specificity.

This court has not been informed of the exact dates on which the examination is to be held, other than a reference for permission to sit for the November examination. There is much substance in the argument put forward by learned Deputy Solicitor General resisting the Petitioner's moves to get interim relief as per motion of 08.10.2013. In fact on the question of submitting the requirement as argued by the Petitioner on continuous assessment, lacks relevant and specific details.

There being no consensus between the parties, on the interim relief sought, court has to look at the facts presented by each of them, bearing in mind that relief sought by way of the motion is an interim remedy not prayed for in the petition filed of record. Nor has the Petitioner counsel indicated to court the exact dates on which the examination is to be held. Further the method of submitting continuous assessment reports is devoid of necessary and relevant details. On the other hand the suspension imposed by P15 would lapse by January 2014. I am more inclined to accept the position of the learned Deputy Solicitor

General. In the above circumstances this court is not inclined to grant the relief sought by motion of 08.10.2013.

The application for relief as per motion of 08.10.2013 is refused and motion dismissed. This order will bind the connected applications.

Nos: C.A 150/2013, C.A 151/2013 & C.A 153/2013,

JUDGE OF THE COURT OF APPEAL