

**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 The  
Democratic Socialist Republic of Sri Lanka**

S.I Mohomed Riyas,  
No. 304, 3<sup>rd</sup> Cross Sreet,  
Nintavur 05.

**Petitioner**

**CA/ WRIT/189/2013**

Vs,

1. The South Eastern University of Sri Lanka,  
University Park,  
Oluvil.
2. Dr. S.M Mohomed Ismail,  
Vice Chancellor,  
The South Eastern University of Sri Lanka,  
University Park,  
Oluvil.
3. A.B.M. Aliyar,  
The Dean,  
Faculty of Islamic Studies and Arabic Languages,  
The South Eastern University of Sri Lanka,  
University Park,  
Oluvil.
4. M.H.A. Munas,  
Head of Department of Arabic Languages,  
Faculty of Islamic Studies and Arabic Languages,  
The South Eastern University of Sri Lanka,

- University Park, Oluvil.
5. M.A Jabbar,  
Head of Department of Social Sciences,  
Faculty of Islamic Studies and Arabic Languages,  
The South Eastern University of Sri Lanka,  
University Park,  
Oluvil.
  6. A.L Badurdeen,  
The South Eastern University of Sri Lanka,  
University Park,  
Oluvil.
  7. K.M.H Akbar,  
The South Eastern University of Sri Lanka,  
University Park,  
Oluvil.
  8. The Registrar,  
The South Eastern University of Sri Lanka,  
University Park,  
Oluvil.
  9. M.Y Minnathl Suheera,  
No. 37/1, South Road,  
Nintavur 06.
  10. A.R. Firdawsiya Begum,  
No. 26, Mafaz Manzil,  
Koswatta, Udathawinna.
  11. M. I Mohomed Ifran,  
No. E6/1, Police Road,  
Samooaha Lane, Sammanthuui 03.
  12. Sarena Gafoor
  13. Prof. Dayantha Wijesekara
  14. K.M.H Akbar
  15. N.M. Shaheed
  16. M.N.M Naphiel
  17. A.L.M. Nawfer
  18. Prof. Nandakumar

19. Dr. M.I.M Kallel

20. Dr. R. senthlnithy

21. Dr. M.I.S Safeena

22. K.M.M Faleel Haque

23. Dr. P.K.C.L Jayasinghe

12<sup>th</sup> to 23<sup>rd</sup> Respondents all:

Council Members,

The South Eastern University of Sri Lanka,

University Park,

Oluvil.

24. University grants Commission,  
No. 20, Ward Place, Colombo 07.

**Respondents**

**Before**

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

**H.C.J. Madawala J**

**Counsel** : Shantha Jayawardena with Chamara Nanayakkara for the Petitioner,

Nayomi Kahawita SC for the Respondents

Argued On: 20.03.2015

Submission of Document On: 06.11.2015

Written Submissions On: 17.02.2016

**Order On: 05.08.2016**

## Order

### **Vijith K. Malalgoda PC J (P/CA)**

Petitioner to the present application S.I. Mohamed Riyas has come before this court seeking inter alia,

- c) Order in the nature of *Writs of Certiorari* quashing the appointments of the 9<sup>th</sup> Respondent as Lecturers (Probationary) in Social Science at the Faculty of Islamic Studies and Arabic Language of the 1<sup>st</sup> Respondent University reflected in P-19.
- d) Order in the nature of *Writ of Certiorari* quashing the appointment of the 10<sup>th</sup> Respondent as a Lecturer (Probationary) in Social Sciences at the Faculty of Islamic Studies and Arabic Language of the 1<sup>st</sup> Respondent University reflected in P-20
- e) Order in the nature of *Writ of Certiorari* quashing the appointment of the 11<sup>th</sup> Respondent as a Lecturer (Probationary) in Social Sciences at the Faculty of Islamic Studies and Arabic Language of the 1<sup>st</sup> Respondent University
- f) Order in the nature of *Writ of Certiorari* quashing the recommendations of the selection committee for the appointment of the 9<sup>th</sup> to 11<sup>th</sup> Respondents as Lecturers (Probationary) in Social Sciences at the Faculty of Islamic Studies and Arabic Language of the 1<sup>st</sup> Respondent University
- g) Order in the nature of *Writ of Mandamus* directing the 1<sup>st</sup> Respondent to take steps according to the applicable circulars and hold fresh interviews to select candidates for the posts of Lecturers (Probationary) in Social Sciences at the Faculty of Islamic Studies and Arabic Language of the 1<sup>st</sup> Respondent University

Petitioner who holds a second class Upper Division Honors Degree in Bachelor of Arts (Specialized in Political Science) obtained from the South Eastern University of Sri Lanka in November 2007, was reading for the Master of Arts Degree in Political Science at the Faculty of Arts

of the University of Peradeniya, at the time he filed the present application before this court. He has also completed the Diploma in Human Rights and Peace Studies at the University of Colombo in 2009.

The Petitioner had served as a Temporary Assistant Lecturer in Political Science at the Department of Social Sciences, Faculty of Arts and Culture at the 1<sup>st</sup> Respondent University from 07.01.2008 to 28.02.2009. For the academic years 2009/10 and 2010/11 he was serving as a visiting Lecturer at the Department of Social Sciences, Faculty of Arts and Culture of the 1<sup>st</sup> Respondent University.

As submitted before this court, the 1<sup>st</sup> Respondent University by notice published had called for applications for the post of “Lecturer Probationary in the Social Sciences” at the faculty of Islamic Studies and Arabic Language.

The Petitioner who had applied for the said post was called for an interview on 15.05.2013 and the Petitioner had presented himself for the interview, made a presentation to demonstrate his teaching ability and also produced the necessary documents before the interview panel to establish his academic qualifications and experience.

On or about 17.06.2013 the Petitioner, became aware that 9<sup>th</sup> to 11<sup>th</sup> Respondents have been selected and appointed as Lecturers (Probationary) in Social Sciences consequent to the above interview, and the Petitioner had strong reasons to believe that some of the candidates selected for the above post were not eligible to be selected and the process of selection was with several lapses and it was done without transparency, the Petitioner had come before this court seeking the relief as referred to above.

During the argument before this court the Petitioner raised several grounds in support of his argument. Among the several grounds raised before this court the illegal nature of the composition of the interview panel was the main ground the Petitioner has raised before this court. In addition to the above, he had further raised that the marks were given in an arbitrary manner, the 9<sup>th</sup> Respondent is

not qualified to be selected, the appointments have not been duly approved by the Council and failure to disclose the marking scheme as the other grounds in support of the argument.

### Illegal Nature of the Composition of the Interview Panel

According to the Petitioner, all appointments to the Universities are governed by the procedure for Appointment Ordinance No. 198 issued by the University Grants Commission and section 7 (2) of the said ordinance 198, every appointment for the post of teachers other than of Professor or Librarian, shall be made by its Governing Authority upon the recommendation of Selection Committee which shall consist of

- a) The Principle Executive Officer who shall be the Chairman
- b) The dean of the faculty concerned
- c) The Head of the Department of Study concerned
- d) Two members appointed by the Governing Authority
- e) One member with a knowledge of the subject of study concerned appointed by the senate,

Whilst submitting the above, the Petitioner argued before this court, that

- ◆ By P-12 applications were called for the post of Lecturer (Probationary) in the said University at the Faculty of Islamic Studies and Arabic Language of the 1<sup>st</sup> Respondent University.
- ◆ Interview was held to recruit for the post of Lecturer (Probationary) in Social Sciences and therefore the Head of the Department of Social Sciences should have been a member of the selection committee according to the above provisions.
- ◆ Department of Social Sciences and the Department of Islamic Studies and Arabic Languages are two distinct departments coming under the Faculty of Islamic Studies and Arabic Language of the 1<sup>st</sup> Respondent University.

- ◆ However the Head of the Department of Social Sciences was not a member of the interview panel and instead, the Head of the Department of Islamic Studies and Arabic Languages was present at the interview (4<sup>th</sup> Respondent)

Whilst submitting the above facts before this court the Learned Counsel argued that the said appointment of the 4<sup>th</sup> Respondent as a member of the Interview Panel is illegal and against the provisions of the procedure for Appointment Ordinance.

However the above position taken up by the Petitioner was challenged by the Respondents and submitted that the said procedure for Appointment Ordinance referred to above are considered only as guidelines since the said procedure for appointment had not been Gazetted but, the appointment of the 4<sup>th</sup> Respondent to the selection committee was done according to the said guidelines.

In support of the above contention the Respondents have further submitted that Mr. Munas the 4<sup>th</sup> Respondent to the present application who was the Head of the Department of Arabic Languages, was appointed to the selection committee as the relevant Head of the Department, since the appointment challenged were made to the Department of Islamic Studies and Arabic Languages and not to the Department of Social Sciences.

The Respondents have relied on the vacancy advertisement which was produced marked P-12 by the Petitioner in support of their contention.

In the said advertisement, applications were called for the Senior Lecturer Grade I/II/ Lecturer (Probationary) in Accountancy and Finance and Senior Lecturer/Grade I/II/ Lecturer (Probationary) in Social Sciences for the Faculty of Islamic Studies and Arabic Languages under heading one. Under heading two Senior Lecturers Grade I/II/ Lecturer (Probationary) posts were advertised in Zoology, Mathematic Physics, Chemistry in the Departments of Zoological Science, Mathematical Science and Physical Science respectively for the Faculty of Applied Science.

Similarly under heading three Senior Lecturers Grade I/II/ Lecturer (Probationary) in Hindu Civilizations were advertized in the Department of Languages of the Faculty of Arts and Culture.

As submitted by the Learned Counsel for the Respondent specific references had been made under heading 2 and 3 for each department where the vacancies have arisen, but under heading one there was no such reference was made with regard to a specific department but the reference was only with regard to the Faculty of Islamic Studies and Arabic Languages.

In the absence of Specific reference to the Department of Social Sciences, in the said advertisement, the argument raised by the Respondents were that it is understood from the above advertisement, that the vacancies have arisen only in the Department of Islamic Studies and Arabic Languages of the Faculty of Islamic Studies and Arabic Languages and therefore nominating the 4<sup>th</sup> Respondent as a member of the Interview Panel has been done following the procedure for Appointment Ordinance.

When considering the arguments raised by both parties we see no reason to reject the argument raised by the Respondents.

As observed by this court, that only challenge raised by the Petitioner with regard to the composition of the interview panel was with regard to the appointment of the 4<sup>th</sup> Respondent, but we see no merit in the said argument for the reasons set out above.

### Marks were given in an Arbitrary Manner

### The 9<sup>th</sup> Respondent is not qualified.

Whilst referring to the marks sheet produced before court, the Petitioner argued that the Petitioner has been given 2 marks for Teaching Experience where as the 11<sup>th</sup> Respondent has been given 3 marks under the same heading.



In this regard the Petitioner had challenged the above mark before this court on the ground that the Petitioner who had 3 years teaching experiences as a temporary lecturer and visiting lecturer at the same university had only being given 2 marks where as the 11<sup>th</sup> Respondent who had no teaching experience had given 3 marks.

However the material placed before this court does not explain the teaching experience of any of the candidate who were selected to the above position and how the said marks were allocated to the Petitioner and the 11<sup>th</sup> Respondent is a matter to be looked into by a suit where the parties would have an opportunity to examine the witnesses in order to clarify the said matters in the said suit but this court is reluctant to consider such issue in a writ application.

The next point raised with regard to the qualification of the 9<sup>th</sup> Respondent was based on the advertisement published, calling for applications for the vacancies in the Faculty of Islamic Studies and Arabic Language which was produced by the Petitioner marked P-12 and by the Respondents as 'E' to the motion dated 19<sup>th</sup> August 2015.

Unlike for the vacancies advertized for the other Faculties in the same advertisement, there is a prerequisite for the applicants to be considered for the above vacancies in the Faculty of Islamic Studies and Arabic Language.

The relevant section of the vacancy notice reads thus,

01. Faculty of Islamic Studies and Arabic Language

Senior Lecturer Grade I/II Lecturer (Probationary) in Accountancy and Finance

Senior Lecturer Grade I/II Lecturer (Probationary) in Social Sciences

(Candidates possessing BA (Special) Degree consisting of following subjects will only be considered)

Current Affairs

International Studies

Environmental Studies

Public Administration and Bureaucracy

Public Administration in Sri Lanka

According to the said vacancy notice, candidates who does not possess a BA (Special Degree) consisting of the subjects referred to above will not be considered to be selected for the above vacancies.

During the argument before this court the petitioner whilst referring to the statement of results submitted by the 9<sup>th</sup> Respondent which was produced marked 'H' by the Respondent had submitted that the said Respondent does not possess BA (Special Degree) consist of the said subjects.

In this regard the Respondents have taken up the position that, the 9<sup>th</sup> Respondent too have covered the said subjects during her Graduate Study since those subjects were also included in the modules of the subjects she had taken.

When going through the results submitted by the candidates including the 9<sup>th</sup> Respondent and the Petitioner we observe that none of the candidates did have exactly the same subjects required in the said advertisement, and as observed by us, these matters could not be looked into in a writ application since the parties dispute these issues.

In the case of *Thejudeen V. Sri Lanka Tea Board, (1981) 2 Sri LR 471* Court of Appeal held that,

“Where a major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the court would be better able to Judge which version is correct, a writ will not issue”

when considering the issues raised above, we are of the view that the two issues raised by the petitioner above could only be answered in a suit where the parties would have ample opportunity of examining the witness as observed in the case of *Thajudeen V. Sri Lanka Tea Board*.

The appointments have not been duly approved by the Council

The Petitioner has further argued before this court that the appointments to the 9<sup>th</sup> to 11<sup>th</sup> Respondents were made by the 2<sup>nd</sup> Respondent without obtaining the Council approval and therefore no proper appointments had been made by the 1<sup>st</sup> Respondent University to the said Respondents. In this regard the petitioner has brought to our notice to the agenda of the 159<sup>th</sup> meeting of the Council of the 1<sup>st</sup> Respondent University hold on 20.05.2013 which was produced marked P-21 and submitted that no Council approval was granted to the said appointment at the said meeting except for delegating the powers of appointment to the Vice Chancellor pending approval of the Council.

In this regard the Petitioner had argued that it is wrong to make any appointment to academic staff without the approval of Council and in this instance, the Vice Chancellor had adopted a different procedure which is not identified in the accepted procedure for making appointments.

However the Respondents whilst denying the said argument submitted that the appointments made by the Vice Chancellor under the delegated powers were discussed at the 160<sup>th</sup> Council meeting when the appointment of 9<sup>th</sup> to 11<sup>th</sup> Respondents were submitted for covering approval and relevant council minutes reads to the effect,

160.3.12 [160.4.1.6] appointment to the post of Lecturer (Probationary) in Social Sciences in Faculty of Islamic Studies and Arabic Languages SIUSL [Council memo: SEU/C/2013/160/06]

After a lengthy discussion, the council decided to appoint Professor V. Nandakumar to study the appropriateness of the procedure and report to the next council.

Respondents have submitted before this court the council minutes of the 162<sup>nd</sup> meeting where the council after considering the report submitted by Professor V. Nanakumar had decided,

“Having considered the report, the Council approved the recommendation of the selection committee to appoint the above names for the post of Lecturer (Probationary) with retrospective effect from 17.06.2013 and place them at the initial salary step of U-AC-3(VI)....”

When considering the above material placed before this court by the Respondents we observe that the University Council of the 1<sup>st</sup> Respondent University had taken all precautions to make sure that the appointment of the 9<sup>th</sup> to 11<sup>th</sup> Respondents were made correctly following the proper procedure and therefore we see no reason to uphold the said argument raised by the Petitioner.

#### Failure to disclose the marking scheme

Whilst relying on the decision by the Supreme Court in the case of *Perera and Another V. Cyril Ranatunga Secretary Defence and Others (1993) 1 SLR 39* the Petitioner had argued that the selection committee had failed to disclose the marking scheme in advance and there by the petitioner has been denied of properly presenting himself for the interview.

As observed by us, even though the Petitioner at one stage submitted that the interview panel was bias against him, he did not pursue the said argument during the argument.

In the absence of any allegation that the Petitioner was deprived of properly presenting himself before the interview, we see no merit in the said argument.

In the said case of *Perera and Another V. Cyril Ranatunga Secretary Defence and Others*, the Supreme Court observing the importance of disclosing the criteria relevant to promotions, stated that

“.....it is very desirable that all the criteria relevant to promotions should be publicized in advance so that all candidate have equal opportunities of advancing their claims; the more complex the scheme, the greater the need for such publicity.

In the absence of any complaint of depriving equal opportunities among the candidates and/or complex nature of the scheme we see no relevance of the said decision to the present case.

Even though the Petitioner had submitted several other grounds in support of his contention, he did not pursue them during the argument before this court. As observed above the Petitioner was not successful in establishing his argument before this court and for the reasons given above we are not inclined to grant any relief claimed by the Petitioner and therefore we dismiss this application but we make no order with regard to costs.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala J**

I agree,

**JUDGE OF THE COURT OF APPEAL**