

**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 and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application
No.364/2013

Vidana Kankanamage Nimal Gamini,
No. 35, Nuwarathenna Road,
Wattegama.

PETITIONER

-Vs-

1. Rajarata University of Sri Lanka
2. Prof. K.H.R. Wijewardhana,
The Vice Chancellor.
3. Prof. Malani Udupihlle
4. W.M.T. Weerasekara
5. P.D.N.K. Palihena
6. Dr. B.A. Karunarathne
7. Dr. D.M. Jinadasa
8. W. Rajapaksha
9. Y.M. Wickramasinghe
10. P. Hettiarachchi
11. W.M.P.G.R. Pushpakumara
12. Ven. N. Pangnananda Thero
13. H.M.K. Herath

14. S.M.E. Semasinghe
15. Dr. W. Atapattu
16. Amarasena Hettige
17. M. Senevirathne
18. Mahinda Ralapanawa
1st to 18th of Rajarata University of Sri Lanka,
Mihintale.
19. University Grants Commission
20. Prof. Kshanika Hirimburegama
- 20A. Prof. Mohan de Silva,
Chairperson,
University Grants Commission.
21. Prof. Ranjith Senarathne
- 21A. Prof. P.S.M. Gunaratne
22. Prof. Malkanthi Chandrasekara
- 22A. Prof. Malik Ranasinghe
23. Prof. Wijaya Malalasekara
- 23A. Dr. Nalin Kumara De Silva
- 23B. Dr. Wickrama Weerasooriya
24. Prof. Sampath P.P. Amarathunga
- 24A. Prof. Hemantha Senanayake
25. Prof. Subramaniam Mohandas
- 25A. Dr. Ruvaiz Haniffa
19th to 25A of No. 90, Ward Place,
Colombo 07.
26. University Services Appeals Board
27. Hon. Justice G.W. Edirisuriya
28. Anton Alfred
29. Dr. R.M.K. Rathnayake

26th to 29th of University Services Appeals Board,
No. 20, Ward Place,
Colombo 07.

30. Pushpa Wellipili

No. 90, Ward Place,
Colombo 07.

RESPONDENTS

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : K.G. Jinasena with Vikum Jayanath and Mihiri
Poornima Kolambage for the Petitioner
Chaya Sri Nammuni, SC with Nayomi Kahawita,
SC for the 1st to 19th Respondents
J.C. Boange for 26th to 29th Respondents

Decided on : 27.11.2018

A.H.M.D. Nawaz, J.

The Petitioner seeks the following discretionary remedies:-

- a. a writ of certiorari to quash the decision made by the University Services Appeals Board (the USAB) on the appeal preferred to it by the Petitioner;
- b. a writ of certiorari to quash the decision made in P3 by the governing council of the 1st Respondent-University to appoint the Petitioner to a post of lecturer (Probationary);
- c. a writ of mandamus compelling the 19th Respondent, University Grants Commission (UGC) of which 20th to 25th Respondents are members to approve the recommendation made by the 1st Respondent-University dated 26.10.2006 to appoint the Petitioner as a senior lecturer Grade II in computer science.

Factual Matrix

The following facts pertaining to this application emerge from the pleadings. Having obtained the B.Sc Business Administration (Special) Degree from the University of Sri Jayawardanapura, on 15.09.1992, the Petitioner had joined the North Central Province Affiliated College as an Instructor in Computer Technology (Grade II).

On a decision taken by the government, the affiliated University Colleges in the Central, North Western and North Central Provinces were amalgamated and the 1st Respondent-Rajarata University of Sri Lanka was established on 07.11.1997. The Petitioner had been absorbed into the newly established university in his capacity as an Instructor in Computer Technology (Grade II).

Whilst working as an Instructor in Computer Technology, the Petitioner went on to obtain his Post Graduate Diploma in Computer Technology from the University of Colombo in 1997. Thereafter he secured his promotion as an Instructor in Computer Technology (Grade I) with effect from 15.09.1997.

It is in terms of Section 71 of the Universities Act No.16 of 1978 as amended by the Universities (Amendment) Act No.7 of 1985 (Universities Act) every appointment to a post of teacher shall be made subject to such requirements or conditions in the approved scheme of recruitment and the procedures for appointment prescribed by rules. It is under the mandate of Section 18 of the Universities Act as amended that rules and circulars are often issued by the UGC and Circulars 721 of 21st November, 1997 and 842 of 30th April 2004 are but two examples of the exercise of this rule making power.

Circular No.721 which has been flagged as quintessentially applicable to the instant application provides for the relevant scheme of recruitment applicable to the appointment of a Lecturer (Probationary) and a Senior Lecturer Grade II. In a nutshell the circular provides for the two types of appointments to be made and item (6) specifies as to the qualifications that a teacher must possess in order to become a Senior Lecturer Grade II. I will presently return to this circular once the other circulars have been adverted to.

It would appear that having considered the requests made by those who were absorbed from various Affiliated Colleges to the newly established Universities, the 19th Respondent-UGC decided to appoint them as Lecturers (probationary) or Senior Lecturers (Grade II) subject to fulfillment of certain conditions and the UGC Circular 842 (PI) dated 30th April 2004 was issued directing the Universities to make the appointment on the basis stated below:-

“i. Lecturer (probationary):

As and when such Instructors in English and Educational Assistants have 7 years experience and earn a Master Degree in the relevant field on one year full-time or equivalent part-time duration with or without a research component.

ii. Senior Lecturer (Grade II):

As and when such Instructors in English and Educational Assistants have 8 years experience and earn a two years full-time or equivalent part-time Master Degree with a significant component of research in the relevant field or nay other higher level degree.”

The provisions made in the said circular 842 (PI) were effective from 01.05.2004 and as it is apparent, Instructors in Computer Technology such as the Petitioner were not covered by the Circular. In order to address the grievance of the instructors that they found themselves ineligible to enter the mainstream of teachers due to the stringency of the existing circulars, it would appear that the UGC-the 19th Respondent responded with other circulars such as 05/2005, 06/2005 and 10/2000.

Establishment Circular No.05/2005 dated 29th March 2005 rescinded Circular 842 but did not cater to the instructors in Computer Technology. Establishment Circular No. 06/2005 dated 29th April 2005 amended Circular No.05/2005 but is not relevant for the purposes of this application as it catered only to instructors in English, Educational Assistants and Engineering Teaching Assistants as did Circular No.05/2005.

Instructors in Computer Technology were afforded an opportunity on par with the aforesaid category of the instructors in English, Educational Assistants and Engineering

Teaching Assistants by way of the next circular that followed namely Circular No.10 of 2009 dated 13th November 2009.

According to the circular the aforesaid category which included Instructors in Computer Technology was required to apply for academic positions in response to open advertisements published by their respective Higher Educational Institutions.

The provisions of this circular were operative concurrently along with Establishment Circulars No.05/2005 and 06/2005. Upon their rescission, these circulars ceased to be operative from 29.03.2011

In any event during the time that Circular No.10 of 2009 was in operation, it enabled Instructors in Computer Technology such as the Petitioner to apply to become Lecturers (Probationary) or Senior Lecturers (Grade II).

Subsequently the UGC informed all Higher Educational Institutions that the UGC must receive recommendations in respect of appointments of Instructors in Computer Technology to either position referred to above. The Petitioner did make the application to enter the academic stream and after an abortive selection committee which had first interviewed the Petitioner, the UGC directed that a second Selection Committee be reconvened and a fresh recommendation forwarded. In fact the constitution of the Selection Committee is specified in paragraph 7(2) of the Commission Circular No.166 of 06.04.1982 and accordingly the 2nd Selection Committee having evaluated the professional experience and performance recommended to the UGC that the Petitioner be appointed to the post of Senior Lecturer Grade II. But the UGC did not adopt the recommendation but chose to appoint the Petitioner to the post of Lecturer (Probationary) on personal to the holder basis having taken into account the Petitioner's academic and professional qualifications and experience under the 4th category of qualification for the post of Lecturer (Probationary) as set out in the UGC Circular No.721 dated 21st November 1997.

