

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, Prohibition and  
Mandamus under Article 140 of the Constitution.*

CA/WRIT/379/2021

Prof. (Mrs) Rambukwella, Metiwala  
Walawwe Chulani Neranjana Kumari  
B-14, University Quarters,  
Meewathura, Peradeniya.

**Petitioner**

Vs.

1. University of Peradeniya
2. Prof. M. D. Lamawansa  
Vice Chancellor
3. Prof. S. H. P. P. Karunaratne  
Deputy Vice Chancellor
- 3A. Prof. Terrence Madhujith  
Deputy Vice Chancellor
4. Prof. O. G. Dayarathna Banda  
Dean, Faculty of Arts
- 4A. Dr. E. M. P. C. S. Ekanayake  
Dean, Faculty of Arts
5. Prof. D. K. N. G. Pushpakumara  
Dean, Faculty of Agriculture
- 5A. Prof. S. S. Kodithuwakku  
Dean, Faculty of Agriculture
6. Prof. M. A. J. C. Marasinghe  
Dean, Faculty of Allied Health Sciences

7. Prof. J. A. V. P. Jayasinghe  
Dean, Faculty of Dental Sciences
- 7A. Prof. A. M. Attyagalla  
Dean, Faculty of Dental Sciences
8. Prof. G. B. Herath  
Dean, Faculty of Engineering
- 8A. Dr. U. I. Dissanayake  
Dean, Faculty of Engineering
9. Prof. E. M. A. S. B. Ekanayake  
Dean, Faculty of Management
10. Prof. A. S. Abeygunawardena  
Dean, Faculty of Medicine
- 10A. Prof. M. V. G. Pinto  
Dean, Faculty of Medicine
11. Prof. S. R. Kodithuwakku  
Dean, Faculty of Science
12. Dr. D. M. S. Munasinghe  
Dean, Faculty of Vet. Medicine &  
Animal Science
- 12A. Prof. P. G. Anil Pushpakumara  
Dean, Faculty of Veterinary Medicine  
& Animal Science
13. Prof. R. G. S. C. Rajapaksa
14. Prof. C. Wickramagamage

All of  
University of Peradeniya,  
Peradeniya.

15. Mr. Samantha Ratwatte P.C  
No. 532/2, Serbet Place,  
Peradeniya Road, Kandy.
16. Mr. G. S. J. Dissanayake  
No. 915/1, Peradeniya Road,  
Kandy.
17. Most Ven. Niyangoda Wijithasiri  
Malwathu Maha Viharaya,  
Kandy.
18. Mr. Nihal Rupasinghe  
No. 57, Mahaweli Housing Complex,  
Pallekale, Kundasale.
19. Dr. D. M. R. B. Dissanayake  
No. 1, Disindrawa, Darshanapura,  
Kundasale.
- 19A. Prof. Kapila Gunawardena  
Consultant Obstetrician and  
Gynecologist,  
No. 452/1, Heerassagala Road,  
Kandy.
20. Mr. U. C. Kirindigoda  
No. 451, Court Complex,  
Wiliyam Gopallawa Mawatha,  
Kandy.
21. Mr. Prasanna Goonatilleke  
No. 30/7/A, Bangalawatta,  
Lewelle Rd, Kandy.
22. Dr. Siril Wijesundara  
National Institute of Fundamental  
Studies, Hanthana Road, Kandy.
23. Mr. Mahendra Wijepala  
Chief Engineer, Road Development  
Authority, Kandy.

24. Professor G. H. Peiris  
No. 16, Primrose Rd, Kandy.
  25. Dr N. D. Samarawickrama  
No. 16, Riverside, Galaha Rd,  
Peradeniya.
  26. Mr. J. C. Warnakula  
No. 62, Dangolla Rd, Kandy.
  27. Professor A. N. de S. Amaratunga  
Louis Peiris Mawatha, Kandy.
  28. Dr. Sardha Hemapriya  
No. 03, Galkanda Road, Aniwatta,  
Kandy.
  29. Mrs. Jayantha Darmasiri  
The Acting Registrar,  
University of Peradeniya,  
Peradeniya.
  30. Prof. Upul B. Dissanayke
  31. Prof. J. M. A. Jayawickrama  
C/O Registrar,  
University of Peradeniya, Peradeniya.
  32. Prof. R. M. M. Chandraratne
  33. Dr. D. K. Jayaratne
  34. Dr. Aruna Rajapakse
  35. Dr. Dulma Karunaratne
- 32<sup>nd</sup> – 35<sup>th</sup> Respondents, all of the  
Department of Archaeology, University  
of Peradeniya.

