

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

*In the matter of an application for mandate
in the nature of a writs of Certiorari and
Mandamus under article 140 of the
constitution of the democratic socialist
republic of Sri Lanka.*

Dr. Murukesu Thayanithy,
Valkaddu, Kokkaddicholai,
Batticalo.

Petitioner

CA (Writ) Application No.156/2021

Vs.

1. Eastern University, Sri Lanka
2. Prof. F. C. Ragal
Vice-Chancellor
3. Prof. V. Kanagasingham
4. Dr. (Mrs) Anjela Arulpragasam Anthony
5. Prof. P. Peratheepan
6. Mr. M. Pagthinathan
7. Mrs. V. R. Ragel
8. Dr. J. Kennedy
9. Dr. K. Premakumar
10. Mr. S. Thedchanamoorthy
11. Mrs. K. Shanthrakumar
12. Prof. M. Selvarajah
13. Prof. Riyas Sulaima Lebbe

14. Dr. S. M. Hussain
15. Dr. H. R. Thambawita
16. Dr. Gunasinham Sukunan
17. Mr. Seenithamby Mohanarajah
18. Mr. S. Thilagarajah
19. Mr. S. Shanmugam
20. Mr. P. Premanath
21. Mr. T. Sivanathan
22. Mr. A. L. Joufer Sedique
23. Mr. Nadaraja Sivalingam
24. Ms. S. J. M. S. Samarakoon
25. Dr. Sinnathamby Santhirasegaram
26. Mr. A. Pahirathan

All of

Eastern University, Sri Lanka,
Vantharumolai, Chenkalady.

27. University Grants Commission

No 20, Ward Place, Colombo 7.

28. Dr. (Mrs) Santhiradevi Thayakanthan

29. T. Megaraja

Both 28th and 29th are of

C/o Registrar

Eastern University, Sri Lanka,
Vantharumoolai, Chenkalady.

Respondents

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

Counsel : K. G. Jinasena for the Petitioner.
Rajin Gunaratne, SC for the Respondents.

Supported On : 24.03.2022, 03.06.2022

Decided on : 03.08.2022

Dhammika Ganepola, J.

The 1st Respondent Eastern University of Sri Lanka by its notice published dated 29.02.2020 (P7) had called for applications from qualified applicants to fill the posts of Senior Lecturer (Grade I/II), Lecturer (Unconfirmed), and Lecture (Probationary) in Tamil in its Department of Languages, Faculty of Arts and Culture. In response to the said notice, the Petitioner has submitted an application(P8) for the post of Senior Lecturer (Grade II). Accordingly, by the letter dated 08.02.2021(P9), the Petitioner has been called for an interview for the Post of lecture (Unconfirmed). The Petitioner states that there had been another interview conducted by the University on 08.03.2021 to select a suitable candidate for the post of Lecturer (Probationary). However, the Petitioner had not been summoned for the said interview. Later, the Petitioner had come to know that he has not been selected for any of the said posts for which applications were called by notice marked P7. Upon the queries made, the Petitioner has learnt that he had not been recommended by the Selection Committee due to his failure to obtain the required minimum marks as decided by the University. Nevertheless, the Petitioner states that he possesses all required qualifications to be appointed for the Post of Senior Lecturer (Grade II) under and in terms of the provisions of the Circulars issued by the 27th Respondent i.e., University Grants Commission (UGC). Therefore, the Petitioner states that the decision arrived at by the 1st Respondent based on the recommendations made by the Selection Committee, not to appoint the Petitioner for the post of Senior Lecturer (Grade II) is illegal, arbitrary, unreasonable and contrary to the provisions under the circulars issued by the 27th Respondent. Accordingly, the Petitioner seeks *inter alia* for a mandate in the nature of the *Writs of Certiorari*

(a)to quash the decision made by the Governing Council of the University to introduce a “required minimum mark” for the eligible candidates who appear before the Selection Committees,

(b) to quash the recommendations made by the Selection Committee not to appoint the Petitioner as a Senior Lecturer (Grade II),

(c) to quash the recommendations made by the Selection Committee to appoint the 29th Respondent as a Lecturer (Probationary) and also

Writ of Mandamus compelling the Council of 1st Respondent University to appoint the Petitioner to the post of Senior Lecturer (Grade II).

The Petitioner advances the position that where a candidate with a Doctoral Degree applies for the post of Senior Lecturer, applications at Lecture (Probationary) level shall not be considered until such applicant for the post of Senior Lecturer is first evaluated and deemed unsuitable. The Petitioner relies upon Clause 3(ii) of the Establishment Circular Letter No. 17/2005 marked as P12A. However, the learned State Counsel who appeared on behalf of the Respondents submits that the above Clause 3(ii) of the Circular P12A is subject to the Scheme of Recruitment marked as P12 and particularly to Clause No. 6(3) therein. It appears from the said Clause 6(3) that where a candidate with a Doctoral Degree applies for the post of Senior Lecturer, such candidate is required to possess at least six (6) years of experience in one or more items mentioned therein for such candidate to be considered for the post of Senior Lecture. Nevertheless, the available material does not reveal that the Petitioner possessed such experience. In such circumstances, I am of the view that the relevant authority is authorised to disregard and/or reject the application of the Petitioner who has failed to satisfy basic qualifications which are necessary for him to be appointed to the post of Senior Lecturer Grade II, even without calling for the interview.

In arriving at the above conclusion, I refer to the following considered view taken up by Honourable Justice Sobhitha Rajakaruna in agreement with me in a similar matter bearing Case No. CA/WRIT/568/2021 decided on 27.07.2022.

“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

mentioned in the advertisement upon which the applications were called for, by an authorized officer, cannot be considered unlawful.”

Accordingly, it has been already decided by this Court that the relevant appointing authority is authorized to disregard the applications of the applicants who do not possess the basic qualifications as mentioned above at the threshold stage of an interview process without summoning such applicants for an interview.

The Petitioner further states that if the Respondents were of the opinion that the Petitioner lacked the required experience to be appointed to the post of Senior Lecturer (Grade II), then the University had the discretion to appoint him to the Post of Lecturer (unconfirmed). The Petitioner relies upon Clause 03 of *Special Notes (1)* of the said Circular which signifies that:

“Candidates who shall possess the academic qualifications required for Lecture (Probationary) Non-Medical /Dental in the Scheme of Recruitment and who have obtained a Masters or a Doctoral Degree but less than 6 years of experience as specified in the Scheme of Recruitment for Senior Lecturer by open advertisement may be considered for appointment for Lecturer (but Unconfirmed) at the initial step of U-AC 3(iii)[thenB-03(a)] subject to a three-years period of probation.”

However, the Petitioner claims that no such proposal was submitted by the Selection Committee to the Council and that in fact, the Registrar of the University had failed to furnish with Commission Circular No.996 dated 09.10.2012 (P12B) to the Members of the Selection Committee as well as the Council.

Nevertheless, the said Commission Circular No.996 dated 09.10.2012 has been repealed as per the provisions of Commission Circular No. 07/2018 dated 02.08.2018 which was submitted by the Respondents. Therefore, the provisions of the Commission Circular No.996 dated 09.10.2012 upon which the Petitioner relies upon has no effect in law.

Another contention taken up by the Petitioner is that the definition of the term “a ‘required minimum mark’ that should have been obtained during the interview in order to be recruited” as referred to by the Selection Committee is ambiguous. The Petitioner claims that the Respondents have no authority to introduce any such new

condition to the Scheme of Recruitment (P12) and that the “Marking Scheme” marked as P10 makes no reference to any such “required minimum mark” to be obtained by a candidate to be appointed to a post in the Academic Staff.

The Petitioner concedes the fact that it is mandatory for the Universities to follow the provisions contained in the Circulars issued by the 27th Respondent in making appointments for the posts of the academic staff. The stance of the Respondents in this regard is that Section 3 of the Establishment Circular Letter No. 5/2018 dated 02.04.2018(P13A) requires the University to obtain the approval of the Governing Authority in respect of a duly designed Marking Scheme and it should be obtained prior to conducting the interviews for the recruitment to any post.

It appears that the document P10 submitted by the Petitioner claiming to be the Marking Scheme is certainly not a Marking Scheme. It is merely an Evaluation Sheet. The actual marking scheme which was approved by the University Council at its 298th meeting held on 25.05.2019 has been submitted to Court by the Respondents marked as ‘X₁’ along with the motion dated 15.06.2022. It is observed that the said marking scheme has been approved by the University Council before the date of the interview, i.e., 15.02.2021. Upon perusal of the said marking scheme ‘X₁’, it appears that the minimum required mark has been pre-determined by the University Council before the evaluation of the candidates as required by law. Therefore, it is indisputable that the University Council is vested with the authority to decide the minimum required mark that is necessary for a candidate to be selected for the respective post. In the above circumstances, I am not inclined to accept the argument advanced by the Petitioner that the specification of the “minimum required mark” is ambiguous and also that it was illegal for the Respondents to include such requirement into the marking scheme.

It is observed that in terms of the advertisement P7 published by the 1st Respondent University, the candidates who apply for more than one post should submit separate applications for each post. However, as per the Petitioner’s application marked P8, he has applied only for the post of Senior Lecturer (Grade II). It does not appear from the evidence placed before this Court that the Petitioner has made any formal application for any of the other posts. Hence as of right, the Petitioner is not in a position to claim that he should be considered for the other posts for which he has not applied for. In fact, under such circumstances, it is observed that in any event

the Petitioner's rights had not been deprived completely since he has at least been called for an interview for the post of Lecturer (unconfirmed). Therefore, I am of the view that no prejudice has been caused to the Petitioner.

In light of the foregoing and based on the principles that should be adopted in respect of matters relating to the issuance of notice in a judicial review application, I see no arguable case or a *prima facie* case to issue notice on the Respondents in this application. Therefore, I refuse to proceed with this application.

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal