

**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 Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Ahmed Lebbe Mohamed Aslam,
No. 61, Beach Road, Addalaichenai- 11.

PETITIONER

CA (Writ) Application No. 72/2019

Vs.

1. The South Eastern University of Sri Lanka,
University Park, Oluvil.
2. Prof. M.M.M. Najim,
Vice Chancellor,
South Eastern University of Sri Lanka.
University Park, Oluvil.
3. H. Abdul Saththar,
The Registrar,
South Eastern University of Sri Lanka.
University Park, Oluvil.
4. M.L. Fouzul Ameer,
Dean Faculty of Arts and Culture,
South Eastern University of Sri Lanka.
University Park, Oluvil.

5. Dr. S.M. Ahamed Lebbe,
Head of the Department,
Department of Economics and Statistics,
South Eastern University of Sri Lanka.
University Park, Oluvil.
6. I.M. Musthapha
7. Prof. M.I.M. Mowjood
8. Mr. K. Mohamed Thamby
9. I.M. Haniffa
- 10.A.S. Mahroof
- 11.Prof. M.J.S. Wijeyaratne
- 12.R.M. Gunawardena
- 13.M.S. Razaq
- 14.Rev. Prof. G.F. Rajendram
- 15.Dr. P.K.C.L. Jayasinghe
- 16.Dr. S. Gunapalan
- 17.Dr. U.L. Zainudeen
- 18.Mr. S.M.M. Mazahir
- 19.Dr. S.M. Junaideen
- 20.Dr. M.G. Mohamed Thariq
- 21.Prof. M.A.M. Rameez

6th to 21st Respondents

All Members of the Council,
South Eastern University of Sri Lanka.
University Park, Oluvil.

- 22.Divisional Secretary,
Divisional Secretariat,
Addalachenai.

RESPONDENTS

Before: Kumudini Wickremasinghe, J
Arjuna Obeyesekere, J

Counsel: Dr. U.L. Ali Zakky for the Petitioner

Ms. Sabrina Ahmed, State Counsel for the 1st – 14th
and 16th – 21st Respondents

Supported on: 21st March 2019

Written Submissions: Tendered on behalf of the Petitioner on 13th May
2019

Tendered on behalf of the 1st – 14th and 16th – 21st
Respondents on 9th May 2019

Decided on: 3rd June 2019

Arjuna Obeyesekere, J

The Petitioner states that by an advertisement dated 21st January 2018, annexed to the petition marked 'P13', the 1st Respondent South Eastern University of Sri Lanka had called for applications for the post of Professor, Senior Lecturer (Grade I), Senior Lecturer (Grade II) and Lecturer (Probationary) at the said University. The Petitioner, who holds a Master of Philosophy in Economics in addition to a Bachelors Degree with First Class Honours with specialisation in Economics and who is currently serving as an Assistant Director of Planning attached to the Divisional Secretariat, Addalaichenai had submitted applications for each of the three latter positions, through the Divisional Secretary of Addalaichenai. There is no dispute among the parties that the said applications were received by the 1st Respondent.

The Petitioner states that he got to know that at least one other candidate who had submitted an application for one of the said posts had been asked to present himself for an interview scheduled for 21st January 2019. The Petitioner had immediately sent a letter to the 1st Respondent on 14th January 2019, annexed to the petition marked 'P28' informing that he had not been called for the interview, although he was eligible to be called for the said interview.

On 15th January 2019, the Petitioner invoked the jurisdiction of this Court by way of CA (Writ) Application No. 08/2019, seeking *inter alia* an interim order to stay the interviews scheduled for 21st January 2019, a Writ of Certiorari to quash the said interview and a Writ of Mandamus directing the Respondents to call the Petitioner for the interview. When the said application was taken up for support on 14th February 2019, the learned State Counsel for the Respondents informed this Court that the interviews had already been concluded and that the appointments have been made.

This Court also found that the documents marked 'P7' – 'P9' annexed to the original petition in that case, were different to the documents bearing the same numbers that had been attached to the two copies of the petition filed of record. For that reason, the learned Counsel's application to withdraw the said application and file a fresh application, subject to objections by the Respondents, was allowed by this Court.

The Petitioner thereafter filed this application on 24th February 2019, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the interviews for the post of Lecturer (Probationary), Senior Lecturer (Grade I) and Senior Lecturer (Grade II) held on 21st January 2019;
- b) A Writ of Mandamus directing the Respondents to re-schedule the interview for the said posts;
- c) A Writ of Mandamus directing the Respondents to call the Petitioner for the re-scheduled interview for the said posts.

This Court observes that the relief sought in this application is identical to the relief prayed for in CA (Writ) Application No. 8/2019.

When this application was taken up for support on 21st March 2019, the learned State Counsel once again brought to the attention of this Court that the interviews have been concluded and that appointments have been made. This Court thereafter directed the learned State Counsel to file limited Statement of Objections with documents to support the submissions made in Court.

In the limited Statement of Objections filed on behalf of the Respondents, the learned State Counsel has brought to the attention of this Court the following matters:

- 1) Although 35 applications were received in response to 'P13', none of the applicants were eligible to be called for an interview for the post of Senior Lecturer (Grade I);

- 2) The two applicants who were eligible to face the interview for the post of Senior Lecturer (Grade II) had failed to appear before the interview board on 21st January 2019;
- 3) Eighteen applicants who were eligible for the post of Lecturer (Probationary) had been interviewed on 21st January 2019;
- 4) On 26th January 2019, the Council of the 1st Respondent had approved the appointment of the five candidates who scored the highest marks at the interview;
- 5) The said five candidates, having been issued their letters of appointment on 28th January 2019, have assumed their duties as Lecturer (Probationary) with effect from 28th and 29th January 2019, as borne out by the documents produced marked 'R8A' – 'R8E'.

In this factual background, the learned State Counsel has taken up the objection that proceeding with this application is futile. This Court has examined the relief sought by the Petitioner and is of the view that the necessity of considering whether a Writ of Certiorari will lie to quash the interviews for the post of Senior Lecturer (Grade I) and Senior Lecturer (Grade II) does not arise as interviews for the said posts were not held.

In Ratnasiri vs Ellawala¹ what was sought to be quashed was the decision said to have been made by the Transfer Board, to whom the power of transfer had

¹ 2004 (2) Sri LR 180 at 208.

been delegated by the Public Service Commission. The Public Service Commission had subsequently approved and adopted the decision of the Transfer Board and no relief has been sought against that decision. Marsoof, J P/CA (as he then was) held that it would be futile to grant the reliefs prayed for since it would still leave intact the decision of the Transfer Board. The position in this application is similar.

This Court is in agreement with the submission of the learned State Counsel that quashing the interviews held on 21st January 2019 for the post of Lecturer (Probationary) would be futile as appointments have been made and the selected candidates have assumed duties, even prior to this application being filed. As no relief has been sought to quash the said appointments, quashing the interviews will still leave the appointments intact.

The learned State Counsel had drawn the attention of this Court to Circular No. 846 dated 14th July 2004 marked 'R13' issued by the University Grants Commission. Paragraph 4(a) thereof specifies that, "In the case of posts other than professorships in the university, the advertisement shall be valid for a period of one year reckoned from the closing date of applications. Under no circumstances shall an advertisement be extended beyond one year." The closing date for applications being 21st February 2018, it is clear that by the time this application was filed on 24th February 2019, the validity period of the said advertisement 'P13' had expired and therefore, no further interviews can be conducted in respect of applications called by 'P13'. Thus, the Petitioner is not entitled to the Writs of Mandamus prayed for.

This Court must observe that since the appointments have been made, the Petitioner ought to have named as respondents, the five candidates who have been appointed by the 1st Respondent. Any order that this Court makes in favour of the Petitioner would affect those appointees. The learned Counsel for the Petitioner has in fact stated in the written submissions that, "if the Petitioner is appointed to the posts, at least one of the candidates who have already been appointed will lose his position." Hence, this Court is of the view that the said appointees are necessary parties to a proper determination of this application. The failure to name such persons as respondents, inspite of the Petitioner being informed of such fact at the stage of support, is fatal to the maintainability of this application.

In the above circumstances, this Court does not see any legal basis to issue notices on the Respondents.

There is one matter that this Court would like to advert to. According to 'P13', "applicants who are employees of Government Departments should forward their applications through the Heads of their respective institutions, but may send an advance copy in the first instance. However, no such application shall be considered for interview, if the application has not been routed through the respective Head of the State Institution."

It is not in dispute that the Petitioner has submitted his application for the said posts through the Divisional Secretary of Addalaichenai. However, the Respondents have taken up the position that the applications ought to have been channelled through the Secretary, Ministry of Finance since he is the head of the Planning Service to which the Petitioner belongs. In view of the

conclusion already reached that there is no legal basis to issue notice, this Court does not need to consider this issue any further. However, this Court having considered the submissions of the learned Counsel for the Petitioner and the learned State Counsel for the Respondents observes that clarity is required with regard to the channel through which the Petitioner should submit his application in the future. This Court therefore directs the 1st Respondent to inform the Petitioner, within one month from today, the person through whom the Petitioner should submit his application in the future, should the Petitioner decide to respond to any advertisement that may be issued by the 1st Respondent.

Subject to the above, this application is dismissed, without costs.

Judge of the Court of Appeal

Kumudini Wickremasinghe, J

I agree

Judge of the Court of Appeal