**Respondents**

**Before** : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

**Counsel** : Suren Ganaraj with R. Dias for the Petitioner.

Hashini Opatha, SC for the 1<sup>st</sup> to 35<sup>th</sup> Respondents.

**Argued on** : 02.08.2022 and 01.09.2022

**Written Submissions:** Petitioner - 26.07.2022

1<sup>st</sup> to 35<sup>th</sup> Respondents - 08.09.2022

**Decided on** : 22.09.2022

### **Sobhitha Rajakaruna J.**

The Petitioner has been serving as a senior lecturer Grade II at the University of Peradeniya ('University') since 12.02.2007. The Petitioner was promoted to the post of Professor (Chair) of Archaeology on 16.05.2019 and thereafter she was appointed to the post of Head of the Department of Archaeology ('Head/Department') on 01.10.2019.

The Vice Chancellor of the University by his letter dated 29.07.2021, marked 'P17', informed the Petitioner a decision taken by the Council of the University ('Council') at its 506<sup>th</sup> meeting on 24.07.2021 to relieve the Petitioner from her duties as the Head/Department. Additionally, by letter dated 30.07.2021, marked 'P17A', the said letter marked 'P17' has been amended to indicate that the Petitioner had been relieved from her duties 'until the conclusion of the investigations that will be conducted regarding the administrative matters of the said Department'. In view of the said letter marked 'P17A', the Petitioner has been relieved from her duties with effect from 30.07.2021 'until the formal inquiry regarding the non-academic issues of the Department of Archeology are over'.

Thereafter, Prof. J. M. A. Jayawickrama, the 31<sup>st</sup> Respondent was appointed as the Head/Department with effect from 30.07.2021 by letter dated 29.07.2021, marked 'P18'. The said letter 'P18' was also amended by the letter dated 20.08.2021 ('P18A') by which the period of the said appointment has been restricted and accordingly it will be operative

as an acting appointment only 'until the investigations in to the administrative issues of the said Department are over'.

***Impugned Decisions.***

In this application, the Petitioner is challenging the aforesaid decisions of the Council, taken at its 506<sup>th</sup> meeting on 24.07.2021 to relieve the Petitioner from her duties as the Head/Department of Archaeology and also to appoint Prof. J. M. A. Jayawickrama, the 31<sup>st</sup> Respondent to act in the post of the Head of the said Department. The Petitioner filed the instant application on 03.01.2022 seeking, inter alia, for a mandate in the nature of a writ of Certiorari to quash such decisions reflected in 'P16B', 'P17', 'P17A', 'P18' & 'P18A'.

The main question which requires consideration of this Court is whether due process has been followed by the said Council in relieving the Petitioner from her duties as the Head/Department. Moving now to consider the facts and circumstances which revolve around the said question.

***Background to the impugned decisions taken by the Council.***

The Petitioner by her letter dated 10.05.2020 has submitted an appeal to the Vice Chancellor of the University requesting for a preliminary investigation to be conducted regarding the academic and administrative issues prevalent at that time at the Department of Archaeology ('Department'). Similarly, few other academic members of the same Department have lodged two complaints in regard to an alleged unprofessional behavior of the Petitioner. The Council at its 493<sup>rd</sup> meeting held on 30.06.2020, appointed a committee to hold a preliminary investigation. The report of the said preliminary investigation has been issued by the said committee on 25.08.2020 and it is marked as 'P9' ['A11'].

The said Committee has recommended *inter alia* as follows:

2. *"The Committee advised the incumbent Head of the Department to demonstrate professionalism during departmental meetings and other conversations with staff members, thereby to uphold the unity among the staff of the Department while respecting the pluralism."*

3. *“The Committee also advised all staff members of the Department to support the uninterrupted academic programme despite of individual/personal issues.”*
6. *“The Committee recommends that the Dean of the Faculty should be requested to closely monitor the activities of the Department of Archaeology and submit a report to the Council on the behaviour of four academic staff members of the Department after implementing the above recommendations, after lapse of 3-6 months.”*
7. *“If the Vice Chancellor/Council is of the view that there is no positive change towards settling the current issues in the Department in 3-6 months after implementation of these recommendations, the Vice Chancellor/Council could consider appointing an external senior academic staff member as the acting Head of this Department.”*

In a subsequent development, the Senior Assistant Registrar/Legal and Documentation of the University sought approval of the Council by way of the Council paper dated 09.07.2021, marked ‘P16A’, to get a new preliminary investigation committee appointed to look into the non-academic issues of the Department in view of identifying specific allegations in order to frame charges. The said Senior Assistant Registrar sought such approval based on the grounds that the former preliminary investigation had dealt only with resolving the academic and administrative issues amicably within the Department itself and such committee had not identified any specific allegations against the members of the Department. The recommendations submitted by the said Senior Assistant Registrar are as follows;

*“Accordingly, the governing council may grant approval to appoint the following committee of investigation to hold a preliminary investigation regarding the non-academic issues of the Department of Archaeology, Faculty of Arts in order identify whether there is a prima facie case which warrants holding a formal disciplinary inquiry against the responsible persons;*

- i. Mr. E. W. M. L. Ekanayake – Retired High Court Judge (Chairman)*
- ii. Prof. A. N. de S. Amaratunga – Council member*
- iii. Prof. S. S. Kodituwakku – Head of the Department of Agricultural Economics & Business Management, Faculty of Agriculture”.*

The Council thereafter at its 506<sup>th</sup> meeting held on 24.07.2021 considering the said Council paper (memorandum), marked ‘P16A’, has decided, inter alia, as follows;

*“The council also decided to proceed with a fresh preliminary investigation to look into the unresolved administrative matters (it has been reported that the academic matters have been already settled) in the Department by a preliminary investigations committee in order to identify whether there is a prima facie case which warrants holding formal disciplinary inquiries against the responsible persons. (Vide-‘P16B’)*

The decision reflected in ‘P17’ & ‘P17A’ to relieve the Petitioner from her duties as Head/Department, until the investigations into the administrative matters (non-academic) of the Department are over, has been taken by the Council at the same meeting. The Council has emphasized that such measure had been taken in view of resolving the conflict situation that prevailed in the Department at that time. Additionally, the Council has decided, as mentioned earlier, to appoint the 31<sup>st</sup> Respondent as the Head/Department until the investigations are over.

Accordingly, the Council appointed another committee to conduct a preliminary investigation regarding the unresolved issues at the Department and its’ Report, marked as ‘A28(a)’, was issued on 25.02.2022.

In the said report ‘A28(a)’ the members of the investigation committee have arrived at the following conclusions:

*5.1 “The Committee finds that a prima facie case is disclosed against Prof, Rambukwella for violating sections 1.5 and 1.7 of chapter XXI of the University Establishments Code and thereby has committed the offences mentioned in sections 2.2.2, 2.2.5 (a), (b), (d), (f), (h) and (i), 2.2.7 and 2.2.8 of Chapter XXII of the University Establishments Code.”*

*5.2 “The Committee finds that a prima facie case is disclosed against Dr. Rajapaksha for violating sections 1.2 and 1.3 of Chapter XXI of the University Establishments Code and thereby has committed offences mentioned in sections 2.2.1, 2.2.2, 2.2.3, 2.2.5 ((a)), 2.2.7 and 2.2.8 of Chapter XXII of the University Establishments Code.”*

*5.3 “The Committee finds that a prima facie case is disclosed against Prof. Chandrarathne for violating sections 1.2 and 1.3 of Chapter XXI, 1.2 of Chapter XXV and 3.2 of chapter XXIV of the University Establishments Code and thereby*



*has committed offences mentioned in sections 2.2.1, 2.2.2, 2.2.3, 2.2.5 (a) and 2.2.8 of Chapter XXII of the University Establishments Code.”*

By virtue of letter dated 25.05.2022, marked ‘P31’ (which is annexed to the Counter Affidavit affirmed by the Petitioner on 24.06.2022), the Petitioner has been informed of the decision of the 514<sup>th</sup> Council meeting (held on 26.03.2022) to serve a charge sheet against the Petitioner under Para 18.2 of the Chapter XXII of Establishment Code of the University (‘Code’). The said decision has been taken based on the grounds that a prima facie case against her has been disclosed concerning her conduct as the Head/Department. The period of relieving her duties from the Head/Department was extended until the formal disciplinary inquiry is over, by the same letter.

***Contention of the Petitioner and the Respondents.***

Now, I advert to consider the arguments relied on by the Petitioner as well as the Respondents in this application.

The Petitioner argues that the practice of ‘relieving a Head of the Department of his/her duties until the conclusion of an investigation is not a mechanism known to law and is contrary to the University Establishment Code, Universities Act and all other laws and Regulations governing the function of University academic and non-academic activities’.

The Petitioner further argues that her appointment to the post of the Head/Department was made in terms of Section 51 of the Universities Act No. 16 of 1978 as amended (‘Act’) and no provision available in the said section to relieve a Head/Department of their duties. According to the Petitioner, an appointment of an acting Head/Department could be made only in two instances as mentioned in the Proviso to section 51(1) and section 51(3) of the Act.

The Petitioner asserts that there was a recommendation to refer the examination and academic lapses identified by the 1<sup>st</sup> investigation committee to a Senate appointed committee and however such recommendations have been blatantly disregarded. Accordingly, the Petitioner states that the Memorandum (Council Paper) dated 09.07.2021 marked ‘P16A’ is illegal, arbitrary and *mala fides*.

The principal argument of the Petitioner is that there were no disciplinary or criminal proceedings against the Petitioner and further, there was no mechanism for the Petitioner

to be interdicted pending a preliminary investigation under the provisions of the said Code. The Petitioner referring to Para 18:7 of Chapter XXII of the Code asserts that the said Section does not provide for 'relieving' a person from their duties but rather stipulates that if a person should not exercise the functions of his office in the interest of an investigation or inquiry, then he should be **transferred** or **placed on compulsory leave** in terms of Para 14 of Chapter X. In view of such submissions the Petitioner contends that the decision to relieve her from her duties has been made without any legal authority and such decision can be declared a nullity.

The other important facet of the Petitioner's argument is that the decision to relive the Petitioner from her duties is devoid of any reasoning and it is only at the stage of filing the statement of objections (in this application) that the Respondents have divulged the reason for relieving the Petitioner from her duties and apparently it was 'to facilitate conducting of an impartial investigation'.

As opposed to such arguments, the Respondent's contention is that although the section 51 of the Act has provided for removal of the Head of the Department, no procedure for such removal has been mentioned and/or prescribed. The Respondents contend therefore, that the University has embarked on conducting disciplinary proceedings adhering to the rules of natural justice to ascertain, according to law, whether there are any strong grounds to establish the allegations put forward against the Petitioner in respect of her functions as the Head/Department. The Respondents further submit that although there is no clear provision in the Act or in the Code to deal with allegations against the Head/Department in respect of alleged misbehaviour or misuse of authority, it is the common understanding that a reasonable, valid procedure should be followed to remove the Head/Department; and the said Act cannot provide for each and every step of the administrative action of a university.

The Respondents argue that the post of academic Head/Department is not a permanent post and it is only a temporary administrative post; and further, such position is the same in relation to the Vice Chancellor and the Deans of Faculties. The Act only provides for the appointment and the removal of a Head/Department whereas, no procedure for such removal has been laid down. In that context the Respondents allege that the procedure stipulated in Chapter XXII of the Code has been considered as the most suitable procedure to be followed in determining the allegations against the Petitioner.

The Respondents further argue that the Petitioner's behaviour as the Head/Department was in issue as enumerated throughout in this case. Accordingly, the Respondents have taken a decision that the Petitioner's engagement in duties as the Head/Department while the investigations are pending would be detrimental to gather evidence and statements from the academic/non-academic members of the staff who are serving under the Petitioner and elsewhere.

Meanwhile, the Respondents have divulged the fact that the Petitioner had filed a Fundamental Rights Application bearing No. SC/FR/29/2022, seeking reliefs similar to the instant application. The said case is still pending in the Supreme Court. Thus, the Respondents complain that the Petitioner is acting with mala fides and attempting to use the machinery of justice to obtain undue advantages.

***Whether due process has been followed by the said Council in relieving the Petitioner from her duties.***

Having considered the arguments of the Petitioner & the Respondents and also based on the circumstances of this case, I take the view that the pivotal question that should be examined at this stage is whether it has been disclosed, prima facie, that the Petitioner had committed an act of misconduct by the time the Council took the decision to relieve the Petitioner from her duties.

The members of the committee who conducted the preliminary investigation at the initial stages have noted in their report marked 'P9' ['A11'] that the background to the disputes in the Department was the long-drawn dispute over the appointment to the cadre chair for which both the Petitioner and the 32<sup>nd</sup> Respondent were applicants. Further, the said committee has noted that there had been personal conflicts between the Petitioner and the other members of the Department and as a consequence, the Department did not have an environment conducive for conducting departmental meetings or resolving both academic and administrative issues amicably.

In an attempt to create a suitable atmosphere in the Department, the said committee has advised all the members including the Petitioner to cooperate with each other and maintain cordial relations for the betterment of the Department. The said committee has advised the Petitioner to demonstrate professionalism during Departmental meetings and

other conversations with staff members; thereby to uphold the unity among the staff of the Department while respecting the pluralism.

As per the Council minutes marked 'P16', the Council has, inter alia, noted that there is some weakness in the behaviour of the Petitioner and she could be removed from the post of the Head/Department if she is found guilty at the preliminary inquiry. As per the minutes of the said Council meeting, marked 'P16B', the Council has observed as follows;

*“The council after a lengthy deliberation on the ongoing conflict situation in the Department decided that, to solve the problems, it is important to relieve the present Head of the Department from her duties until the investigations into the administrative matters (non-academic) of the Department of Archaeology are over. The council emphasized that this measure is taken only to resolve the conflict situation that currently prevails in the Department despite the efforts of the Dean to resolve the same.”*

It appears with the above wordings that the Council has taken the decision to relieve the Petitioner from her services after a lengthy deliberation on the conflict situation in the Department. It is important to ascertain whether the members of the Council had particular reasons in their mind at the time they took the decision to relieve the Petitioner from her duties. With the words 'lengthy deliberation', it can be assumed that the council must have taken note of the investigation report marked 'P9' as well as other communication such as 'P14', 'P15' & 'P16A'. Even in the earlier Report, marked 'P9' ['A11'], in the month of August 2020, the committee who conducted such investigation has recommended to consider appointing an external senior academic staff member as the acting Head/Department, if there is no positive change in 3-6 months after implementation of the recommendations therein, in view of settling the issues prevailed in the Department.

The Court observes the minutes of the 452<sup>nd</sup> ['A10b'], 493<sup>rd</sup> ['A8c'], 497<sup>th</sup> ['A12'], 506<sup>th</sup> ['A24a'], 507<sup>th</sup> ['A24b'/'A36'], 508<sup>th</sup> ['A24c'], 513<sup>th</sup> ['A14a'] and 514<sup>th</sup> ['A28c'] meetings of the Council. The Council having decided to appoint a further preliminary investigation committee at its 506<sup>th</sup> meeting, has nominated three members to conduct the said preliminary investigation. Thereafter, the Council has discussed and approved at its 508<sup>th</sup> meeting, the terms of reference of the said committee in order to commence such investigations. The said terms of reference are marked as 'P21' ['A27'].

On a careful perusal of the said terms of reference and minutes of the several meetings of the Council, I take the view that the members of the Council have identified, prima facie, grounds against the Petitioner in order to conduct a preliminary investigation. In the said terms of reference, 8 entries are shown as alleged irregularities committed by the Petitioner based on the complaints of Dr. A. S. G. Rajapakshe, the 32<sup>nd</sup> Respondent and the 33<sup>rd</sup> Respondent. It appears that the members of the Council and the members of the committees who conducted the aforesaid inquiries have observed that many disputed issues relating to the Petitioner had been continuing even after several attempts were taken to resolve such disputes amicably at various stages.

Therefore, in my view, the fact that the Petitioner had committed an act of misconduct has been disclosed, prima facie, when the Council took the decision to relieve the Petitioner from her duties. Furthermore, sufficient material has been made available to the Council before they took the said decision and I am convinced that the said decision was taken for the best interest of the University and to ensure smooth functioning of the Department.

It is important to draw my attention to the statement made on 24.07.2021 at the 506<sup>th</sup> Council meeting by the Dean Faculty of Arts who has stated that the Petitioner was a very good administrator; but the Department could not run smoothly unless the conflicts among the Petitioner and the other academic staff members would be resolved satisfactorily.

It is no doubt when one holds an administrator post which requires the management of a particular department or office, the holder of such post needs to be strict and steadfast/firm. However much you maintain your honesty and integrity in taking administrative decisions in favour or against the subordinates and colleagues will not be sufficient to maintain harmony and efficiency at the work place. In order to exercise the true leadership, the administrator should be firm as mentioned above, but at the same time should be polite. The politeness includes respecting others and their views also. The Code of the University in Para 1.7 of Chapter XXI under 'General Conduct and Discipline' has identified this notion of being polite, which is in my view, always blends with 'Good Governance' and 'Rule of Law'. The above social theories, in my view, are utilitarian in assessing the legal basis for decisions taken by authorities and therefore, I cannot possibly

overlook such norms when reviewing the impugned decision of the Council to relieve the Petitioner from her duties.

The underpinning of my above finding is braced with the below passage of Frank B. Cross in his essay titled- "Law as Courtesy", published in Tulsa Law Review (Vol.47. Issue 1, Summer 2011)<sup>1</sup>

*"The rule of law is conceived as a rule of etiquette. Legal procedures are useful pretenses. A judicial action is simply a form of decorum. As a result, judges can "clothe their claims in law's independent tests and procedures, lending their views an appearance of importance and impartiality that may not have much of a connection to underlying substance"."*

In the circumstances, when such harmony and efficiency are falling down within the work place, the higher authorities will eventually be compelled to take remedial measures in order to overcome such unpleasant occurrences. The Council, to my mind, has acted in a polite manner by relieving the Petitioner from her services rather than interdicting her or sending her on compulsory leave although such 'relieving from duties' is not spelled out in the Code or the Act.

Interdiction cannot be considered as a punishment and it is one of the foremost processes used to initiate investigations into alleged misconducts at the workplace. Interdiction would not be a presumption of guilt. To my mind, when an employee is interdicted, usually the work place will be out of bounds for such employee. However, when an employee is relieved from his duties of a certain post given to him in addition to his substantive post, he would not essentially be barred from visiting the workplace and engaging in work of his substantive post; thus, such employee will be restricted only from engaging in duties of the relevant post and not the duties of his substantive post. It is observed, as per the averments of the Petitioner that the post of 'Senior Lecturer' is the substantive post of the Petitioner at the University.

In terms of Para 18 of Chapter XXII of the Code, where it is considered undesirable that a person employed in a Higher Educational institution should continue to exercise the functions of his office, he may be, interdicted forthwith from office provided that

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<sup>1</sup> <https://digitalcommons.law.utulsa.edu/tlr/vol47/iss1/21>

<sup>2</sup> See, e.g., Richard A. Brisbin, Jr., Slaying the Dragon: Segal, Spaeth and the Function of Law in Supreme Court Decision Making, 40 AM. J. POL. SCI. 1004 (1996).

disciplinary proceedings or criminal proceedings have been or are about to be instated on charges which if established are sufficiently serious to warrant his dismissal. The Para 18.7 of the said Chapter stipulates that if the person cannot be appropriately interdicted in terms of this Section, but it is in the interest of the investigation or inquiry that he should not exercise the functions of his office, he should be transferred, or placed on compulsory leave in terms of Para 14 of Chapter X. The Chapter X mentioned therein deals with 'Leave to University Staff' whereas Para 18.1 comes under the Chapter which provides disciplinary procedure which set forth 'Disciplinary proceedings or Criminal proceedings'.

Therefore, based on the circumstances of this case, what is pertinent here is not to give unnecessary weight attempting to draw an analogy between the terms such as 'interdicting', 'relieving duties', 'transferring' & 'placing on compulsory leave', but to assess whether the purpose of the act of 'interdicting' or 'relieving duties' etc., falls within the ambit of the said Para 18 of the Code. I take the view that if the act of 'relieving duties' comes within the required limbs of the said clause, then no substantive prejudice would be caused to an employee who has been kept away only from a certain post without barring him attending to his substantive official duties.

It is observed that the Petitioner has been relieved from her duties as the Head/Department, by letters 'P17' and 'P17A', only until the investigations that will be conducted regarding the administrative matters of the Department are over. Although, the wordings of the said two letters do not disclose any 'disciplinary proceedings' or 'criminal proceedings', I am convinced that the Council at various meetings have deliberated taking disciplinary actions or commencing disciplinary proceedings against the Petitioner. The several council minutes as mentioned above and the said terms of reference ('P21') evinced that the members of the Council were contemplating to commence disciplinary proceedings against the Petitioner. In other words, I take the view that the fact that the Petitioner has committed an act of misconduct has been well disclosed to the Council by the time the Council took the impugned decisions.

Hence, the Council, in my view, satisfying the requisites of the said Para18 of Chapter XXII of the Code, has arrived at a rational and reasonable conclusion that;

- (a). it is undesirable that the Petitioner continues to exercise the functions of the post of Head/Department until the investigations against her are over;

(b). disciplinary proceedings against the Petitioner have been or are about to be instated on charges which if established are sufficiently serious to warrant his dismissal.

The said point of view is accentuated with the terms of reference marked 'P21' ['A27'] and also with the final conclusions of the Report dated 25.02.2022, marked 'A28(a)', wherein the members of the investigating committee decided that a prima facie case was disclosed against the Petitioner and two others who had violated provisions of the Code and thereby committed offences under the Code. In light of the aforesaid, I reject the argument of the Petitioner that the decision of the Council to relieve the Petitioner from her duties as the Head/Department is a nullity.

***Appointment of the 31<sup>st</sup> Respondent.***

Having examined the issues relating to the main relief prayed for by the Petitioner, I should now examine the question whether the appointment of the 31<sup>st</sup> Respondent as the Acting Head of Department is illegal and ultra vires as claimed by the Petitioner. The 31<sup>st</sup> Respondent was appointed as the Head/Department of Archaeology, Faculty of Arts by virtue of letter dated 29.07.2021, marked 'P18', in terms of Section 51 of the Act. Thereafter, within 22 days, the Vice Chancellor issued another letter dated 20.08.2021, marked 'P18A', withdrawing the letter marked 'P18'. The 31<sup>st</sup> Respondent by virtue of the said letter 'P18A' has been appointed only to act in the post of the Head of the said Department until the investigations into the administrative issues are over. In view of the withdrawal of the letter 'P18', the Petitioner argues that the decision to appoint the 31<sup>st</sup> Respondent to act in the post of the Head of Department does not reflect what was actually decided at the 506<sup>th</sup> meeting of the Council. The decision in regard to the appointment of the 31<sup>st</sup> Respondent has been minuted at the said 506<sup>th</sup> meeting ('P16B') as follows;

*“Therefore, the Council decided to appoint Prof. J. M. A. Jayawickrama of the Department of Economics and Statistics, Faculty of Arts as the Head of the Department until the investigations are over.”*

The intention of the Council has been emphasized by the literal meaning of the above words. It is apparent that the Council has intended to make only a temporary appointment as the said appointment has been restricted only to a period until the conclusion of the investigations. In light of the above, I take the view that the simple reason that the word



‘Acting’ is not reflected in the said minutes of the Council would not pave the way for me to uphold the Petitioner’s above arguments.

The Petitioner’s other contention in regard to the appointment of the 31<sup>st</sup> Respondent as the Acting Head/Department is that the appointment of the 31<sup>st</sup> Respondent by ‘P18A’ is contrary to law. The Petitioner asserts that the Section 51 of the Act provides only for the below mentioned two instances for the appointment of an **Acting** Head/Department.

1. Proviso to section 51(1):

‘Provided that, where the Head of a Department of Study has not been appointed by the Council, the Vice-Chancellor may appoint a Professor, Associate Professor, Senior Lecturer or Lecturer to act in the post of Head of Department for a period not exceeding one month reckoned from the date of his appointment.’

2. Section 51(3):

‘Where owing to leave of absence, illness, or other cause, the Head of a Department is temporarily unable to perform the duties of his office for a period not exceeding three months, the Vice-Chancellor shall appoint another Professor, Associate Professor, Senior Lecturer or Lecturer of that Department to act in the post of Head of Department for such period. Where however a Head of a Department retires or resigns, or is for other reason unable to perform the duties of his office for a period exceeding three months, the post of Head of Department shall be deemed to be vacant, and a new Head of Department shall be appointed in accordance with subsection (1).’

The above proviso to Section 51(1) is not pertinent to this application and however, the applicability of provisions of Section 51(3) of the Act as amended by Act No. 7 of 1985 should be examined. The first limb of the said sub section deals with an instance where the Head/Department is temporarily unable to perform the duties for a period not exceeding three months. In such an instance, subject to the other provisions therein, the Vice Chancellor can make an acting appointment for such period.

The second limb of the Section 51(3) deals with an instance where the Head/Department is unable to perform the duties of his office for a period exceeding three months. In such a situation, the post of Head/Department shall be deemed to be vacant. The said **deeming**

**provision** comes into operation where a Head/Department retires or resigns or is for other reasons unable to perform duties of his office. It appears that the 31<sup>st</sup> Respondent has been serving as an Acting Head/Department for a period over three months. What needs consideration in the instant application is whether the said deeming provision becomes operative even on a reason where a higher authority takes a decision, pending an inquiry, against the wish of such Head/Department, preventing him/her from performing duties of the post of Head/Department. In other words, the question is whether such deeming provision is applicable to this case as the 31<sup>st</sup> Respondent has been serving as the Acting Head/Department for a period over three months.

Lord Walker who has extensively dealt with ‘deeming provisions’ in *DCC Holdings (UK) Limited vs. Revenue and Customs Commissioners (2011) 1 All ER 537 (at p. 552), (2010) UKSC 58* has drawn his attention to the following passage in the case of *IRC vs. Metro lands (Property Finance) Limited (1981) 2 All ER 166* ;

*“When considering the extent to which a **deeming provision** should be applied, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. It will not always be clear what those purposes are. If the application of the provision would lead to an unjust, anomalous or absurd result then, unless its application would clearly be within the purposes of the fiction, it should not be applied.”*  
(Emphasis added)

In the circumstances, I am of the view that the purpose of the deeming provision adopted in the said Section 51(3) is limited to instances of;

- i. retirement or
- ii. resignation or
- iii. other reasons unable to perform duties of his office.

The retirement and resignation as mentioned above are not material to the instant issue. Moreover, I am of the view that the Petitioner’s inability to perform duties cannot fall even under the above third category as the Council has taken a decision to relieve her from her duties until conclusion of preliminary investigations. As I have observed earlier, relieving from duties/compulsory leave/interdiction cannot be considered as a punishment but those measures are merely in temporary nature until a proper inquiry is being conducted. Perhaps, the Petitioner’s term of office may have come to the tail end due to the effluxion

of time. Anyhow, my considered view is that the Petitioner will be gravely prejudiced if the above deeming provision embodied in the second limb of the Section 51(3) is applied to this case which would eventually create a permanent vacancy in the post of Head/Department while a preliminary investigation is pending against her. Thus, based on the circumstances of this case, I should exercise my discretion to avoid applying the said deeming provision (in Section 51(3)) to this case since such application does not come within the intended purpose of the statute and also it leads to injustice.

For the foregoing reasons, the impugned decision to appoint the 31<sup>st</sup> Respondent as the Acting Head /Department cannot be considered illegal. Hence, I am not inclined to grant any reliefs as prayed for by the Petitioner in respect of the said appointment of the 31<sup>st</sup> Respondent as Acting Head/Department.

***Writ of Mandamus.***

I do not proceed to deal with the relief sought by the Petitioner for a writ of Mandamus as both learned Counsel for the Petitioner and the learned State Counsel conceded that the main question of the instant application is whether due process has been followed by the Council in relieving the Petitioner from her duties.

***Conclusion on the Reliefs prayed for by the Petitioner.***

For the reasons set forth above, I am not inclined to grant reliefs as prayed for in the prayer of the Petition of the Petitioner. In the circumstances, I proceed to dismiss the application. No order is made with regard to costs.

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**