

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

V. Alagaratnam,
“Lyceum”,
Beach Road,
Cheddipalayam North,
Cheddipalayam.
Petitioner

CASE NO: CA/WRIT/345/2015

Vs.

University Grants Commission,
No.20,
Ward Place,
Colombo 7.
And 23 Others
Respondents

Before: Mahinda Samayawardhena, J.
Counsel: J.C. Weliamuna, P.C., with Senura
Abeywardena for the Petitioner.
Farzana Jameel, P.C., A.S.G., for the
Respondents.
Decided on: 12.06.2019

Mahinda Samayawardhena, J.

The petitioner has filed this application seeking “*a mandate in the nature of writ of mandamus directing the respondents (University Grants Commission and University Council of the Eastern University) to immediately appoint the petitioner to the post of Senior Lecturer Grade II in Philosophy (at the Eastern University) consequent to the decision contained in the document marked P12.*”

To issue a mandamus compelling the respondents to immediately appoint the petitioner to the post of Senior Lecturer in Philosophy consequent to the decision contained in P12, the petitioner must show that he has a legal right, with the corresponding legal duty on the part of the respondent, for him to be so appointed to that post, which has unreasonably been withheld by the latter.¹

What is P12 decision, which the petitioner seeks to compel the respondents to immediately comply with? P12 is a “*Memo*” with the heading “*Recommendation of the Selection Committee*”. In the first place, there is no decision in P12. It is only a mere recommendation by the Selection Committee (without giving any reasons whatsoever) to appoint the petitioner (out of 8 applicants including one having a Ph.D) to the said post “*with the approval of the University Grants Commission*”.

¹ *Mageswaran v. University Grants Commission* [2003] 2 Sri LR 282, *Perera v. National Housing Development Authority* [2001] 2 Sri LR 50, *Wannigama v. Incorporated Council of Legal Education* [2007] 2 Sri LR 281, *Janak Housing (Pvt) Ltd v. UDA* [2008] 2 Sri LR 302, *Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt) Ltd* [2005] 1 Sri LR 89.

The University Grants Commission cannot be compelled to blindly confirm the Selection Committee recommendation and appoint the petitioner to the said post immediately. If that is the case, there is no necessity make a recommendation by the Selection Committee. The Selection Committee could straightaway appoint the petitioner to the said post.

The University Grants Commission circulars marked P10A, P10B and P11 govern the Universities and not University Grants Commission itself.

The recommendation in P12, as it is stated in that document itself, is subject to the approval of the University Grants Commission.

By going through 1R4 and 1R6 it is seen that the University Grants Commission has not given its approval on three reasons:

- (a) The petitioner has been served with vacation of post in 2007 due to non-assumption of duties after study leave as Senior Lecturer.
- (b) The petitioner has not completed the Ph.D for which he had been granted paid overseas study leave.
- (c) The applicant Dr. R. Premakumar is more academically qualified than the petitioner.

The petitioner has not tendered 1R4 and 1R6 although he has tendered all the documents including confidential documents such as Select Committee Memo (P12), Minutes of the University Council Meetings (P13B Attachment). He in the written submissions says that those letters have not been copied to him. Then P9 (which is favourable to him) and those confidential documents have also not been copied to him although he has

tendered to Court with his petition. He has not acted with *uberrima fides*.

By P6A and P6B it is clear that upon his request, the petitioner has been given paid overseas study leave for three years to pursue Ph.D programme at University of Dhaka, Bangladesh. But he has not completed Ph.D nor reported to the University after three years or any time thereafter. To my dismay, in paragraph 8(e) of his counter affidavit he says that he was unable to complete his studies “*due to the prevailing political situation in the country as I had to seek asylum*”. That means, he has gone abroad on a Government to Government Scholarship (SAARC Scholarship) on paid study leave not to study but to seek asylum. That shows his *mala fides*.

According to P7, the petitioner has to pay a sum of Rs.6,452,912/50 to the University (upon his going abroad on paid leave). The 3rd respondent Vice Chancellor in his statement of objection has stated that an action is to be filed to recover the said money from the petitioner.

In the facts and circumstances of this case, no mandamus compelling the respondents to appoint him as a Senior Lecturer can be issued against the respondents.

Application of the petitioner is dismissed. The petitioner shall pay a sum of Rs.50,000/= as costs to the 1st respondent-University Grants Commission.

Judge of the Court of Appeal