

**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. 213/2011

1. Inter University Sub-Warden Union,
Marrs Hall, University of Peradeniya,
Peradeniya.
2. Delanka Sirisena,
The Secretary,
Inter University Sub-Warden Union,
Marrs Hall, University of Peradeniya,
Peradeniya.

Petitioners

Vs.

1. University Grants Commission
2. Prof. S.V.D.G. Samaranayake
- 2A. Prof. Kshanika Hiriburegama
- 2B. Prof. Mohan de Silva

Chairman, University Grants Commission

3. Prof. Rohan Rajapaksa
- 3A Prof. Ranjith Senarathne
- 3B Prof. P.S.M. Gunarathne
4. Prof. Carlo Fonseka
- 4A Prof.Malkanthi Chandrasekera

5. Prof. H. Janaka de Silva
- 5A. Prof. Sampath P.P. Amarathunga
- 5B. Prof. Malik Ranasinghe
6. Prof. H. Abeygunawardena
- 6A. Dr. Wickrama Weerasuriya
7. Subramaniam Mohandas
8. Tissa Nandasena
- 8A. Dr. M.M.P. Premakumara

Secretary, University Grants
Commission
1st to 8th of 20, Ward Place, Colombo 7.

9. University of Peradeniya
10. Prof. S.B.S. Abayakoon
- 10A. Athula Senaratne
- 10B. Prof. Upul Dissanayake

Vice Chancellor,
University of Peradeniya

11. Prof. K. Premaratne
12. Dr. K. Samarasinghe
13. Dr. D.B.M. Wickramaratne
14. Dr. A.S.P. Abhayaratne
15. U.B. Dissanayake
- 15A. Prof. W.M. Tilakaratne
16. Prof. W.M.S.B. Weerakoon
17. Dr. A.G. Buthpitiya
18. Prof. S.H.P.P. Karunaratne
19. Prof. P. Abeynayake
- 19A. Prof. A.M. Nawaratne Bandara
20. Prof. N.V.I. Ratnatunga
21. Prof. R.L. Wijeyaweera
- 21A. Prof. P.B. Meegaskumbura
22. Prof. K.N.O. Dharmadasa
23. Dr. Kapila Gunawardena

- 23A. Mr. G.S.J. Dissanayake
24. Dr. Dushantha Medagedara
- 24A. Mr. Lal Wijenayake
25. Mr. W.M. Jayawardena
- 25A. Mr. Dammika J. Amarasinghe
26. Dr. P.Ramanujam
- 26A. Dr. Ranil Abeysinghe
27. Dr. S.B.Ekanayake
- 27A. Dr. Mohammed Thaha Ziyad
Mohamed
28. Mr. D.Mathi Yugarajah
- 28A. Mr.B.M.N. Balasuriya
29. Mr. W.L.L.Perera
- 29A. Mr. E.M. Palitha Elkaduwa
30. Mr. Lionel Ekanayake
- 30A. Mrs. K.D. Gayathri M.
Abeygunasekara
31. Mr. L.B. Samarakoon
- 31A. Mr. Upali Attanayake
32. Mr. Mohan Samaranayake
- 32A. Mr. Upul Kumarapperuma

9th to 32nd Respondents of University
of Peradeniya, Peradeniya.

33. University of Ruhuna
34. Prof. Susirith Mendis
- 34A. Prof. Gamini Senanayake

Vice Chancellor, University of
Ruhuna

35. Prof. Gamini Senanayake
36. Dr. A.M.N. Alagiyawanna
37. Prof. W.D.G. Dharmaratne
38. Mr. Sunil Jayaratne
39. Mr. H.G.S. Jayasekera

40. Prof. R.M. Ranaweera Banda
41. Prof. Mangala Soyza
42. Prof. T.R. Weerasooriya
43. Prof. Jeewanthi Amarasinghe
44. Dr. Tilak P.D. Gamage
45. M.W.Indrani
46. Prof. Mahinda Wijeratne
47. Rev. Malimboda Gnanaloka Thero
48. Dr. P. Ekanayake
49. K.A.J. Abeygunawardane
50. Buddhapriya Nigamuni
51. H.G. Gunasoma
52. Chandrasiri Hewakandambi
53. M.G. Punchihewa
54. P.L. Chandrasiri
55. G.H. Ediriweera

33rd to 55th Respondents of
The University of Ruhuna
Wellamadama, Matara

56. University of Colombo
No. 94, Kumarathunga Munidasa
Mawatha,
Colombo 3.
57. University of Kelaniya
Kelaniya
58. University of Moratuwa
Katubedda, Moratuwa.
59. Hon. Justice G.W. Edirisuriya
- 59A. Palitha Fernando PC
Chairman,
University Services Appeals Board

60. E.M.G. Edirisinghe,

60A. Neville Abeyrathne P.C

Vice Chairman,
University Services Appeals Board

61. Mr. Anton Alfred

61A. Dr. (Mrs) Neela Gunasekera

Member,
University Services Appeal Board

62. (Mrs.) P.F. Gunatilleke

62A. Mrs. Prathiba Abeysinghe

Secretary,
University Services Appeal Board

59th to 62nd of University Services
Appeal Board, No. 20, Ward Place,
Colombo 7.

63. Prof. A.M. Navarathna Banda

63A. Prof. V.S. Weerasinghe

64. Prof. L. Rajapaksha

64A. Prof. W.M. Tilakaratne

65. Prof. A.Wickramasinghe

66. Prof. S.K. Hennayake

67. Prof. H.B.S. Ariyaratna

67A. Dr. D.B. Mahinda Wickramaratne

68. Prof. P.W.M.B.B. Marambe

69. Prof. S.K. Pinnawala

69A. Pr. H.M.D.R Herath

70. Prof. S.K. Pinnawala

70A. Mr. Dammika J. Amarasinghe

71. Malkanthi Abeygunasekera
71A. Prof. S.R. Kodithuwakku

63rd to 71st Respondents of
University of Peradeniya

72. Prof. S. Subasinghe
73. Dr. P.D.C. Perera
74. Prof. P. Hewage
75. Prof. H.S.C. Perera
75A. Dr. R.A. Maithripala
76. Dr. Sampath Gunawardana
76A. Prof. S. Wawwage
77. Prof. L.P. Jayatissa
77A. Prof. Sarath Lekamawasam
78. Mrs. W.K.K. Athukorala
78A. Mr. H.V.D.I. Abeywickrema
79. Mr. Dihan Samarasekera
79A. Prof. W.G.D. Dharmarathna
80. Mr. Ramya Chandra Gunasekera
80A. Prof. L.P. Jayathissa
81. Mr. Weerasiri Rathnayake
81A. Prof. R.N. Pathirana
82. Mr. R.C.C. de Zoysa
82A. Mr. Anura Dissanayake

72nd to 82nd Respondents of
University of Ruhuna, Matara

83. Mr. U.W. Attanayake
84. Mr. B.M.N. Balasooriya
85. Mr. E.M. Palitha Elkaduwa

83rd to 85th Respondents of
University of Peradeniya

86. Rev. Malimbada Gnanaloka Thero

87.Prof. Anoja Fernando
88.Dr. Thilak T. Ranasinghe
89.Mr. H.G. Gunasoma
90.Prof. N.J. Des Amarasinghe
91.Mr. Asmil Thasim
92.Mr. M.G. Punchihewa
93.Mrs. E.A.C. Vidanagamachchi
94.Mr. S.A. Andrahanandi
95.Mr. Senaka Samarasinghe
96.Mr. Aloka de Silva
97.Prof. Piyasiri Vithanage

86th to 97th Respondents of University
of Ruhuna, Matara

Respondents

Before: Arjuna Obeyesekere, J

Counsel: K.G.Jinasena with D.K. Vikum Jayanath, Ms. Mihiri Colombage and
Ms. A.A. Nelum Pradeepa for the Petitioners

Sumathie Dharmawardena, Senior Deputy Solicitor General for the
1st – 8th Respondents

Argued on: 10th September 2018

Written Submissions: Tendered on behalf of the Petitioners on 23rd July 2018

Tendered on behalf of the 1st – 8th Respondents on 30th
November 2018

Decided on: 12th March 2019

Arjuna Obeyesekere, J

When this matter was taken up for argument, the learned Counsel for the Petitioners informed this Court that he would only be pursuing the reliefs prayed for in paragraphs (b) and (c) of the prayer to the petition, namely:

- a) A Writ of Certiorari to quash the order dated 19th October 2010 delivered by the University Services Appeals Board comprising of the 59th – 61st Respondents, annexed to the petition marked 'Z';
- b) A Writ of Certiorari to quash the clarifications made in the letters annexed to the petition marked 'P15' and 'P16' issued under the hand of the Secretary /the Additional Secretary of the 1st Respondent, University Grants Commission.

The primary issue that arises in this application is whether the decision of the University Services Appeals Board (USAB) that held that Sub-Wardens attached to Universities must complete 13 years of service as Sub-Wardens (Grade I) prior to being eligible for promotion to Sub-Warden (Special Grade) is irrational and if so, whether the said decision is liable to be quashed by a Writ of Certiorari.

The facts of this case very briefly are as follows.

The 1st Petitioner is the 'Inter University Sub-Warden Union', a trade union comprising of Sub-Wardens of all Universities. The 2nd Petitioner is the Secretary

of the 1st Petitioner Union. The 2nd Petitioner had been appointed as a full time Sub-Warden (Grade II) with effect from 16th December 1985 by the 9th Respondent, University of Peradeniya and having functioned for 13 years as a Sub-Warden (Grade I), the 2nd Petitioner had been promoted to Sub-Warden (Special Grade) in 2008.

The Petitioners state that residential facilities were made available to students from the inception of the University system with full time Wardens being appointed to be in charge of the hostels. The Petitioners state further that even though full time Sub-Wardens were appointed for the first time in 1973, a proper scheme of recruitment of Sub-Wardens was implemented only after the 1st Respondent, University Grants Commission (the UGC), was established in 1978 under the Universities Act, No. 16 of 1978.

The first Scheme of Recruitment for Sub-Wardens was introduced in 1981, when the UGC, acting in terms of the power vested in it by Section 18(2)(c) of the Universities Act¹ issued Commission Circular No. 134, titled 'Schemes of Recruitment – Administrative and Financial Officers Grades and Clerical and Allied Grades.'² The scheme of recruitment annexed thereto specified that the post of Sub-Warden shall be full time, selection shall be by interview and that the candidate should be a graduate from a recognised University who is no more than 40 years of age. It was also stated that preference would be given to those with

¹ Section 18(2)(c) reads as follows: Without prejudice to the generality of the powers conferred by subsection (1), the Commission may make Ordinances in respect of all or any of the following matters: the schemes of recruitment, and the procedures for appointment, to the staff of the Commission and of the Higher Educational Institutions;

² A copy of the said Circular dated 22nd June 1981 has been annexed to the petition, marked 'P3'. The specific scheme of recruitment has been annexed as 'P3a'.

experience in administration and management of Hostels. The said Circular did not provide for any promotional path for the Sub-Wardens so appointed.

On 1st January 1985, the UGC, having considered the representations made by certain Universities, created a promotional grade for the post of Sub-Warden by introducing a new category known as Sub Warden (Grade I). This is reflected in Circular No. 290 issued by the UGC, annexed to the Petition marked 'P4'. According to the scheme of recruitment annexed to the said circular, the promotional criteria for the post of Sub-Warden (Grade I) was as follows:

"A Sub-Warden Grade II, who has completed 10 years of satisfactory service in that Grade may be considered for promotion to the post of Sub-Warden Grade I."

Although the Petitioners have not submitted the salary scale at the time the post of Sub-Warden (Grade I) was created, the Petitioners have annexed the salary scale applicable to the post of Sub- Warden (Grade I) and (Grade II) that was introduced by the UGC by way of Commission Circular No. 416 dated 29th January 1990, annexed to the petition marked 'P6'. The said Circular reads as follows:

"The University Grants Commission at its 283rd meeting held on 6th December 1989 decided to revise the Salary Codes and Salary Scales of Sub-Warden (Full time), Grade II and Grade I, with effect from 1st September 1989 as follows:-

(a) Sub-Warden (Full Time) Grade II

A – 05 (a) Rs. 3050 – 10 x 75 – 3800 p.m.

(b) Sub- Warden (Full Time) Grade I

A – 04 (a) Rs. 3900 – 10 x 150 – 5 x 200 – 6400 p.m.”

Thus, the salary scale set out in Circular 'P6' reflects the number of years that a Sub-Warden is required to serve in Grade II prior to being promoted to Grade I. Furthermore, in terms of the said Circular 'P6', it takes a Sub Warden (Grade I) a minimum of 15 years in service in that Grade to reach the maximum salary scale.

By Circular No. 525 dated 30th June 1992 annexed to the petition marked 'P8', a further promotional position was introduced by the UGC for the post of full time Sub Warden by the introduction of a cadre position known as "Sub-Warden (Special Grade)". According to the said Circular, a person holding the post of Sub Warden (Grade I), may be considered for promotion to the post of Sub Warden-(Special Grade), in the following manner:

“A Sub-Warden, Grade I who has spent 1 year on the maximum of the salary scale may be considered for promotion.”

Thus, the cumulative effect of Circulars 'P4', 'P6' and 'P8' is that a Sub-Warden belonging to Grade (II) was eligible for promotion to Sub-Warden (Grade I) after 10 years of service in Grade II. A Sub-Warden (Grade I) is entitled to fifteen salary increments and would reach the highest salary scale only in the 16th year in

service in the post of Sub-Warden (Grade I).³ It was only thereafter - that is after a minimum of 16 years of service in Sub-Warden (Grade I) of which 1 year of service has been on the maximum salary scale - that a Sub-Warden (Grade I) was eligible to be promoted to Sub-Warden (Special Grade).

The minimum number of 10 years that was required in order to be promoted from Grade II to Grade I was reduced to 7 years by the 1st Respondent in 1995 through UGC Circular No. 623 annexed to the petition marked 'P9'. According to the amended scheme of recruitment annexed to the said Circular, the revised criteria for promotion from Sub Warden Grade II to Grade I was as follows:

"A Sub-Warden, Grade II, who has completed 7 years of satisfactory service in that Grade may be considered for promotion to the post of Sub-Warden Grade I."

Thus, after the introduction of the Circular 'P9' in 1995, a person joining as Sub-Warden (Grade II) was required to serve 7 years in that Grade prior to becoming eligible to be promoted to Grade (I). Thereafter such person was required to serve a minimum of another 16 years in Grade (I) including one year on the maximum salary scale prior to becoming eligible to be promoted to Special Grade.

The issue that gives rise to the present application arose in 1998 with the issuance by the UGC of the letter dated 12th February 1998, annexed to the petition marked 'P13'. The relevant portions of the said letter, which is titled

³ This is on the assumption that a Sub-Warden (Grade I) would earn each salary increment on the due date.

“Amendments of Scheme of Recruitment of Non- academic Grades carrying A05 – A15 salary scales” reads as follows:

“The University Grants Commission at its 503rd meeting held on 24th October 1997 granted approval for **the reduction of periods of services required for promotions to next higher grades** specified in the approved Schemes of Recruitment and creation of new grades indicated in Annex I and II.

Please note that above amendments are valid until such time the Scheme of Recruitment are formally revised by issuing a Commission circular in this respect.”

Annex I to the said letter has been produced with '**P13**'. The said annexure is titled, '**Reduction of period of service required for promotion to next higher grades** specified in the scheme of recruitment' and sets out 85 categories that are sought to be amended by '**P13**'. Category 84 is relevant to this application and is re-produced below:

	Post and salary code	Grade	No. of years of service required for promotion in terms of existing SOR	No. of years of service required for promotion in terms of existing SOR
84	Sub Warden (Full time) (A-4b)	Grade I	1 year on the maximum of the salary scale	13 years

The Petitioners state that the said Circular 'P13' created 'an ambiguity' in respect of the period of service that a Sub Warden needs to serve in order to be eligible to be promoted to the Special Grade. The 'ambiguity', according to the Petitioners was whether the 13 years introduced by 'P13' should be the total period of service as a Sub Warden in both Grade I and Grade II, or whether the 13 years is only in respect of the years of service as Sub Warden (Grade I).

The Petitioners state that subsequent to 'P13' coming into effect, several Universities proceeded to promote their Sub Wardens to the post of Sub Warden (Special Grade) on the basis of a total of 13 years of service in Grades I and II⁴, while other Universities such as the 9th Respondent University, refrained from calling for applications for promotion of Sub Wardens (Grade I) to the next grade of Sub Warden (Special Grade) unless they had completed 13 years of service in Sub-Warden (Grade I).

The Petitioners state that due to the said ambiguity, they made a submission to the 9th Respondent University to request the UGC to intervene and resolve the said matter. In response to the request made by the Registrar of the 9th Respondent University to the Secretary of the UGC, the Secretary of the UGC had issued the following two letters to the Registrar of the 9th Respondent clarifying the alleged ambiguity:

⁴The Petitioners have annexed to the petition, marked P14A, B, C and D, notices issued by the Assistant Registrar of the University of Moratuwa, calling for applications for promotion to Sub Warden (Special Grade). These notices specify that the required period of service to be promoted to Sub Warden (Special Grade) was 13 years of service as a Sub Warden or 1 year of service in the maximum salary scale. This Court observes that both requirements violate the provisions of 'P13'.

Letter dated 14th July 2007 marked 'P15'

“උපශාලාධිපති විශේෂ ශ්‍රේණිය සඳහා සුදුසුකම් වශයෙන් අංක 525 දරණ චක්‍රලේඛයේ සටහන් වූ “උපශාලාධිපති 1 වන ශ්‍රේණියේ වැටුප් තලයේ උපරිමයෙහි වර්ෂයක් රැඳීසිටීම” අනුව සේවකයා 1 ශ්‍රේණියෙහි ගත කළ යුතුව තිබුණාවූ වසර 16 ක කාලය. යුපීසී/එච්ආර්/2/3/182 හා 1998.07.03 දිනැති ලිපිය මගින් සංශෝධිත යුපීසී/එච්ආර්/2/3/182 හා 1998 පෙබරවාරි 12 දිනැති ලිපිය මගින් වසර 13 දක්වා අඩුකර ඇත.

එබැවින් උපශාලාධිපති විශේෂ ශ්‍රේණිය සඳහා සලකා බැලීමට සුදුසුකම් ලැබීම පිණිස පළවන ශ්‍රේණියේ පුරණකාලින උපශාලාධිපතිවරයෙකු 1 වන ශ්‍රේණියේ වසර 13 ක් සම්පූර්ණ කර තිබිය යුතු බව කරුණාවෙන් දන්වමි.”

Letter dated 23rd September 2008 marked 'P16'

“උපශාලාධිපති තනතුරේ වසර 13 ක මුළු සේවා කාලය සැලකිල්ලට ගෙන උපශාලාධිපති විශේෂ ශ්‍රේණියේ උසස්වීම් ලබාදෙන ලෙස ඉල්ලමින් ඔබ විශ්වවිද්‍යාලයේ උපශාලාධිපතිවරුන් කිහිපදෙනෙකුගේ අත්සනින් මෙහි එවා ඇති 2008.06.02 සහ 2008.03.07 දිනැති ලිපිවල පිටපත් මේ සමග එවා ඇත.

උපශාලාධිපති විශේෂ ශ්‍රේණියේ උසස්වීම් සඳහා පළවන ශ්‍රේණියේ වැටුප් පරිමාණයේ උපරිමයට පැමිණ වසරක් ගතකර තිබිය යුතු බවට අංක 525 චක්‍රලේඛය මගින් වලංගු කර තිබූ සුදුසුකම මගේ අංක යුපීසී/එච්ආර්/2/3/182 සහ 1988 පෙබරවාරි 12 දිනැති උපකුලපතිවරුන් අමතන ලද ලිපිය මගින් වසර වසර 13 ක් වශයෙන් සංශෝධනය කර ඇත. ඒ අනුව උපශාලාධිපතිවරයෙකු විශේෂ ශ්‍රේණිය සඳහා සලකා බැලිය හැක්කේ උපශාලාධිපති පළවන ශ්‍රේණියේ වසර 13 ක සේවාකාලය සම්පූර්ණ කර ඇත්නම් පමණක් බව කරුණාවෙන් සැලකුව මැනවි.”

මේ බව කොළඹ, කැලණිය සහ මොරටුව විශ්වවිද්‍යාලවලට ද දැනුම් දුන් බව ඔබ විශ්වවිද්‍යාලයේ ආදාප්ත සේවකයින්ගේ දැනගැනීමට සලස්වන්නේ නම් බෙහෙවින් කෘතඥ වෙමි.”

The contents of 'P15' and 'P16' very clearly specify that the service requirement stated in 'P13' is not the total period of service as a Sub-Warden (Grade I and Grade II), but only the period of service of 13 years as Sub-Warden (Grade I). The said letters clarify further that the number of years of service for promotion to Sub-Warden (Special Grade) from Sub-Warden (Grade I) was initially 16 years, and it is this period which has been reduced by 3 years to 13 years by 'P13'.

The Petitioners, being aggrieved by the said clarification in 'P15' and 'P16' and acting in terms of Section 86 of the Universities Act No. 16 of 1978, as amended, filed an appeal with the USAB praying *inter alia* for the following relief:⁵

- i. To grant an order that the letter issued by the UGC dated 23rd September 2008 (P16), is null and void;
- ii. To grant an order to promote and appoint all members of the Inter University Sub Warden Union who have already completed 13 years of service in the post of Sub-Warden to the post of Sub Warden (Special Grade) and to pay their unpaid wages.

⁵ The petition of appeal has been annexed to the petition, marked 'X'.

The USAB, having heard the parties as well as having afforded the parties an opportunity of filing written submissions, by its order dated 19th October 2010, annexed to the petition marked 'Z', dismissed the appeal of the Petitioners.

The Petitioners thereafter filed this application, seeking a Writ of Certiorari to quash the said Order 'Z' as well as the two letters 'P15' and 'P16'. The primary grievance of the Petitioners is in relation to the decision of the USAB in relation to the alleged ambiguity contained in 'P13', on the basis that the said decision is irrational, not supported by evidence and is unreasonable.

Prior to considering what was sought to be effected by 'P13', this Court would like to reiterate the scheme of recruitment and promotion for Sub-Wardens in terms of the Circulars that existed at the time 'P13' was issued. The first step was recruitment to the post of Sub-Warden of persons who possessed the required qualifications. The second step in the ladder was that a Sub-Warden belonging to Grade (II) was eligible for promotion to Sub-Warden (Grade I) after 7 years of service in Grade II. Once appointed as a Sub-Warden (Grade I), which was a post that provided for 15 salary increments, a person was required to earn the said fifteen salary increments and serve one year in the highest salary scale. On the assumption that a Sub-Warden (Grade I) earns each salary increment on the due date, a Sub -Warden (Grade I) would need to serve 16 years in the post of Sub-Warden (Grade I). It was only thereafter - that is after a minimum of 16 years of service in Sub-Warden (Grade I) of which 1 year of service has been on the maximum salary scale - that a Sub-Warden (Grade I) was eligible to be promoted to Sub-Warden (Special Grade).

This Court will now consider the disputed document in this application, 'P13' and what it sought to do.

Paragraph 1 of 'P13' reads as follows:

"The University Grants Commission at its 503rd meeting held on 24th October 1997 granted approval for **the reduction of periods of services required for promotions to next higher grades** specified in the approved Schemes of Recruitment and creation of new grades indicated in Annex I and II"

"අමුණුම අංක 1 හි සහ 2 හි දැක්වෙන ඊළඟ ශ්‍රේණියට උසස්වීම සඳහා අවශ්‍ය සේවා කාලය අඩු කිරීම සහ නව උසස්වීම් ඇති කිරීම 1997.10.24 දින පැවති 503 වැනි රැස්වීමේදී විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව අනුමත කර ඇත."

Thus, it is clear that what was sought to be effected by 'P13' was to reduce the number of years required to be promoted from the existing grade to the next higher grade, as indicated in Annex I and II.

Annex 1 is titled '**Reduction of period of service required for promotion to the next higher grades** specified in the approved scheme of recruitment.' Category 84 of Annex I sets out that the amendment is being done to the scheme of recruitment for the post of "Sub-Warden (Special Grade)". The words, 'next higher grade' means from 'Grade I' to 'Special Grade'. This is confirmed when one considers that Column 4 of Annex I itself sets out the 'number of years of service

that is required for promotion in terms of the existing scheme of recruitment' as being '1 year on the maximum of the salary scale'. In terms of Circular 'P8', it is only a "Sub-Warden (Grade I) who has spent **1 year on the maximum of the salary scale**" who is considered for promotion to the Special Grade. The question of Sub-Warden (Grade II) spending "one year on the maximum salary scale" is not provided for in the circular relating to the promotion of Sub-Warden (Grade II) and therefore the reference to "**1 year on the maximum of the salary scale**" must mean a reference to Sub-Warden Grade I. Thus, it is clear that the Circular 'P13' only reduced the number of years that a person was required to serve in Grade I from a minimum of 16 years to 13 years. 'P13' does not interfere with the 7 years of service that a person must serve in Grade II before being promoted to Grade I.

This Court is therefore of the view that a person who joins the service as a Sub-Warden (Grade II) is required to serve 7 years in Grade II and once promoted to Grade I, a further 13 years in Grade I before becoming eligible to be promoted to the Special Grade. To hold otherwise would amount to a violation of the simple and clear language used in 'P13'. In these circumstances, this Court takes the view that there was no ambiguity in the language of 'P13' that required clarification by the UGC.

This is the conclusion that was reached by the USAB. For the reasons set out in this judgment, this Court does not see any illegality or irrationality with the said conclusion of the USAB. The said decision is reasonable and is a decision which any sensible person who had applied his mind to the question to be decided

would have arrived at⁶. Thus, this Court does not see any merit in the primary argument of the Petitioners.

The Petitioners have also taken up the position that the letters marked 'P15' and 'P16' seek to amend the scheme of recruitment set out in 'P13'. The Petitioners state further, that as the Commission members have not authorised the Secretary to the UGC to issue the said letters, the Secretary to the UGC does not have power to issue the said letters and hence, 'P15' and 'P16' are illegal.

This Court must observe at the outset that the Circulars 'P3', 'P4', 'P6', 'P7', 'P8', 'P9', 'P10' and 'P11' have all been signed by the Secretary or on behalf of the Secretary of the UGC and thus, there is nothing abnormal in the letters 'P15' and 'P16' being sent under the hand of the Secretary of the UGC. This Court has examined the contents of the said two letters 'P15' and 'P16' and is of the view that the said letters do not seek in any manner to amend 'P13'. It is only a reiteration of the position set out in 'P13' or as the Petitioners themselves claim, what was provided was only a clarification⁷. This Court is therefore of the view that the approval of the Commission was not required to issue the said letters as no determination different to what was set out in 'P13' was being made. In other words, nothing turns on 'P15' and 'P16' as the Petitioners were still entitled to challenge their entitlement to promotions which they in fact did before the USAB.

⁶ Lord Diplock in *Council of Civil Service Unions vs Minister for the Civil Service* [1985 AC 374] - "By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

⁷ See paragraph 24 of the petition.

The contention of the Petitioners that the Chairman of the UGC is required to obtain authority from the Commission in order to function in terms of the provisions of Section 7(3) read with Section 18(2)(c) of the Act and that such powers cannot be delegated are not relevant for the simple reason that the Secretary, by issuing the said letters 'P15' and 'P16' have not sought to amend the scheme of recruitment set out in 'P13'. This Court cannot hold that the approval of the Commission is required to issue a simple letter such as 'P15' or 'P16'. In any event, no prejudice has been caused to the Petitioners in view of this Court holding that the only interpretation that can be given to 'P13' is that the reference to 13 years is the number of years that a Sub-Warden is required to serve in Grade I and that there is no ambiguity in that regard in 'P13'.

The Petitioners have cited the judgment of the Supreme Court in the case of **University of Ruhuna vs. Dharshana Wickramasinghe and others**⁸, where it was held by the Supreme Court that as the Council of the University of Ruhuna was the disciplinary authority in terms of the Universities Act, a charge sheet not approved by the Council was a nullity as it had been issued without proper authority. In the present case, the decision relating to the amendment to the scheme of recruitment reflected in 'P13' has been taken by the Commission and hence, 'P13' is not illegal. This Court reiterates that the letters 'P15' and 'P16' did not seek to impose any additional conditions to the scheme of recruitment applicable to the Petitioners and hence, did not require the approval of the Commission.

⁸ SC (Appeal) No. 111/2010; SC Minutes of 9th December 2016.

In these circumstances, this Court is in agreement with the conclusion reached by the USAB that “the Secretary has not either changed or altered or amended the ruling by the UGC” and therefore this Court does not see any merit in the second argument of the Petitioners.

For the reasons set out in this judgment, this Court sees no legal basis to issue the Writs of Certiorari prayed for. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal