

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

In the matter of an Application for Writs of
Mandamus and *Certiorari* under Article 140
of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Court of Appeal Case No.

WRIT/518/2019

1. InterUniversity Works Engineers &
Project Managers Association,
Open University Sri Lanka,
Nawala,
Nugegoda.
2. Ranasinghe Arachchige Gunapala
The President,
Inter University Works Engineers &
Project Managers Association,
University of Visual Performance Arts,
No.21, Albert Crescent,
Colombo 07.

Petitioners

Vs.

1. University Grants Commission
2. Prof. Sampath Amarathunga
The Chairman
3. Prof. Janitha A. Liyanage
4. Prof. Kollupitiye Mahinda Sangarakitha
Thero
5. Prof. A.K.W. Jayawardane

6. Prof. Ms. Vasanthi Arasaratam
7. Prof. Premakumara De Silva
8. Mr. R.H.W.A. Kumarasiri
9. Dr. Priyantha Premakumara
The Secretary
1st to 7th floor of
University Grants Commission,
No.20, Ward Place, Colombo 7.
10. Rajarata University of Sri Lanka
Mihinthale

Respondents

Before: **M. T. Mohammed Laffar, J.**
S. U. B. Karalliyadde, J.

Counsel: K. G. Jinasena instructed by Vikum Jayanath for the
Petitioners.

Ms. A. Gajadeera, SC for the Respondents.

Argued on: 07-06-2022

Written submissions: Not tendered by both parties

Decided on: 27-09-2022

MOHAMMED LAFFAR, J.

The Petitioners are seeking a mandate in the nature of a Writ of Certiorari to quash the clarifications made in **P6**, the letter sent by the 9th Respondent, Secretary to the 1st Respondent, University Grants Commission, and a mandate in the nature of Writ of Mandamus directing the 2nd to 8th Respondents of the 1st Respondent Commission to permit the 10th Respondent (Rajarata University of Sri-Lanka) to allow S.M. Seelaratne, the works Engineer of the 10th Respondent to serve in his respective position in terms of the provisions made in Section 75 (1), of the Universities Act read with the provisions made in the Public Administration Circular, No. 06/2017 marked **P3**.

The Respondents move for a dismissal of the Petitioners' application on the basis *inter-alia* that;

1. The Engineers working in Universities established under the Universities Act, No. 16 of 1978 (as amended) do not belong to the Sri-Lanka Engineering Service.
2. The Public Administration Circular No. 06/2017 marked as P3 is only applicable to Officers of the Sri Lanka Engineering Service.
3. The said Circular marked P3 is not applicable to public corporations and statutory bodies, therefore, P6 does not apply to Universities established under Act, No. 16 of 1978.

The 1st to 7th and the 9th Respondents are the members of the 1st Respondent, University Grants Commission. The 1st Petitioner is the Inter-University Works Engineers & Project Managers Association, a registered Trade Union, and the 2nd Petitioner is the President of the 1st Petitioner.

The Petitioners state that in terms of the Public Administration Circular No. 06/2017 marked as P3, the age of retirement of the Engineers attached to the Universities should be 61. Accordingly, one S.M. Seelarithne, the Works Engineer attached to the 10th Respondent University, by letter dated 01-07-2019, marked as P4, requested the 1st Respondent to permit him to serve up to the age of 61. Thereafter, the said S.M. Seelarithne, by letter dated 10-09-2019 marked as P4 (a) made a similar request to the 10th Respondent as well. Accordingly, the 10th Respondent sought clarification from the 1st Respondent as to the applicability of P3 to the said S.M. Seelaratne. The 1st Respondent by letter dated 16-08-2019 marked P6 informed the 10th Respondent that the Circular marked P3 is not applicable to the Engineers attached to the Universities.

Section 75 (1) of the Universities Act No. 16 of 1978 (as amended) reads as follows;

“The retirement age of a public officer as may be determined by the Government, from time to time, shall apply with effect from the same date as applicable to a public officer in respect of the retirement age of the holder of any post, other than that of a teacher.”

Thus, it is clear that the decisions of the Government as to the retirement age of public officers will be applicable to the Engineers attached to the Universities as well.

In this context, it is pertinent to be noted that the Circular marked as P3 is issued not to the public officers, but only to the Officers belonging to the Sri-Lanka Engineering Service, which reads thus.

“Extension of the Age Limit of Compulsory Retirement of the Officers in Sri-Lanka Engineering Service.”

It was decided at the meeting of the Cabinet of Ministers held on 07-02-2017 to extend the age limit of compulsory retirement of the officers in the Sri Lanka Engineering Service up to 61 years. Accordingly, it is hereby informed that the age limit of compulsory retirement of the officers in Sri-Lanka Engineering Service shall be 61 years with effect from 01-01-2017.”

Accordingly, it appears to this Court that the Circular marked P3 does not apply to the Public Corporations, Statutory Bodies and Universities established under the Universities Act, No. 16 of 1978 (as amended).

In these respects, it is the view of this Court that the retirement age of S.M. Seelaratne shall be determined as per the provisions of the Establishment Code and relevant Public Administration Circulars that determine the retirement age of a Public Officer and not Circulars that determine the retirement age of particular categories of Officers, such as those belonging to the Sri-Lanka Engineering Service.

As such, the clarification issued by the 1st Respondent marked P6 is not erroneous.

Be that as it may, as per the request made by S.M. Seelaratne marked as P4A, he has requested to extend his age of retirement up to the age of 61, namely up to the date of 13-03-2021. Admittedly, by 13-03-2021, he has already completed 61 years, and therefore, it would be futile to grant the reliefs prayed for.

In **Samsudeen Vs. Minister of Defence and External Affairs**¹, it was held that “*a writ of mandamus will not be issued if it will be futile to do so and no purpose will be served.*”

In these circumstances, I proceed to dismiss the Application. Thus, the application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL

¹ 63 NLR 430