

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

**In the matter of an Application for mandates
in the nature of Writ of *Certiorari* and
Mandamus under and in terms of Article 140 of
the Constitution of Sri Lanka**

**R.A.C. Nandanie,
F/G/1, Samapura Flats,
Colombo 10.**

PETITIONER

CA/WRIT/39/2014

Vs,

**1. The University of Kelaniya,
Kelaniya.**

And 24 others

RESPONDENTS

**Before : Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

**Counsel: Manohara de Silva PC with Arinda Wijesundare for the Petitioner,
Manohara Jayasinghe SC for the 1st -20th and 25th Respondents**

Argued On: 28.04.2015

Written Submission On: 25.06.2015

Order On: 13.08.2015

Order

Vijith K. Malalgoda PC J

Petitioner to this application R.A.C. Nandani has filed this application seeking inter alia,

- b. grant and issue a mandate in the nature of Writ of *Certiorari* quashing the decision of the 22nd to 24th Respondents to dismiss the appeal bearing No, USAB 766 filed in the University Services Appeal Board
- c. grant and issue a mandate in the nature of Writ of *Certiorari* quashing the decision of the 1st to 20th Respondents to terminate the Petitioner's Services by letter dated 21.01.2009 annexed to the Petition of Appeal marked P 43
- d. grant and issue a mandate in the nature of Writ of *Mandamus* Compelling the 1st Respondent University and/ or the 25th Respondent to reinstate the Petitioner in service with payment of back wages
- e. grant and issue a mandate in the nature of a Writ of *Prohibition* preventing the 1st Respondent University and/ or the 25th Respondent Commission from considering and/or treating the Petitioner as a member of Academic Support Staff

Petitioner on completion of her Bachelor of Science Degree from the University of Colombo, was appointed a temporary tutor with effect from 05.10.1990 and was appointed a temporary instructor with effect from 03.06.1991 both at the Department of Mathematics. When a vacancy for the post of assistant statistician was advertised by the University Grants Commission (here in after referred to as U.G.C) in late 1991, Petitioner applied for the said vacancy, and was appointed to the post of Assistant statistician Grade 11 at the U.G.C with effect from 30.01.1992. Subsequent to the appointment of the Petitioner in January 1992, in July 1992 U.G.C approved a new scheme of recruitment in respect of Statistician /Econometrician and Assistant statistician Grade 1 and 11.

Petitioner continued to be in the same service attached to U.G.C and by letter dated 22nd July 1997 was transferred to the University of Kelaniya and was attached to the Vice Chancellors Office as the Assistant Statistician.

Petitioner was seconded with effect from 02.10.2006 to the Medical Faculty of Kelaniya and was attached to the Department of Community Medicine.

On 29th March 2007 the Petitioner was summoned by the Dean of Medical Faculty and informed her to sign her attendance on the register allocated for "Academic Support Staff" members. By letter dated 04.04.2007 the Petitioner was served with a warning by the Dean of the Medical Faculty, that if she does not sign her attendance on the appropriate register maintained at the Dean's Office, that he would take disciplinary action against the Petitioner. (P-28)

On 30.07.2007 the Petitioner was served with a show cause letter for alleged insubordination alleging that the Petitioner holds as Academic Support Staff Post and that Academic Support Staff members are required to sign their attendance in terms of a U.G.C decision dated 28.08.2006.

1st Respondent University at its 337 meeting had decided to suspend the Petitioner from service and served with a charge sheet on 16.01.2008. (P-38) By letter dated 21. 01.2009 vice chancellor of the 1st Respondent University informed the Petitioner the she had been found guilty of charges I,II,III,IV,V,VI(2),VII and VIII and by council decision dated 02.12.2008, the Petitioner's Service had been terminated with effect from 02.12.2008.

Being aggrieved by the said decision, the Petitioner had appealed against the said decision to the University Services Appeal Board in terms of section 86 of the Universities Act No. 16 of 1978.

By Judgment dated 25.09.2012 University Services Appeal Board dismissed the appeal of the petitioner (document marked Z).

Being dissatisfied with the said decision the Petitioner has come before this court seeking inter alia relief prayed under paragraphs (a)-(g) of the Petition.

The position taken up by the Respondents before this court was that, the Petitioner who was an Assistant Statistician attached to the U.G.C does belong to B-04 salary scale but does not characterize her post as one coming under Academic Staff Category. The Respondents have admitted B-04 salary scale applies to "Academic Grades" but it does not apply exclusively to Academic Grades. In support of the above contention Respondents have drawn the attention of this court to the document marked R-1 by the Respondent which is U.G.C circular No 717 dated 23.09.1997. a document titled "Revision of salaries in the University system 1997- Conversion Table", was attached to the said circular.

Page 1 of the said Table carries a heading “Academic Grades” and the salary code have been identified as B-04. Page two of the same Table carries the heading “B Grades (others)” and the salary code have also been identified as B-04.

Based on the above circular the Respondents have submitted

- a) B-04 applies to Academic Staff but it also applies to employees who are not part of the Academic Staff;
- b) The mere fact that a person received a B-04 salary is not determinative of the fact that he is a member of the Academic Staff.

The Respondents have further submitted that upon a clarification sought by the Registrar of the University of Kelaniya, the Registrar of the U.G.C has clarified that the post of Assistant Statistician is an Academic support staff position (P 29-b). Even though the above letter confirms the post of Assistant Statistician belongs to academic support staff position, the Respondents have further clarified that the Petitioner who does not engage in academic activity can still be confirmed in the academic staff, provided she satisfies the stipulated criteria crucially the requirement of obtaining a two years post graduate degree.

The Respondents have further argued that the level of obedience expected from an employee is such that they must even comply with instructions which may not be strictly correct and reasonable and the conduct of the Petitioner to brazenly and high- handedly disregard the orders of her superiors would amount to insubordination which under any stand or system will be viewed as a very serious offence.

However the Petitioners argument before this court was mainly based on decisions conveyed to the Petitioner by the U.G.C and correspondence between the Petitioner and U.G.C which confirms the position that the petitioner is not belonging to the Academic Support Staff.

In support of the above contention the Petitioner had submitted that, with the approval of the new scheme of recruitment in respect of Statisticians/ Econometricians and Assistant Statistician Grade I and Grade II Assistant Statisticians were placed on a new salary scale namely BS-02 which is an Academic Support Staff leaved salary scale. However, according to the Petitioner the new scheme was only operative with effect from 01.08.1992, and therefore had no impact on the Petitioners terms of employment as the Petitioner was recruited prior to the said date.

With the introduction of the new scheme the U.G.C by its letter dated 28.04.1993 offered the Petitioner the option to be considered as Academic Support Staff. The first paragraph of the said letter reads thus,

“The commission at its 343rd meeting held on 14th January 1992 decided to offer the Research Assistant and Assistant Statisticians of the planning and Academic Support Staff. If they do decide to option, the same rules and regulations governing the confirmation of Academic Support Staff will apply. Please let me know your decision very early regarding the decision of the Commission.”

Petitioner has filed before this court as P-5 her reply to the said letter where she had informed the U.G.C that “she wishes to remain as an Academic Staff.”

By letter dated 24th May 1993 which is produced marked P-6a the then chairman U.G.C had written to the Petitioner and three others as follows. “All of you have now opted to remain on the (academic) B scale salary. This requires you to obtain a postgraduate degree in the relevant filed for your confirmation and promotion”

In response to the above letter, the petitioner had informed the U.G.C that she had obtained a Postgraduate Diploma in Applied Statistics. However the U.G.C by letter dated 22.06.1995 (P-6b) refused to consider the same as an adequate qualification for the reason that “since this post carries the same status as that of a member of the academic staff in the B-04 grade”

Petitioner has marked as P-7 a new U.G.C circular issued on 14th November 1995 with regard to Recruitment, confirmation and Promotion of Lectures/ Senior Lectures and corresponding Library staff and under paragraph 2, it deals with “confirmation of a Probationary Lecture” as follows;

A Lecturer (probationary) shall be confirmed in the post on fulfilling the following requirements;

- a. Three years of satisfactory service as a lecturer in the permanent cadre

And

- b. A relevant post graduate qualification obtained after a full-time cause of study of at least one academic year or an equivalent part- time course of study

NOTE: the postgraduate qualification referred to in (b) above could be Master’s Degree, Diploma or equivalent...

This court further observes that the Petitioner by letter dated 06.02.1996 requested the U.G.C to consider her confirmation on the basis of the said circular and thereafter the Commission by its letter dated 18.11.1996 confirmed the Petitioner with effect from 30.01.1992 in Assistant Statistician grade II.

However the Learned Counsel for the Respondent had challenged the said letter before this court and argued that, nowhere in the circular are the words "academic staff" used. This was a circular of the U.G.C. dealing the recruitment, confirmation and promotion of Lectures, Senior Lectures and corresponding Library staff.

The circular marked no reference to statisticians Learned President's Counsel's reliance to this circular is disingenuous. The section he relies on is section 2A (b) which states that the postgraduate qualification required can be a diploma. A diploma is all that the Petitioner possesses. But the title of this section speaks about the confirmation a probationary Lecturer and it says nothing about confirmation to the Academic Support Staff who are keen to be confirmed in the academic staff.

However this court observes the final paragraph of P- 6b to the effect "You are Kindly requested to satisfy above requirement for the purpose of considering you for confirmation in the post of Assistant Statistician Grade II and of the view that the U.G.C had informed in no uncertain terms that she would be confirmed in her post only if she satisfies the required qualification. Therefore when the Petitioner requested to consider her confirmation based on P-7 and the U.G.C confirmed her in the post of Assistant Statistician by P-9 cannot be disputed now, and this court is satisfied that the U.G.C has confirmed the Petitioner, in the Grade she opted to be, by her letter P-5b.

