

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

In the matter of an application for writs in  
the nature of Certiorari and Mandamus  
under Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

Purnima Anuradha Rathnayake  
Seethawaka Rajasinghe Mawatha  
Walauwatte  
Nattandiya.

**PETITIONER**

**C.A.(Writ) Application No. 302/2011**

**Vs**

1. University of the Visual and  
Performing Arts.  
21, Albert Crescent  
Colombo 07.
2. Prof. Jayasena Kottegoda  
Vice Chancellor  
University of the Visual and  
Performing Arts  
21, Albert Crescent  
Colombo 07.
3. Ariyaratne Kaluarachchi  
Dean,  
Faculty of Dance and Drama  
University of the Visual and  
Performing Arts.

4. Dhammika Lankatilleke  
Head,  
Department of Upcountry Dance  
Faculty of Dance and Drama  
University of the Visual and  
Performing Arts.
5. Prof. Albert Dharmasiri
6. Piyasara Sripadhipathi
7. Upekdha Gangodawila
8. Manouri Manamperi
9. Senaratne Pathirana
10. Prof. Jagath Wickramasinghe
11. Dhanapala Ovitigedara
12. T.M.H.P.K. Gunatilleke
13. B.R. Dissanayake
14. Sarath Gnanasiri
15. Prof. Mudiyanse Dissanayake
16. Ranjith Fernando
17. K.L. Hewage
18. Yamuna Nishanthi Pieris
19. Eranga Rajamanthri
20. Sandapathi Priyadarshini
21. Achira Tennekoon
22. Kumudu Dilani
23. Saman Priyalal  
5<sup>th</sup> – 23<sup>rd</sup> Respondents all of the  
University of the Visual and  
Performing Arts,  
21, Albert Crescent, Colombo 07.
24. University Grants Commission  
20, Ward Place, Colombo 07.
25. S.P. Piyasara
26. S. Welabadage

25<sup>th</sup> and 26<sup>th</sup> Respondents are of  
the University of Visual and  
Performing Arts.

21, Albert Crescent, Colombo 07.

**RESPONDENTS**

**BEFORE**

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

**COUNSEL**

: J.C. Weliamuna with Senura

Abeywardena for the Petitioner

Manohara Jayasinghe SC for the

1<sup>st</sup> to 4<sup>th</sup> Respondents and 12<sup>th</sup> and

24<sup>th</sup> Respondents.

Roshan Dayaratne for the 18<sup>th</sup> to

23<sup>rd</sup> Respondents.

**ARGUED ON**

: 11<sup>th</sup> January, 2016

**DECIDED ON**

: 15<sup>th</sup> July, 2016

**Deepali Wijesundera J.**

The petitioner has filed this application praying for a writ of Certiorari to quash the decision of the 1<sup>st</sup> to 17<sup>th</sup> respondents to appoint the 18<sup>th</sup> to 23<sup>rd</sup> respondents to the Post of Lecturer (Probationary) and to cancel the interviews held by the University Council in 2009 and 2010.

The petitioner is a graduate of the 1<sup>st</sup> respondent university. She has obtained a first class degree honors and was reading for her M.Phil. degree in the same University at the time she went for the interview.

The petitioner's counsel stated that she had worked as a visiting lecturer in year 2009 and 2010 and also served on the examination board. The petitioner stated that the required hours of lecturing was completed by the petitioner at the time of the interview. Petitioner has filed documents **P1 to P6** to prove these points.

The learned counsel for the petitioner submitted that posts of Lecturer (Probationary) Tutor/Instructor and Demonstrator for the Department of Upcountry Dance of the University of Visual and Performing Arts were advertised in 2009 and 2010. On both these occasions after the interviews the interview were cancelled. Documents P7, P8 and P9 (a) and (b) were produced with the petition to prove these. Thereafter for the third time the post of Lecturer (Probationary) and Demonstrator was advertised and the petitioner had applied and was required to attend a Practical Test which was held on 11/12/2010 and was asked to come for an interview on the 14<sup>th</sup> January 2011. (P12 (a) and (b) and P13). This interview had been cancelled and a fresh interview was held on 08/02/2011. At this interview the petitioner had been

informed that she did not have the one year experience in teaching. Thereafter petitioner had been informed that she was not selected for the post advertised.

The petitioner submitted that under *circular 935 of the University Grants Commission* the candidate has to make a presentation at the interview, but the wrongful position of the respondents that the said circular is not applicable to the interview deprived the petitioner being selected to the said post. The petitioner stated the circular came into operation from 01/11/2010 therefore it is applicable to this interview.

The petitioner further submitted that the petitioner was called for the third interview which shows that she was qualified to be considered for the said post. The petitioner stated the dishonest conduct of the 2<sup>nd</sup> respondent by not sharing the documents submitted by the petitioner with the other members of the interview panel is evident. The petitioner stated that the head of the department of upcountry dance had not signed the mark sheet for the selection of Lecturers to the very department, which shows the surreptitious manner in which the selections were made.

The learned counsel for the respondents submitted that the petitioner applied for three different posts namely Lecturer (Probationary)

Tutor and Demonstrator and that the 1<sup>st</sup> respondent University never advertised the post of Tutor, and that no such post existed. The respondents stated that the petitioner failed to show basic diligence in instituting this application. The grievance of the petitioner is that she was refused admission to a post which was not advertised and does not exist. Therefore the instant application should be dismissed for failure to pursue this application for discretionary relief with the required diligence the respondents argued.

The respondents stated that the practical test for the post of Demonstrator in the Upcountry Dance Department was cancelled after it had transpired that the Instructor for Percussion Music could perform the function of the Demonstrator of Upcountry Dance and that there was no need to recruit a separate Demonstrator. The respondents stated there were many other applicants in addition to the petitioner for this post. The respondents argued that they had valid reasons to cancel the earlier interview and that the petitioner was not the only applicant.

The respondents submitted that the interview board consisted of five members whose evaluation of her was consistent, and the highest mark obtained by the petitioner is 76 and the lowest 64 and her marks should be compared with the marks awarded to the person ranked first.

The respondents stated that simple arithmetic will show that the petitioner has not been deprived of anything she was entitled to. The respondents further submitted that the petitioner has made vague, frivolous and unsubstantiated allegations against her examiners who had a wide discretion in their evaluation, and that the petitioner's allegations are bereft of merit.

The learned counsel for the respondents submitted that *Circular no. 721* with respect to recruitment of Lecturer (Probationary) required at least one year experience in teaching within an institutional frame work and not stints as a visiting Lecturer, and that the petitioner in her inability to meet this criterion had adverted to *Circular no. 935* where this requirement had been relaxed.

The respondents stated as can be seen by **P10** the advertisement was before this circular came into operation therefor at the time of advertising *circular no. 721* was in operation. The University Grants Commission has taken a decision on this on 04/12/2010 before the interviews were concluded.

The respondents stated that the petitioner's application for the post of Lecturer (Probationary) was rejected as she did not fulfill the

requirements and as *circular no. 935* was not applicable to her application the question of being appointed as a Temporary Lecture does not arise.

The respondents further stated that the petitioner has failed to comply with the requirements of *Rule 3 (1)* of the Court of Appeal rules. The respondents stated that the documents annexed to the petition marked **P1 to P21** are not original or certified copies, and that they are not individually authenticated. The respondents cited the judgments in **Perera vs Perera 2001 3 SLR 30** and **Shanmugavadivu vs Kulathilake 2003 1 SLR 215** and said noncompliance of *rule 3 (1) (a) and (b)* are imperative and that the Court of Appeal had no discretion to excuse the failure of the petitioner to comply with the rules.

The petitioner has submitted that the selection procedure for the posts she applied for has been done unlawfully and in an unreasonable manner and alleged that the 2<sup>nd</sup> prevented her from being selected. The petitioner made personal allegations against the 2<sup>nd</sup> respondent without any evidence to prove them. This is not very professional and is a very serious allegation to make against a senior Academic. This kind of frivolous allegations should not be made where there is no material before court to establish them.



On perusal of the marking sheets of the various interview it is clear that the petitioner did not merit selection. The candidates selected have obtained higher marks than the petitioner. The petitioner knowing very well that she did not reach the required marks tried to mislead court by making allegations against the respondents. The cancellation of the interviews have been explained by the respondents.

The circular applicable to the petitioner is *circular no. 721 and no. 935* therefore the petitioner being appointed as a Temporary Lecturer does not arise. The petitioner has failed to comply with *rule 3 (1) of the Court of Appeal rules* by not providing original or certified documents with the petition.

For the afore stated reason this court decides to dismiss the application of the petitioner with costs fixed at Rs. 25,000/=.

**JUDGE OF THE COURT OF APPEAL**

**M.M.A. Gaffoor J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**