The said decision of the UGC was notified to the Rajarata University of Sri Lanka by letter dated 03rd December 2008 and the appointment of the Petitioner to the Post of

Lecturer (Probationary) accordingly had been made under the hand of the Vice Chancellor of the Rajarata University of Sri Lanka based on the said decision of the UGC.

After having perused the decision of the UGC to approve the appointment of the Petitioner to the post of Lecturer (probationary) vis-à-vis the criteria set out in the UGC Circular No.721 with regard to the Scheme of Recruitment pertaining to the post of Lecturer (Probationary), Senior Lecturer (Grade II), and Senior Lecturer (Grade I) of the University or an Institute of Higher Education, I hold the view that the decision of the UGC cannot be faulted. It was the contention of the Respondents that the Petitioner is not measure up to the strict terms of the scheme of recruitment as he did not have a degree with specialization in Computer Science and notwithstanding the absence of such a degree in the relevant field, the UGC had considered the Diploma in Computer Technology which the Petitioner had and took the decision to grant approval to appoint him to the post of Lecturer (probationary) in Computer Science. In the letter that the UGC wrote to the Vice Chancellor giving the approval to appoint the Petitioner to the post of Lecturer (probationary), the UGC specifically stated that the Petitioner had not fulfilled the requirements in the scheme of recruitment for appointment to the post of Senior Lecturer (Grade II). It is this decision not to appoint the Petitioner to the post of Senior Lecturer (Grade II) that this Petitioner impugns in these proceedings and he also seeks a mandamus compelling the UGC to approve the recommendation made by the University and appoint him to the position of Senior Lecturer.

Upon a perusal of the criteria necessary to become a Senior Lecturer (Grade II), I find that the UGC Circular 721 requires a higher qualification than that stipulated for a Lecturer (probationary). The UGC Circular 721 in Item 6 specifies a Post Graduate degree in the relevant field obtained after a full-time course of study of at least 2 academic years duration in addition to the 1st degree in the relevant field. Thus it is clear that without even a first degree in Computer Science, the Petitioner cannot entertain a legitimate expectation that he should be accorded with the position of a Senior Lecturer (Grade II). A mere hope cannot give rise to a legitimate expectation and no administrative body can be said to have dashed the substantive legitimate expectation of a petitioner when criteria

for conferral of a substantive benefit have been published but the petitioner has failed to fulfil those criteria. Substantive legitimate expectation, if at all, would be referable to the representations given as criteria in the circular and if one fails to meet the stipulations in the circulars for the securing of a substantive benefit, one cannot complain that the administrative functionary has disappointed the legitimate expectations-see *R v. Secretary of State for the Home Department ex p Khan* (1984) 1 WLR 1337; *R v. Secretary of State for the Home Department ex p Ruddock* (1987) 1 WLR 1482; *R v. Ministry of Agriculture, Fisheries and Food ex p Hamble (Offshore) Fisheries Ltd* (1995) 2 All ER 714; *R v. North and East Devon Health Authority, ex parte Coughlan* (2001) QB 213.

The Petitioner accepted the appointment as a Lecturer (Probationary) on the 11th of December 2008 and has been consistently agitating for posting as a Senior Lecture Grade II before the Human Rights Commission and the University Services Appeals Board.

By order dated 14.05.2013, the University Services Appeals Board (USAB) dismissed the appeal of the Petitioner. In this application for judicial review, the Petitioner has also sought a writ of Certiorari to quash the decision of the USAB. I do not find any illegality, irrationality or procedural impropriety as vitiating factors that would taint any of the decisions sought to be impugned in these proceedings and the fact that the UGC relaxed the requirements specified for the appointment of a Lecturer (Probationary) when it came to the appointment of this Petitioner shows that the UGC had kept its mind open as regards the rules stipulated in their own Circular and was even prepared to depart from their rule in regard to this Petitioner when he did not even have the requirement of a basic degree in Computer Science. That shows that the UGC had not fettered its discretion-*British Oxygen v. Minister of Technology* (1971) AC 610; (1970) 3 All ER 165 (HL).

In the circumstances, I take the view that the Petitioner has not made out a case for Judicial Review and I therefore proceed to dismiss this application.

JUDGE OF THE COURT OF APPEAL