This court further observes that, when the Petitioner was transferred to the Kelaniya University by P-10, there is specific reference that, required finances will be made available based on her grade to the effect "මින් ඉදිරියට සංඛ්‍යා ලේඛනඥ තනතුරේ ප්‍රවීණතාව (B -04) ඔබ විශ්ව විද්‍යාලයේ සේවක සංඛ්‍යාවට ඇතුළත් කරනු ලැබේ."

According to the petitioner since August 1997 she was signing her attendance on the Administrative Register as she was assigned to the Vice Chancellor's office. There was no objection by anybody including the then Registrar her signing in the said register. However when Mr. Karunarathne was appointed the Registrar in March 2006, he had ordered the Petitioner to sign her attendance in a new register separate from the Administrative Register. The Petitioner

submitted that she was the only member of the staff to whom this separate book was allocated to. However the Petitioner continued to sign on both book including the Administrative Register as she feared that the loss or interference with such separate book would put any record of her regular attendance in doubt. By P-12 the Registrar has ordered her not to sign in the Administrative Register since she is holding a post which entitles to a 'B' grade salary and to sign in the register provided to her.

The court observed this document as an unusual letter, since he has taken trouble to send this handwritten letter to the Petitioner, without following the proper procedure to communicate such directive.

The Petitioner had submitted before this court a series of events which followed, according to the Petitioner, a result of Petitioner's refusal to concede to certain advances by the said Register, but we are not going to address our mind to such instances since our role is limited in this application. However we are mindful of the fact that the Petitioner made several attempts thereafter to obtain a transfer from the said University but was unsuccessful as evident in document produced marked P-13, P-14a, P-14b and P-15.

As I have discussed earlier the Petitioner was seconded with effect from 2.10.2006 to the Medical Faculty of Kelaniya and was attached to the Department of Community Medicine.

On 16th March 2007 the Dean of the Medical Faculty on directions he received from the Vice Chancellor and the Registrar of Kelaniya University had written to the Head of the Department of Community Medicine, directing him to hand over the attendance register of the Petitioner to the assistant registrar's office with a direction to the Petitioner to sign at the register at the assistant registrar's office. This court observes that this is the starting point of the dispute which arose between the Petitioner and the University Administration over signing of attendance by the Petitioner. As observed by this court it is the Registrar of the University of Kelaniya who directed by an unusual letter the Petitioner to sign a separate register when she was signing her attendance in the Administrative Register since she is holding a post which entitled to a 'B' grade salary. The same registrar thereafter called for the separate attendance register used by the Petitioner to sign her attendance by withdrawing it though the Dean of the Medical Faculty, and thereafter got her to sign in the register used by the support staff.

If the Petitioner cannot be allowed to sign the Administrative Register, since she is holding a post which entitled to a 'B' grade salary, the same principle will apply to her when she is asked to sign the register, which is used by persons who are not entitled to a 'B' grade salary. The Learned State Counsel who represented the respondents had argued before this court that level of obedience expected from an employee is such that they must even comply with instruction which may not be strictly correct and reasonable and then complain to the authorities of his or her grievance rather than brazenly and high handedly disregard the orders which would amount to insubordination.

When go through the document marked P-26, P-27 , P-28, P-30a, P-30b, P-31, P-32, P-33 and P-34 it is clear that the Petitioner has repeatedly requested a proper register for her to sign her attendance but the authorities have refused her requested and forced her to sign the register used by persons who are not entitled to a 'B' grade salary. Instead of finding an answer to her request, the authorities have gone to the extent of obtaining a clarification from U.G.C whether the post of Assistant statistician belongs to Academic Support Staff. We observe that the authorities have suppressed important facts in the said letter and therefore the ruling they obtained in document marked P-29b has no value.

In the case of *Ceylon Estate Staff's Union V. Superintendent Meddecombra Estate (1970) 73 NLR 278 at 288* Weeramanthry J observed, "there is of cause no general principle that an employee is in all cases bound to accept such a transfer order under protest, for there may be cases where the mala- fides prompting such an order is so self- evident or the circumstances of the transfer so humiliating that the employee may well refuse to act upon it even under protest."

This court observes that the Petitioner on several occasions requested the authorities to appreciate her status as a person who is not belonging to the Academic Support Staff but the Respondents have failed to satisfy this court that the said requests were even considered when the impugned decisions are reached. This court further concludes that, the U.G.C by its conduct specially by sending P-5a, P-6a, P-6b, P-9 and P-10 confirmed to the Petitioner that she is not belonging to "Academic Support Staff" any further and therefore it is wrong for the Respondent to terminate the services of the Petitioner without giving due consideration to the above facts by reaching a conclusion that the petitioner is guilty of allegations of misconduct and insubordination, all arising from the refusal by the Petitioner to sign attendance on the Academic Support Staff Register, to which she is not belonging to, as evident from the material placed before this court.

For the reasons set out above I conclude that the petitioner is entitled to all the relief claimed against the Respondents and therefore decides to grant relief prayed by the Petitioner in paragraph (b) - (e) of the Petition.

I further direct the 1st Respondent to pay sum of Rs. 500,000/- as compensation to the Petitioner.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. MADAWALA,

I agree,

JUDGE OF THE CUORT OF APPEAL