

**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 Prohibition under
Article 140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

CA/WRIT/82/2022

Amarasekara Yapa Oshan Lakshitha
No. 100, Massena,
Weligama.

Petitioner

Vs.

1. University of Kelaniya
2. Snr. Prof. Nilanthi de Silva
Vice Chancellor
3. Prof. M. M. Gunathilaka
Dean, Faculty of Social Sciences
4. Snr. Prof. J. M. D. Ariyaratna
Dean, Faculty of Graduate Studies
5. Dr. P. G. Wijayarathna
Dean, Faculty of Computing and
Technology
6. Snr. Prof. S. R. D. Kalingamudali
Dean, Faculty of Science
7. Dr. P. N. D. Fernando
Dean, Faculty Commerce &
Malmanagement Studies
8. Mr. U. S. Senarath
Dean, Faculty of Humanities

9. Snr. Prof. S. J. de S. Hewavisenthi
Dean, Faculty of Medicine
10. Mr. Rakitha Shri Dharshana
Abeygunawardana
11. Prof. H. Abeygunawardana
12. Prof. Ranjith Arthanayake
13. Mr. Sanjaya Bandara
14. Mr. S. M. Gotabaya Jayarathne
15. Prof. Ananda Patabandige
16. Prof. Nimal Perera
17. Prof. Rohan Rajapakse
18. Mr. L. E. Susantha Silva
19. Mr. Cyril Suduwella
20. Ven. (Snr. Prof.) Induragare
Dhammarathana Thero
21. Mr. K.apila Seneviratne
22. Mr. K. K. K. Dharmathilaka
23. Snr. Prof. Patrick Ratnayake
24. Mr. R. M. Priyankara Ratnayake
25. Mr. Upul Jayantha Ranepura
26. Mrs. M. M. N. T. K. Yalegama
Deputy Registrar

All of
C/O The Registrar,
University of Kelaniya,
Kelaniya.

27. University Grants Commission
No. 90, Ward Place,
Colombo 7.

28. Mr. M. P. A. R. Subasinghe

29. Mr. T. S. N. Gunarathne

30. Mr. W. S. K. Perera

All of
29th to 39th
C/O The Registrar,
University of Kelaniya,
Kelaniya.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : K.G. Jinasena for the Petitioner.
H. Opatha, SC for the Respondents.

Supported and Decided on : 28.09.2022

Sobhitha Rajakaruna J.

Heard learned Counsel for the Petitioner in support of this application and the learned State Counsel opposing this application.

The Petitioner of this application was a Co-Petitioner in case No. CA/Writ/0578/21 which has been dismissed by this Court on 12/01/2022. In the said application No. CA/Writ/0578/21, the purported grievance of the 1st Petitioner therein was that he had not been called for the interviews scheduled to be held on 23/11/2021.

Similarly, in the said application, the learned State Counsel had submitted as per the instructions of the University that the 2nd Petitioner of the said case (Petitioner of the instant application) is prima facie eligible to be present at the interviews.

The learned State Counsel in reference to the instant application submits that the Petitioner has not been called for any interview and thus this application is premature. In terms of the prayer of the amended Petition of the Petitioner, it is observed that the Petitioner is primarily seeking a writ of Certiorari to quash the document marked 'P15(a)' and 'P15(b)'. The said impugned documents reflect the decisions made by the selection committee of which 2nd, 8th, 14th, 15th, 23rd, 24th and 25th Respondents are members.

The learned Counsel for the Petitioner referring to the averments in paragraph 19 of the Petition informs Court that he intends to challenge the composition of the relevant selection committee as well. However, we are unable to find a properly formulated relief to that effect in the prayer of the instant application.

In addition to the reliefs prayed for in reference to the documents 'P15(a)' and 'P15(b)', the Petitioner is also seeking for a Writ of quo-warranto. According to the established law, we are of the view that no Writ of quo-warranto lies against the appointments of this nature which is more fully described in the Petition.

The learned State Counsel referring to the documents annexed to the motion dated 21/09/2022, submits that the Petitioner by way of his letter dated 19/11/2019 has specifically applied for the post of "Assistant Lecturer in Image Art/ Film and Television, Department of Fine Art".

The Vice Chancellor by letter, marked '3(a)', has sought permission from the University Grants Commission to interview only the applicants specializing in Drama and Theater before 24/11/2021. The Secretary to the University Grants Commission has communicated the decision taken at the 1065th meeting held on 28/10/2021 and has informed that the validity period of the advertisement for the post of Lecturer (Probationary)/ Lecturer (unconfirmed)/ Senior Lecturer Gr. II/I in the Drama, Theater and Image Arts Unit had been extended.

The learned State Counsel further points out that this Petitioner has filed a Fundamental Rights application bearing case No. SC FR/429/2021 on identical matters and further, the said Fundamental Rights application has been already refused by the Supreme Court.

The Court observes that the Petitioner's purported grievance is based on the fact that he has not been called for the interview mentioned in the Petition. The learned State Counsel referring to several documents which are filed of record submits that the application of the

Petitioner is premature. In the circumstances, we take the view that the Petitioner has failed to submit an arguable case and prima facie there is no merit in this application.

It is observed that the manner in which the prayer of the Petition has been formulated and the alleged contents of the body of the Petition do not warrant the Petitioner to duly challenge the composition of the respective selection committee in the instant application.

At the threshold stage of a judicial review application, as established by several judgements, the Court must be satisfied that there is a serious case to be heard and on the facts before Court there is a probability that the Petitioner is entitled to relief. The vitiating ground must be arguably material to the impugned decision and such decision must be arguably amenable to judicial review. (See-*Jinadasa vs. Weerasinghe 31 NLR 33 and R vs. Chief Rabbi ex. p. Wachmann (1993) 2 All ER 249*)

In light of the above, we are of the view that the Petitioner has failed to submit a prima facie case which warrants this Court to issue formal notice of this application on the Respondents.

Accordingly, we proceed to refuse this application.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal