

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

*In the matter of an Application, mandated in the
nature of Writs of Certiorari, Prohibition and
Mandamus under and in terms of Article 140 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.*

CA/WRIT/118/2021

Ven. Ethkandure Sumanasara Thero
No. 218, Sri Shailaramaya,
Hokandara North,
Arangala.

Petitioner

Vs.

1. Buddhist and Pali University of Sri Lanka
Gurulugomi Mawatha, Pitipana North,
Homagama.
2. Ven. Kotugoda Dhammawasa Mahanayake Thero
Chancellor,
Buddhist and Pali University of Sri Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
3. Prof. Ven. Neluwe Sumanawansa Thero
Vice Chancellor, Chairman,
University Council,
Buddhist and Pali University of Sri Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
4. Prof. Samantha Illangakoon
Member, University Council,
Buddhist and Pali University of Sri Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.

5. Prof. Ven. Moragolloagama
Uparathana Thero
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
6. Assistant Prof. Ven. Lenagala
Sirinivasa Thero
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
7. Snr. Prof. Ven. Uthuravala
Dharmarathana Thero
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
8. Snr. Prof. Ven. Ilukevala
Dhammarathana Thero
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
9. T. N. Hettiarachchi
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
10. Rajakeeya Panditha Most Ven.
Thirikunamle Ananda Thero
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.

11. Prof. Kapila Gunawardena
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
12. Prof. Ven. Niyangoda Vijithasiri Thero
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
13. Dr. Ven. Bellanwila Dhammarathana
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
14. Snr. Prof. Ven. Indhuranghare
Dhammarathana Thero
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
15. Snr. Prof. Wimal Wijeratne
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
16. Snr. Prof. Uditha Gurusinghe
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
17. Kalyananda Thiranagama
Attorney-at-Law
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.

18. Prashantha Lal de Alwis
President's Counsel,
Member, University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
19. R. A Piyaratne
Secretary,
University Council,
Buddhist and Pali University of Sri
Lanka, Gurulugomi Mawatha,
Pitipana North, Homagama.
20. University Grants Commission
No. 20, Ward Place,
Colombo 07.
21. Snr. Prof. Sampath Amaratunga
Chairman,
University Grants Commission,
No. 20, Ward Place, Colombo 07.
22. Snr. Prof. Janitha A. Liyanage
Vice Chairperson,
University Grants Commission,
No. 20, Ward Place, Colombo 07.
23. Prof. Rev. Kollupitiye Mahinda
Sangharakkitha Thero
Member,
24. Snr. Prof. A. K. W. Jayawardane
Member,
25. Prof. Vasanthi Arasaratnam
Member,
26. Prof. Premakumara de Silva
Member,
27. Palitha Kumarasinghe, PC
Member,

28. R. H. W. A. Kumarasiri
Member,

22nd to 27th Respondents are Members
of the University Grants Commission,
No. 20, Ward Place, Colombo 07.

29. Dr. Priyantha Premakumara
Secretary,
University Grants Commission,
No. 20, Ward Place, Colombo 07.

30. Prof. K. Kapila C. K. Perera
Secretary, Ministry of Education,
“Isurupaya”,
Battaramulla.

31. Prof. G. L. Peiris
Hon. Minister of Education,
Ministry of Education,
“Isurupaya”,
Battaramulla.

32. Vijitha Berugoda
Hon. State Minister of Dhamma
Schools, Bhikku Education, Pirivena
and Buddhist Universities,
Ministry of Education,
“Isurupaya”,
Battaramulla.

33. Hon. Attorney General
Attorney General’s Department,
Hulftsdorp Street, Colombo 12.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Sanjeeva Jayawaradane PC with Ridmi Beneragama for the Petitioner.

S. Wimalasena, DSG with Medhaka Fernando, SC for the 1st to 19th and 30th Respondents.

Argued on : 13.12.2022

Decided on : 03.02.2023

Sobhitha Rajakaruna J.

The Petitioner is primarily seeking for mandates in the nature of writs of Certiorari quashing the decisions of the Respondents to suspend the services of the Petitioner from his post of lecturer in ‘Sanskrit’ at the 1st Respondent-Buddhist and Pali University (‘University’) by and through the letters dated 30.09.2020 and 08.10.2020, marked ‘P32a’ and ‘P33’, respectively. As per the said letter ‘P33’, the payment of salary also has been suspended with effect from 02.10.2020.

It is admitted that after the suspension of services, a formal disciplinary inquiry has commenced against the Petitioner based on the charge sheet dated 15.10.2020, marked ‘P35’. Although, the Petitioner argues that the charges contained in the said charge sheet are pernicious and ill-motivated and made up of the most trivial and baseless allegations, I am of the view that such issues should be first dealt with at the disciplinary inquiry which is currently in progress. I am aware that the Establishments Code of the Government of Sri Lanka has no application to the staff of the University but I need to refer to its Clause 14:1 (of the Chapter XLVIII) which stipulates that the statement of charges need not take a legalistic form and all that is required is a clear and simple statement of the facts or omissions for which it is intended to punish the officer. Thus, I see no reason to examine such charges at this stage as there is no ex-facie illegality or unlawfulness involved in issuing the said charge sheet.

The question that needs consideration of this Court is whether the suspension of the services and the payment of salary of the Petitioner are rational. The contention of the Petitioner is that the said temporary suspension is inter alia ultra vires, unreasonable and irrational as it has been done without any hearing and giving reasons.

Based on the circumstances of this case, I take the view that it is fit and proper to be guided by the rationale adopted in some provisions of the University Establishment Code ('Code') in order to determine the issues of this case. I must draw my attention to Chapter XXII of the Code which deals with disciplinary procedure. The Section 18 of Chapter XXII illustrates rule on Interdiction and Compulsory Leave.

18:1 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 forthwith be interdicted from office by the Chairman of the Commission or the Principal Executive Officer of the Higher Educational institution provided that:

- a) 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: or
- b) a report has been received from a Court of Law or Statutory Authority in terms of sub-section 16:1 or an offence has been disclosed in terms of sub-section 15:1 in a matter sufficiently serious to warrant his eventual dismissal after the matter has been considered by the appropriate Disciplinary Authority in terms of sub-para 16:2.

On perusal of the Statement of Objections of the Respondents, it is observed that the Respondents have failed to demonstrate that the disciplinary proceedings instated on charges are sufficiently serious to warrant the Petitioner's dismissal, if such are established. The charges contained in the said charge sheet cannot be assumed, at this stage, as criminal offences or bribery charges. No evidence has been tendered to Court that continuance of the Petitioner in service is detrimental for the holding of the disciplinary inquiry against him. Hence, it appears that the decision to suspend the services of the Petitioner has been taken without a rational basis.

I have observed that even the rationale adopted in the aforesaid Establishments Code applicable to public servants in reference to interdiction and payment of wages during the period of interdiction is more or less similar to the provisions of the University Establishment Code.

The rationale adopted in the said Section 18:3 of the Code is also important and accordingly, if a person has been interdicted, it is essential that the proceedings against him should be completed with the least possible delay. The Petitioner's services have been suspended by letter dated 30.09.2020 and however, the formal disciplinary inquiry has not been concluded up to date. No adequate justification has been submitted to Court for such delay other than the purported reason that an interim order issued by this Court on 21.11.2022 to maintain the status quo was in operation. Similarly, I am attracted to the rationale adopted in Section 8:7 of Chapter VI of the said Code. Section 8:7;

'If the disciplinary proceedings against a person whose total emoluments have been withheld under section 8:2 and 8:3 are not completed within a period of one year, and the facts of the case are not so serious as to justify withholding his total emoluments any further, the appointing authority may, authorize a payment not exceeding one half emoluments commencing from a date which is not retrospective and which falls after a period of one year, from the date of interdiction plus the period of any postponement of the disciplinary proceeding attributed to or made at the request of the person under interdiction'.

It is noted that a period over two years has lapsed since the suspension of services of the Petitioner and however, the disciplinary inquiry is yet to be concluded. Moreover, the withholding of emoluments of an officer under Sections 8:2 and 8:3 is based on an interdiction on conviction on a criminal charge and interdiction in respect of offences such as negligence, misappropriation, fraud, forgery or similar misdemeanour committed in respect of public property causing loss to the government.

On a careful consideration of the whole matter, I have come to the conclusion that by reason of special circumstances of this case, I should exercise my discretion to quash the decision of the Respondents to suspend the services of the Petitioner and also the decision to suspend the payment of salaries.

I am not inclined to examine the matters pertaining to the other reliefs sought by the Petitioner in the prayer of the Petition as the disciplinary inquiry against the Petitioner should continue without any encumbrances and the Petitioner should not have a special privilege during the pendency of the disciplinary inquiry. Anyhow, I have drawn my attention to the relief sought in paragraph (k) of the prayer of the Petition by which the Petitioner has sought a writ of Mandamus directing several Respondents to pay 'back wages' to the Petitioner in the event that the innocence of the Petitioner is proven at the disciplinary inquiry. I take the view that the decision of payment of back wages and other emoluments should be taken by the relevant Disciplinary Authority after the conclusion of such disciplinary inquiry. Hence, I hold that the above conclusion of this Court to lift the suspension of the payment of salary should not give an additional right for the Petitioner to obtain back wages for the period prior to the date of this judgement.

In the circumstances, I proceed to issue writs as prayed for in paragraphs (b) and (c) of the prayer of the Petition of the Petitioner. However, this judgement should not be an impediment for the relevant Authorities to continue and conclude the formal disciplinary inquiry against the Petitioner expeditiously. Also, this judgement should not be a hinderance to take any appropriate decision by the Respondents including the suspension of services if fresh evidence is revealed during the course of the disciplinary inquiry that the continuance of the Petitioner in service is detrimental to the holding of the said disciplinary inquiry.

Application is partly allowed.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal