

**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 Writs of  
Certiorari, Mandamus, Prohibition and  
Quo Warranto in terms of Article 140 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka.*

C A (Writ) Application

No. 240 / 2013

Dr. S Rasu,

No. 03,

Sri Waishakya Mawatha,

Obeysekarapura,

Rajagiriya.

**PETITIONER**

-Vs-

1. Institute of Indigenous Medicine,  
Rajagiriya.

and others.

**RESPONDENTS**

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

**P. Padman Surasena J**

Counsel : J C Weliamuna for the Petitioner.

Anusha Samaranayake Deputy Solicitor General for

1<sup>st</sup> – 28<sup>th</sup> and 30<sup>th</sup> – 53<sup>rd</sup> (added) Respondents.

N M Shaheed for the 29<sup>th</sup> Respondent.

Decided on : 2017 - 04 - 05

### JUDGMENT

## **P Padman Surasena J**

Petitioner in this application seeks to challenge her non selection for the post of 'Probationary Lecturer in Fundamentals in Unani', a post that was advertised by the 1<sup>st</sup> Respondent namely the Institute of Indigenous Medicine, University of Colombo.

The 2<sup>nd</sup> – 23<sup>rd</sup> Respondents are the members of the Board of Management of the 1<sup>st</sup> Respondent Institute of which the 2<sup>nd</sup> Respondent is the Chairman.

2<sup>nd</sup>, 3<sup>rd</sup>, 7<sup>th</sup>, 16<sup>th</sup>, 24<sup>th</sup> and 25<sup>th</sup> Respondents are the members of the interview panel which interviewed the Petitioner.

The 26<sup>th</sup> Respondent is the University of Colombo and the 27<sup>th</sup> Respondent is its Vice Chancellor. The 28<sup>th</sup> Respondent is the University Grants Commission (hereinafter sometimes be referred to as UGC). The 29<sup>th</sup> Respondent is the person who was selected by the interview panel for the post the Petitioner too had applied for.

It would be convenient to list out at the outset, the main reliefs the Petitioner has sought from this Court. They are as follows;

- i. a mandate in the nature of a Writ of Certiorari to quash the part of the advertisement produced marked **P 5** by which, Arabic language has been introduced as an additional qualification for recruitment to the above post by the 1<sup>st</sup> Respondent institute and/ or any other decisions incidental thereto;
- ii. a mandate in the nature of a Writ of Certiorari to quash the selection and/ or appointment of the 29<sup>th</sup> Respondent to the post of Probationary Lecturer in Fundamentals in Unani at the 1<sup>st</sup> Respondent Institute;
- iii. a mandate in the nature of a Writ of Certiorari to quash the decision/s of any one or more of the Respondents not to select and/

- or appoint the Petitioner to the post of Probationary Lecturer in Fundamentals in Unani at the 1<sup>st</sup> Respondent institute;
- iv. a mandate in the nature of a Writ of Certiorari to quash any decision/s taken to ratify and/ or approve the selection and appointment of the 29<sup>th</sup> Respondent to the post of Probationary Lecturer in Fundamentals in Unani at the 1<sup>st</sup> Respondent Institute;
  - v. a mandate in the nature of a Writ of Prohibition prohibiting the 29<sup>th</sup> Respondent from functioning in the post of Probationary Lecturer in Fundamentals in Unani at the 1<sup>st</sup> Respondent Institute;
  - vi. a mandate in the nature of a Writ of Mandamus directing anyone or more of the Respondents to follow the scheme of Recruitment stipulated in **P 9 (a)** together with other applicable UGC Circulars thereto and make appointment to the post of Probationary Lecturer in Fundamentals in Unani at the 1<sup>st</sup> Respondent institute
  - vii. a mandate in the nature of a Writ of Mandamus directing anyone or more of the Respondents to appoint the Petitioner to the post of Probationary Lecturer in Fundamentals in Unani at the 1<sup>st</sup> Respondent Institute;

- viii. a mandate in the nature of a Writ of Quo Warranto declaring that the selection and/ or appointment of the 29<sup>th</sup> Respondent to the post of Probationary Lecturer in Fundamentals in Unani at the 1<sup>st</sup> Respondent Institute is invalid.

Having above prayers in mind it is now time to turn to the ground urged by the Petitioner as to why she prays for such reliefs. The gist of the argument advanced by the Petitioner is that the Respondents have arbitrarily included Arabic language as a requisite qualification for the relevant post although the UGC circular No. 721 dated 1997-11-21 and UGC circular No. 935 dated 2010-10-25 produced marked **P 9 (a)** and **P 9 (b)** respectively which regulate the recruitment scheme do not empower the Respondents to include Arabic language as an additional requisite qualification for the relevant post.

However it is revealed from the 3<sup>rd</sup> Respondent's affidavit<sup>1</sup> that the aforementioned circulars have to be read with the document produced by the Respondents marked **3 R 4** which confirms that the UGC at its 731<sup>st</sup> meeting held on 2007-03-29 has decided to authorize the higher education

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<sup>1</sup> Paragraph 14(k)

institutes to include as an additional clause if necessary when it is essential to recruit a lecturer (Probationary) / Senior Lecturer to a Department in an area of a particular speciality or sub speciality relevant to the subject.

The Petitioner in her Counter Affidavit has not controverted this position.

Thus, this Court has no basis to hold that the inclusion of Arabic language as a requisite additional qualification for the relevant post by the

Respondents is arbitrary, unreasonable, irrational or procedurally flawed as alleged by the Petitioner<sup>2</sup>.

Learned counsel for the Petitioner as well as the learned Counsel for the Respondents have agreed before this Court that this Court should pronounce the judgment in this case after considering the written submissions the parties have filed. Therefore this judgment would be based on the material that has been adduced by parties in their written submissions.

The burden is on the Petitioner to prove before this Court that there is indeed a basis for this Court to issue the writs she had prayed for in her petition. This Court made an attempt to locate whether there are any such plausible arguments put forward in the written submission filed by the

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<sup>2</sup> As alleged in paragraph 14 of the petition.

Petitioner. However this Court is unable to gather any such basis from the said written submission which appears to have only repeated some facts.

In these circumstances this Court has to conclude that it has no basis to grant any relief prayed for by the Petitioner. This application is therefore refused. It should stand dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K Malalgoda PC J**

I agree,

**JUDGE OF THE COURT OF APPEAL**