

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

*In the matter of an Application for an
order in the nature of Writ of Certiorari in
terms of Article 140 of the constitution*

C A (Writ) Application No. 356/ 2014

1. Egoda Arachchilage
Wickramasinghe,
No.56/2,
Athurugiriya Road,
Kottawa

PETITIONER

-VS-

1. Buddhist and Pali University of Sri Lanka
Lanka
No.37,
Moragahahena Road,
Pitipana Town,
Homagama,
Sri Lanka
2. Ittadembaliye Indasara Thero,
"The Venerable Vice-Chancellor",
Buddhist and Pali University of Sri Lanka,
Lanka,
No.37,
Moragahahena Road,
Pitipana Town,
Homagama,
Sri Lanka.
3. Nuluwe Sumanawansa Thero,

4. Trikunamale Ananda Mahanayaka
Thero,
5. Ankumbure Premawansa Thero,
6. Thumbulle Seelakkanda Nayaka
Thero,
7. Alikewela Seelananda Nayaka
Thero,
8. Banagala Upathissa Nayaka
Thero,
9. J. M.U.B. Jayasekara,
10. G. Radampola,
11. B.H.M. Ratnasiri
12. Waawwe Dammarakkita Thero,
13. Akiriyagala Nanda Thero,
14. Piyasena Ranupura,
Additional Secretary,
Ministry of Higher Education,
No. 18,
Ward Place,

Colombo 7.

15. M.K.B. Disanayake,
Secretary,
Ministry of Buddhasasana and
Religious Affairs,
No. 135,
Dharmapala Mawatha,
Colombo 07

(All Members of
Council,
Buddhist and Pali
University of Sri Lanka,
No. 37,
Moragahahena Road,
Pitipana Town,
Homagama,
Sri Lanka.)

16. Uturawela Dhammaratna Thero,

17. Weegama Piyaratna Thero,
18. Dunuke watte Gunaratna Thero,
19. Mawathagama Pemananda Thero
20. Moragollagama uparatna Thero
21. K.G. Swarnananda
22. Gonadeniye Packgyaratne Thero
23. Varuni Thennakoon
24. Nirosha Salwatura
25. H.A. Dinesh Kumara Gunatilake
26. Makuruppe Dhammananda Thero,
27. Walter Marasinghe
28. Ananda Abesiriwardena

[3rd and 16th to 28th
Respondents, Members of the
Faculty Board, Buddhist and Pali
University of Sri Lanka,
No.37,
Moragahahena Road,

Pitipana Town,
Homagama,
Sri Lanka.]

RESPONDENTS

Before: Vijith K. Malalgoda PC J (P/CA)

P. Padman Surasena J

Counsel: Manohara De Silva, PC for the Petitioner

Dr. Almeida Gunaratne for the Respondents

Decided on: 2016-05-31

JUDGMENT

P Padman Surasena J

The petitioner in this application has sought from this court *inter alia*:

- 1) a writ of certiorari quashing the decisions communicated by the 2nd Respondent by letter **P 21**, and the decisions of the council in its 351st Meeting to appoint the 3rd Respondent as the Acting Dean of the Faculty of Language Studies of Buddhist and Pali University of Sri Lanka, and the decisions communicated by letter **P 22**,
- 2) a writ of Prohibition to prohibit the 1st Respondent and/ or 1st to 15th Respondents and/ or 1st to 28th Respondents from calling any Faculty Board Meeting and/ or holding any meeting of the Faculty Board for the purpose of appointing a new Dean for the Faculty of Language Studies of University of Buddhist & Pali during the Petitioners term of office in terms of Section 18 C (2) of The Buddhist and Pali University of Sri Lanka (Amendment) Act No. 37 of 1995.

The Petitioner has been unanimously elected as the Dean, Faculty of Language Studies of University of Buddhist and Pali at a special Faculty Board meeting which was held on 2014-09-24 for the purpose of electing a new

Dean for the Faculty of Language Studies of University of Buddhist and Pali of Sri Lanka. Consequent to that election, secretary to the Faculty Board by his letter dated 2014-09-24 had informed the 2nd Respondent that the Petitioner was elected unanimously to function as the Dean, Faculty of Language Studies of University of Buddhist and Pali of Sri Lanka with effect from 2014-09-26 for a period of 3 years as per the special Faculty Board meeting held on 2014-09-24 under Section 18 C of the Buddhist and Pali university of Sri Lanka (Amendment Act No. 37 of 1995).

Section 18 C of the Act above referred to is as follows,

“(1) There shall be a Dean of each Faculty who shall be a full time officer of University and the academic and administrative head of that Faculty. The Dean shall be elected by the Faculty board from among the Heads of the Departments of Study comprising such Faculty, and shall, when so elected cease to be the Head of the Department of Study concerned.”

Notwithstanding the said election and the subsequent letter by the Secretary to the Faculty Board dated 2014-09-24 (**P 20**), the 2nd Respondent by his letter dated 2014-10-02 (the document marked **P 21**), had informed the 3rd Respondent that the 3rd Respondent has been appointed as the Acting Dean of the Faculty of Language Studies of University of Buddhist and Pali, Sri

Lanka with effect from 2014-09-30 by the council in its 351st meeting until a new Dean is appointed.

It is the position of the Petitioner that this letter marked **P 21** is arbitrary, unreasonable, *mala fide* and is *ultra vires* the provisions of Section 18 C of the Buddhist and Pali University of Sri Lanka Amendment Act No. 37 of 1995 and hence has no force or avail in law and therefore is a nullity.

Perusal of the journal entries in the docket of this case shows that the Respondents have been represented by a counsel on the notice returnable date i.e. 2014-11-03. Learned counsel who had appeared for the Respondents had moved for time to file objections and that application had been granted by this court. Thereafter this court, on the application of learned counsel who had appeared for the Respondents had granted further time at several occasions affording an ample opportunity for the Respondents to file objections in this case. However, Respondents have failed to file any objections in this case. Further, no counsel had appeared for the Respondents thereafter. It was in this backdrop that this court had decided to dispose this matter on the written submissions filed on behalf of the Petitioner.

The facts, the legal positions applicable to this impugned appointment have not been controverted by the Respondent. There has been ample opportunity for them to do so if they had wanted to challenge these positions. In these circumstances this court has no option but to conclude that the position taken up by the Petitioner is correct.

The Respondents have failed to adduce any basis to justify the issuance of letters marked **P 21** and **P 22**.

In these circumstances this court issues

- 1) a writ of certiorari quashing the decisions communicated by the 2nd Respondent by letter **P 21**, and the decisions of the council in its 351st Meeting to appoint the 3rd Respondent as the Acting Dean of the Faculty of Language Studies of Buddhist and Pali University of Sri Lanka, and the decisions communicated by letter **P 22**,
- 2) a writ of Prohibition prohibiting the 1st Respondent and/ or 1st to 15th Respondents and/ or 1st to 28th Respondents from calling any Faculty Board Meeting and/ or holding any meeting of the Faculty Board for the purpose of appointing a new Dean for the Faculty of Language Studies of University of Buddhist & Pali during the Petitioners term of

office in terms of Section 18 C (2) of The Buddhist and Pali University of Sri Lanka (Amendment) Act No. 37 of 1995.

Registrar is directed to convey this order to the Respondents.

Application is allowed.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL