

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

**CA/WRIT/568/2021**

S. A. C. M. Anasdeen  
No. 14, Jumma Mosque Road,  
Kekunagolla,  
Kurunegala.

**Petitioner**

Vs.

1. Prof. F. C. Ragel  
Chairman,  
Vice Chancellor of the University  
Council and Member of the Selection  
Committee,
2. Dr. J. Kennedy  
Member of the Council and the  
Selection Committee
3. Mr. T. Sivanathan  
Member of the Council and the  
Selection Committee
4. Prof. M. Selvarajah  
Member of the Council and the  
Selection Committee
5. Dr. M. Z. M. Nafeel  
Member of the Council and the  
Selection Committee
6. Mr. A. L.M. Mujahid  
Member of the Council and the  
Selection Committee

7. Prof. V. Kanagasingam
8. Prof. P. Peratheepan
9. Dr. A. N. Arulpragasam
10. Dr. K. Premakumar
11. Dr. M. Pagthinathan
12. Dr. S. Jeyarajah
13. Mrs. K. Shanthrakumar
14. Mr. S. Thedchanamoorthy
15. Dr. K. Rajendram
16. Dr. K. Arualanandem
17. Prof. Riyas Sulaima Lebbe
18. Dr. S. M. Hussain
19. Eng. S. Mohanarajah
20. Eng. N. Sivalingam
21. Mr. P. Premnath
22. Mr. A. L. Joufer Sadique
23. Mr. S. Shanmugam
24. Ms. S. J. M. S. Samrakoon
25. Dr. G. Sukunan
26. Eng. S. Thilagarajah
27. Dr. H. R. Thambawita  
Are all members of the Council and/or  
the Selection Committee,  
Eastern University Sri Lanka,  
Vandarumoolai, Chenkalady.

28. Mr. A. Pahirathan  
Registrar and Secretary  
The University Council  
Eastern University Sri Lanka,  
Vandarumoolai  
Chenkalady
29. University Grants Commission  
Ward Place,  
Colombo 7.
30. M. I. Mohomed Helfan  
Eravur,  
Batticaloa.
31. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before** : Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel** : Rushdhie Habib with R.M.F Shahla Rafeek for the Petitioner.

Manohara Jayasinghe, DSG with Amasara Gajadeera, SC for the 2<sup>nd</sup> to 5<sup>th</sup>, 8<sup>th</sup> to 12<sup>th</sup> and 24<sup>th</sup> to 27<sup>th</sup> Respondents.

**Supported on** : 26.01.2022

**Written submissions** : Petitioner - 19.05.2022

2<sup>nd</sup> to 5<sup>th</sup>, 8<sup>th</sup> to 12<sup>th</sup> and 24<sup>th</sup> to 27<sup>th</sup> Respondents- 24.05.2022

**Decided on** : 27.07.2022

**Sobhitha Rajakaruna J.**

The Petitioner in this application seeks, *inter alia*, for a mandate in the nature of a writ of Certiorari to quash the decision of the Selection Committee and the University Council of the Eastern University of Sri Lanka, reflected in document marked 'P53', to appoint the

30<sup>th</sup> Respondent for the post of Lecturer (Probationary) in Islamic Studies. The 2<sup>nd</sup> to 5<sup>th</sup>, 8<sup>th</sup> to 12<sup>th</sup> & 24<sup>th</sup> to 27<sup>th</sup> Respondents ('Respondents') resisting the issuance of formal notice on the Respondents raised several preliminary objections and moved that the application of the Petitioner be dismissed *in limine*.

The Registrar of the Eastern University of Sri Lanka ('University') called for applications by way of a notice dated 16.11.2018 (marked as 'P46') for the posts of;

- i. Senior Lecturer Gr. I
- ii. Senior Lecturer Gr. II
- iii. Lecturer (Unconfirmed)
- iv. Lecturer (Probationary)

A six-member Selection Committee (1<sup>st</sup> to 6<sup>th</sup> Respondents) comprising of the Vice Chancellor and Dean (Faculty of Arts and Culture) of the University were appointed in accordance with the Circular No. 166 dated 06.04.1982 of the University Grants Commission ('UGC') to evaluate the candidates.

The interviews were held on 23.12.2020 in respect of the posts of Senior Lecturer Gr. II, Lecturer (Unconfirmed) and Lecturer (Probationary). As per the document marked 'R1', five candidates have applied for the post of Senior Lecturer Gr. II and out of which two applicants have not been called for interviews probably based on the reasons given in the same document 'R1'. The document marked 'R2' is the schedule of the applicants who faced the interviews in respect of the post of Senior Lecturer Gr. II. The Petitioner is also among those candidates who faced the interview on 23.12.2020. The summary of marks obtained by the Petitioner after the said interview is 'R6' and the individual evaluation of the Petitioner by each member of the Selection Committee are marked as 'R7(a)' to 'R7(f)'.

In view of 'R1', five candidates have applied for the post of Lecturer (Probationary) and out of them only four candidates were eligible to face the interview. However, except for the 30<sup>th</sup> Respondent, the other candidates were not present at the interview.

The said Selection Committee had not recommended any applicant to be appointed as Senior Lecturer Gr. II on the basis that none of the relevant applicants were able to obtain the minimum marks, i.e., 60 which is required to be considered for appointments. However, by virtue of the document marked 'R10', the said Selection Committee recommended the 30<sup>th</sup> Respondent to be appointed to the post of Lecturer (Probationary)

in Islamic Studies. It is observed that although, the 30<sup>th</sup> Respondent is the only candidate who faced the interview, he had obtained the minimum marks that is required to be considered for the relevant appointment.

The Petitioner's main contention is twofold. Primarily, the Petitioner claims that the Respondents have no authority to include a minimum mark. The argument of the Respondents is that Section 3 of the UGC Establishment Circular Letter No. 5/2018 dated 02.04.2018 (marked as 'R14') requires adopting a suitable marking scheme approved by the governing authority for the recruitment for all posts in the university system prior to interviews. Accordingly, the Respondents assert that the University Council is vested with the authority to decide the minimum marks required to be obtained to be selected for a respective post.

The Respondents have tendered to Court the marking scheme for the post of Senior Lecturer Gr. I/II, marked as 'R4', which was approved by the University Council at its 298<sup>th</sup> meeting held on 25.05.2019. It is observed that the said marking scheme has been approved by the said Council before the date of the interview, i.e., 23.12.2020. It is obvious that it would be unreasonable if the Selection Committee decides the cut off marks or the minimum marks after evaluating the candidates. However, on perusal of the said marking scheme 'R4', it appears that the minimum marks have been predetermined by the University Council before the evaluation of the candidates. Furthermore, the incumbent Vice Chancellor has affirmed in his Affidavit dated 24.03.2022 (submitted along with the limited statement of objections) that the entire process of selection was carried out giving due regard to the provisions of the UGC Circular No. 996 dated 09.10.2012, marked as 'R15'.

In the circumstances, I am unable to accept the proposition of the Petitioner with regard to the minimum marks.

The other contention of the Petitioner is that two other candidates have also been evaluated together with the Petitioner when Petitioner was the only candidate in Senior Lecturer Gr. II and such act of the Respondents is procedurally improper, unreasonable and ultra vires. Now I advert to examine such assertions of the Petitioner.

In view of the schedule of applications to the posts advertised, marked 'R1', the following candidates specifically applied for the post of Senior Lecturer Gr. II;

- i. Dr. S. A. C. Mohamed Anasdeen
- ii. Dr. M. A. Azhar
- iii. Dr. L. M. Muhfeeth
- iv. Mr. K Fahrudeen Mohamed
- v. Mr. M. M. Nayeem

Thus, the Petitioner cannot be considered as the only candidate who applied for the post of Senior Lecturer Gr. II. The above fourth (-iv) and fifth (-v) candidates have been recognized as not eligible under the remarks; (a) “degree is not relevant” and (b) “Yemenya University Yemen and Al-Eman University are not recognized” respectively. Therefore, it appears that except for the above two candidates, others have been evaluated at the interview although, there was a remark against the name of the above second (ii) and third (iii) candidates that they were ‘eligible for the post of lecturer (unconfirmed) in Islamic Studies’.

In the selection process of this case, the schedule of applicants, ‘R1’, has been prepared by the Senior Assistant Registrar/Academic Establishments (for Registrar) and however, the final decision on the eligibility has been taken by the Selection Committee. In my view, when there is an approved marking scheme as in this case, the relevant authority such as the said Registrar/Senior Assistant Registrar is authorized to disregard the applicants who are not possessed with the basic qualifications. That is the threshold stage of an interview process and not summoning the candidates who do not possess the basic qualifications that are mentioned in the advertisement upon which the applications were called for, by an authorized officer, cannot be considered unlawful. Therefore, what appears to me is that the above second (-ii) & third (-iii) candidates were possessed with the basic qualifications and they have been evaluated together with the Petitioner merely because they also had applied for the same post i.e., Senior Lecturer Gr. II. The documents marked R6, R7(a) to R7(f) and R9 evinced that the Selection Board has evaluated the candidates who applied for the post of Senior Lecturer Gr. II and the applicants (only one was present) for the post of Lecturer (Probationary) separately.

I am of the view that no prejudice has been caused to the Petitioner since the Respondents have followed the due process and also due to the fact that none of the candidates in the category of Senior Lecturer Gr. II were successful in obtaining the required minimum marks. Hence, I cannot accept the allegation of the Petitioner that the Respondents have

evaluated the lecturer (Probationary) separately and the rest together despite all being different posts.

The Petitioner alleges that him being a Senior Lecturer candidate with a PhD qualification should have been prioritized in the appointment process and accordingly, he ought to have been appointed to the post of Lecturer (Probationary). At this stage, I draw my attention to the advertisement marked 'P46' which categorically emphasizes that the candidates who apply for more than one post should submit separate applications along with separate bank slip in separate cover for each post. It is not disputed that the Petitioner has never submitted a separate application as per the notice marked 'P46', to the post of Lecturer (Probationary). The significant difference that should be identified here is that the Respondents have evaluated the candidates separately based on the posts that they have applied for and not on the basis of the remarks made by the Registrar/Senior Assistant Registrar in 'R1' by using, among other, the word 'eligible'. In view of the above, I am compelled to accept the argument of the Respondents that the Petitioner and the 30<sup>th</sup> Respondent applied for two distinctive posts and the Petitioner does not submit any ground whatsoever to challenge the decision making process in respect of the appointment of the 30<sup>th</sup> Respondent to the post of Lecturer (Probationary).

In the circumstances, I take the view that there is no prima facie question to be examined at a full hearing in this case. Anyhow, for the reasons set out above, the Petitioner's all other alleged claims particularly the assertions that he was not treated equally and also the claim on legitimate expectation have failed. In view of my above findings there is no necessity to examine separately the preliminary objections raised by the Respondents. Hence, I am of the view that there is no merit in this application and I proceed to refuse issuing formal notice on the Respondents. Application is refused.

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**