

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

Dr.M.A.A.K.Munasinghe
No.39, Kithulakanda Road
Radawana

Petitioner

C.A. [WRIT] APPLICATION
NO.601/10

VS

1. Rajarata University of Sri Lanka
Mihintale
2. Prof.K.A.Nandasena
The Vice Chancellor
Rajarata University of Sri Lanka
Mihintale
3. Prof.M.Udupihilla
Acting Dean, Faculty of Medicine and Allied
Sciences
Rajarata University of Sri Lanka Mihintale
4. Prof.P.A.J.Perera
Head, Department of Biochemistry
5. Dr.N.J.Dhanayaka
Head, Department of Medicine
6. Prof.Sarath Lekamwasam
7. Member Selection Committee representing
The University Grants Commission
8. Member Selection Committee representing
The University Grants Commission

2nd to 8th Respondents are made parties as they were the members of the Selection Committee for the Recruitment to the Post of Senior Lecturer – Grade II/I Department of Medicine, Faculty of Medicine

9. Ms.Thakshila Ranasinghe
Senior Assistant Registrar (Establishments)
University of Peradeniya/Secretary to the
Selection Committee for the Recruitment to the Post
Senior Lecturer – Grade II/I
10. Mr.A.G.Karunaratne
Registrar of the University of Rajarata
Mihintale
11. Prof.A.Lagamuwa
12. Prof.K.H.R.Wijewardhane
13. Dr (Mrs) M.M.Gunasekera
14. Dr.(Mrs) P.A.Weerasinghe
15. Mr.A.G.Karunaratne
16. Dr.H.M.M.B.Seneviratne
17. Mr.Y.M.Wickremasinghe
18. Ven.N.Pangananda Thero
19. Dr.W.M.T.B.Wijekoon
20. Mr.A.Hettige
21. Mr.W.Rajapaksha
22. Mr.H.M.K.Herath
23. Mr.M.Ralapanawa
24. Mr.T.Thennakoon
25. Mr.S.M.W.Semasinghe
2nd, 3rd and 11th to 25th Respondents All
being members of the University Council
of the University of Rajarata
Mihintale
26. The University Grants Commission
No.20, Ward Place, Colombo
Respondents

BEFORE : **K.T.CHITRASIRI, J**
L.T.B.DEHIDENIYA, J

COUNSEL : Faisz Musthapha P.C. with Rajeev Amarasuriya
for the Petitioner
M.N.B.Fernando A.S.G. with Nayomi Kahavita S.C.
for the Respondents

ARGUED ON : 10.02.2015 and 10.03.2015

**WRITTEN
SUBMISSIONS
FILED ON** : 11.05.2015 by the Petitioner
11.05.2015 by the Respondents

DECIDED ON : **16. 07.2015**

CHITRASIRI, J.

When this matter was taken up for argument on 10.02.2015, learned President's Counsel for the petitioner submitted that the petitioner is restricting his reliefs to the items (c), (e) and (f) referred to in the prayer to the petition and therefore he is not pursuing with the remaining reliefs found therein. Also, it is necessary to note that the reliefs (e) and (f) referred to above had been prayed for, in the alternative. Hence, basically the relief sought by the petitioner is to quash the decision mentioned in the document marked 1R2 filed with the objections of the respondents by which the application of the petitioner for the post of Senior Lecturer Grade I had been rejected.

The petitioner being a medical doctor, applied for the post of Senior Lecturer Grade I in the University of Rajarata, pursuant to the applications being called to fill

the vacancies for the posts of Professor, Senior Lecturer Grade II/I and Lecturer (Probationary) in the Department of Medicine in the Faculty of Medicine and Allied Sciences in the 1st respondent university. Petitioner's application was for the post of Senior Lecturer, Grade I. The scheme of recruitment relevant to the post of Lecturer Grade I is found in the document marked P26 filed with the petition. The qualifications that are necessary for the aforesaid post of Lecturer (Grade I) are as follows:

1. Candidates should possess the academic qualifications required for Lecturer (Probationary) (Medical/Dental) as stipulated under post I in this document

AND

- 2.(i) A Masters Degree in the relevant field obtained after a full-time course of study of at least 02 academic years (or an equivalent part-time course of study) with a research component by way of thesis/ dissertation or Doctoral Degree or MD/MS and Board Certification by the Postgraduate Institute of Medicine where required or its equivalent.

OR

- (ii) Such professional qualifications and experience as may be approved by the University Grants Commission upon the recommendation of the Higher Educational Institution concerned.

AND

3. At least eleven (11) years of experience [of which not less than six (06) years should have been after obtaining qualifications stipulated in 2 above) in one or more of the following:
 - (i) Teaching an University level
 - (ii) Professional experience
 - (iii) Research in a recognized Institute
 - (iv) Postgraduate studies

Accordingly, the petitioner was called for an interview before a panel comprising of six members that included the 2nd respondent, namely the Vice Chancellor of the Rajarata University of Sri Lanka. Petitioner was allotted 34 marks

out of 100 for the performance he made at the interview before the selection committee. Pursuant, to the said interview held before the selection committee, the petitioner had been informed by the letter marked 1R2 that his application for the post of Senior Lecturer Gr.1 was rejected. Said decision was on the basis that the performance of the petitioner at the interview was not of sufficient merit. As a result, the petitioner was not selected for the post of Senior Lecturer Grade I.

Petitioner in his petition has stated that the aforesaid decision of the Selection Committee is perverse and unreasonable and it would be in grave violation of the principles of natural justice and of his legitimate expectations. Accordingly, he has sought to grant a mandate in the nature of a writ of certiorari quashing the decision of the Selection Committee and to issue a mandate in the nature of a writ of mandamus directing the 1st respondent to 3rd and/or 11th to 26th respondents, to appoint the petitioner to the post of Senior Lecturer Grade I in the Faculty of Medicine of the University of Rajarata. In the alternative, the petitioner sought to have a mandate in the nature of a writ of mandamus directing the respondents to re-reconsider his application for the post that he has applied for.

As mentioned hereinbefore, the petitioner has decided not to pursue with the application to have a writ of mandamus compelling the respondents to appoint the petitioner to the position that he has tendered his application. Therefore, the issue before Court is to ascertain whether the impugned decision of the selection committee is liable to be quashed for the reasons set out in the petition of the

petitioner or in the alternative to find out whether there are reasonable grounds to make an order, in order to re-consider the application of the petitioner.

The scheme of recruitment pertaining to the post of Senior Lecturer (Grade I) is mentioned in the document P26 and the matters mentioned therein are not in dispute. The manner in which the interview was held also has not been challenged. Then the remaining issue is to consider whether or not the Selection Committee has rejected the application of the petitioner in an arbitrary manner without considering the qualifications and the experience of the petitioner.

Reasons for the rejection of the application were basically on the ground;

- ✓ that the petitioner had not produced adequate research work for consideration of the selection committee; and
- ✓ that he did not perform at the interview to reach the standard required to become a Senior Lecturer Grade I in the University.

The petitioner was given only 03 marks out of 34 for the research publication component whilst 12 out of 30 marks for his performance at the interview *viva voce*.

Admittedly, he has not produced a single publication of his own for the interview board to consider. His publication that was produced at the interview had been authored jointly with others. Therefore, the fact remains that he did not possess a single publication of his own. Indeed, it is an essential requirement to have a research publication produced by the petitioner himself published in a reputed journal even according to the scheme of recruitment. [P26] Admittedly,

such a publication has not been produced by the petitioner for the selection committee to consider. Hence, it is clear that the petitioner has failed to satisfy the requirement 2(i) or 3 (iii) of the qualifications that are required in accordance with the scheme of recruitment.

Furthermore, in order to become a Senior Lecturer Grade I, a person should have good presentation skills as well. Such a requirement is necessary for proper teaching and to impress upon the students. Then only the students would tend to accept a person as a lecturer in a University. Such a criteria is necessary for the students to consider senior lecturers as their mentors and perhaps even as role models. Such a criteria seems to have been the basis that was expected by the selection committee. It was the reason to have allocated 12 out of 30 marks for the performance at the oral interview.

Those circumstances show that the Selection Committee has not acted arbitrarily or capriciously or in violation of rules of natural justice when they decided not to select the petitioner to the post of Senior Lecturer Grade I. Therefore, I am not inclined to issue a mandate in the nature of a writ of certiorari to quash the decision of the Selection Committee referred to in the document marked 1R2.

Now that a decision has been arrived at, validating the impugned decision, this Court is not in a position to issue a mandate in the nature of a writ of mandamus directing the respondents to re-consider the application of the petitioner

once again. Moreover, there is no legal right or legal duty cast upon the respondents even to do so enabling this Court to grant such a mandate. This position of law had been discussed comprehensively in the case of **Credit Information Bureau of Sri Lanka v. Messrs Jafferjee and Jafferjee (Pvt) Ltd [2005] 1 S.L.R. 89.**

Also, it is necessary to note that the decisions in the cases of **Kunanantham vs. University of Jaffna and others [2005] 1 S.L.R.239. (1) Karavita and others, and Welikanna v. Inspector General of Police and others [2002] 2 S.L.R. 287 and W.K.C.Perera v. Prof.Daya Edirisinghe and others [1995] 1 S.L.R.148** that were referred to by the learned President's Counsel for the petitioner had been made when there is a violation of the selection process. In this instance no such violation of the selection process is found. Therefore, those decisions referred to by the learned President's Counsel for the petitioner cannot be made applicable to the case at hand.

For the aforesaid reasons, this application is dismissed. No costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B.DEHIDENIYA, J

I agree

JUDGE OF THE COURT OF APPEAL