

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

In the matter of an application in the nature of Writs of Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Case No:

CA-Writ-0430-19

Dr. Ranganathan Kapilan,
8A, Pandarakkulam West,
Nallur, Jaffna.

PETITIONER

1. The University Services Appeals Board,
No 20 Ward Place,
Colombo 07.
2. Mr. Palitha Fernando. PC,
Chairman, University Services Appeals Board,
No 20, Ward Place,
Colombo 07.
3. Mr. Neville Abeyratne. PC,
Vice Chairman, University Services Appeals Board,
No 20, Ward Place,
Colombo - 07.
4. Dr (Mrs). Neela Gunasekera,
Member, University Services Appeals Board,
No 20, Ward Place,
Colombo - 07.
5. The University of Jaffna,
Thirunelvelly, Jaffna.
6. Prof. T. Vigneswaran,
Associate Professor in Mathematics,
Former Vice Chancellor & Dean / Science.
7. Prof. K. Kandasamy,
Competent Authority,
Chairperson, Council of the University of Jaffna,
Thirunelvelly, Jaffna.

8. Mr. V. Kandeepan,
Registrar,
Secretary/ Council of the University of
Jaffna,
Thirunelvely, Jaffna.
9. Dr. T. Mangaleswaran,
Rector, Vavuniya Campus.
10. Prof. J. P. Jeyadevan,
Dean, Science.
11. Prof. G. Mikunthan,
Dean, Graduate Studies.
12. Dr. K. Suthakar,
Dean, Arts.
13. Dr. S. Sooriyakumar,
Dean, Agriculture.
14. Dr. S. Raviraj,
Dean, Medicine.
15. Prof. A. Atputharajah,
Dean, Engineering.
16. Prof. T. Velnamby,
Dean, Management Studies & Commerce.
17. Dr. (Mrs.).S. Sivachandran,
Acting Dean, Technology.
18. Dr. A. Pushpanathan,
Dean, Business Studies -Vavuniya
19. Prof. P. Ravirajan,
Department of Physics.
20. Ms. S. Abimannasingham,
Notary Public.

21. Dr. Aru Thirumurugan,
President of the Tellipalai Dhurga
Devasthanam
22. Mr. P. Eeswaradasan,
Former Registrar, Land Registry
23. Mr. D. K. P, U. Gunathilake,
Deputy General Manager (CEB,
Northern).
24. Rev. Fr. M. Jero Selvanayagam,
Former Rector, St. Patrick's College.
25. Mr. V. Kanagasabapathy
Finance Commission of Sri Lanka.
26. Dr. P. Lakshman,
Consultant, Jaffna Teaching Hospital.
27. Mr. Mano Sekaram,
CEO and Co-Founder at 99X
Technology.
28. Dr. T. Sathiyamoorthy,
Director/Jaffna Teaching Hospital.
29. Dr. S. Sivasegaram,
Retired Professor, Peradenya Mech. Eng.
30. Prof. C. Sivayoganathan,
Emeritus Professor, University of
Peradeniya.
31. Prof. Jayadewa Uyangoda,
Senior Professor of Political Science.
32. Mr. N. Vethanayahan,
Government Agent, Jaffna.

33. Prof. Jayadewa Uyangoda,
Senior Professor of Political Science.

34. Mr. N. Vethanayahan,
Government Agent, Jaffna.

35. Mr. N. Vishnukanthan
Lawyer, Colombo.

33. Dr (Mrs.) S. Srimuraleetharan,
Acting Dean, Hindu Studies.

34. Dr (Mrs.) A Nanthakumar,
Applied Science – Vavuniya

35. Mrs. T Raveenthiran,
Head, Human Resources Management.

36. Mr. A. L. Juffer Sadique,
Retired Registrar, UOM.

08th - 37th Respondents are Members
of the Council of the University of Jaffna.

37. Prof. V. Tharmaratnam,
Emeritus Professor of Mathematics,
Former Council Member of University of
Jaffna,
Former Dean, Science.

38. Prof. S. K. Sitrapalam,
Emeritus Professor of History,
Former Member of UGC,
Former Council Member of University of
Jaffna,
Former Dean, Arts & Graduate Studies.

39. Dr. N. Jeyakumaran,
Clinical Oncologist & Consultant,
Maharagama Cancer Hospital,
Former Council Member.

40. Prof. S. Abeysinghe,
Professor, Department of Botany,
University of Ruhuna.
41. Prof. L. R. Jeyasekara,
Professor, Department of Botany,
University of Kelaniya.
42. Prof (Mrs). N. Salim,
Professor, Department of Botany,
University of Sri Jayewardenepura.

RESPONDENTS

43. Prof S. Srisatkunarajah,
Vice Chancellor,
University of Jaffna,
Thirunelvelly, Jaffna.
44. Mrs. D. Thabotharan,
Dean / Allied Health Science.
45. Dr. Y. Nanthagopan,
Dean/ Business Studies Vavuniya.
46. Mr. S. Suthaharan,
Dean / Technological Studies.
47. Prof K. Velauthamoorthy,
Department of Chemistry.
48. Prof. P. Balasundarampillai,
UGC Appointed Member.
49. Prof Jagath Weerasinghe,
UGC Appointed Member
50. Prof Kumudu Wijewardena,
UGC Appointed Member.
51. Prof Mahinda S. Rupasinghe,
UGC Appointed Member.

52. Dr. S. Mohanadas,
UGC Appointed Member.
53. Mr K. Rushangan,
UGC Appointed Member.
54. Mr. K. Sivaram,
UGC Appointed Member.
55. Mr. V. Suthakar,
UGC Appointed Member.
56. Mr. P. Sutharshan,
UGC Appointed Member.
57. Mr. M. Thiruvathavooran,
UGC Appointed Member.
58. Mr. P. Thiyagarajah,
UGC Appointed Member.
59. Mr. T. Vignaraja,
UGC Appointed Member.
60. Mr. T. Vimalan,
UGC Appointed Member.
61. Mr. V. Vithurson,
UGC Appointed Member.

44 - 61 Respondents are
Members of the
Council of the University of Jaffna
Thirunelvely, Jaffna

ADDED RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

S.N. Vijith Singh for the Petitioner.

M. Jayasinghe, DSG. with A. Gajadeera, SC for the 1st to 36th and 40th to 42nd
Respondents.

Written submissions tendered on:

20.12.2022 by the Petitioner

20.12.2022 by the Respondents

Argued on: 19.10.2022

Decided on: 22.06.2023

S.U.B. Karalliyadde, J.

By this Writ Application, the Petitioner seeks to issue as substantive reliefs the Writs of Certiorari to quash the Orders dated 31.07.2018 and 20.08.2019 of the University Service Appeal Board (the USAB) and a Writ of Mandamus to direct the Respondents to appoint him in the position of Full Professor in the Department of Botany with effect from 29.12.2015 in the University of Jaffna (the University). The position of the Petitioner is that he possesses the necessary qualifications to be promoted to the Post of Full Professor according to the University Grants Commission Circular No.916 dated 30.09.2009 and Established Circular Letter No. 04/2010 dated 19.03.2010. When the Application of the Petitioner was referred to the Selection Panel as necessary, he has

been deliberately under marked by the Panel chaired by the 6th Respondent for some unknown reason. As a result, he has been promoted to the Post of Associate Professor but not to the Post of Full Professor. In terms of the marking scheme marked as P8A, the maximum marks needed for a Full Professor under the three categories mentioned in P8A are 20, 50 and 10 respectively, and the applicant should score total marks of 105. The Selection Panel has given 15, 106.65 and 19.25 marks respectively under three Categories and a total mark of 140 to the Petitioner. He claims that the Selection Panel has under marked Items 1.5 and 1.6 in Category 1 and as a result, he has not been appointed as a Full Professor. Under Item 1.5, it has been considered by the Selection Panel the applicant's participation in Continuing Professional Development Programmers/Extension Courses/ Short Courses and under Item 1.6, the applicant's contribution to institutional development. He has been given no marks out of 10 under 1.5 and only 2 marks under 1.6 out of 20. As such he has been selected for the Post of Associate Professor but not for the Post of Full Professor. Being aggrieved by the decision of the University not to promote him to the Post of Full Professor the Petitioner appealed to the USAB seeking relief to direct the Respondents to promote him to the Post of Full Professor. The USAB in its Order dated 31.07.2018 marked as P4 directed the Council of the University to look into the marks given to the Petitioner under Items 1.5 and 1.6 in Category 1 through an independent panel along with observations of the 37th Respondent to this Writ Applications. The USAB arrived at the above-stated decision on the premise that the members of the USAB are not competent to pronounce upon an academic evaluation upon which an appointment is made, where the evaluation has been made by experts in the relevant field and it is a matter for the authorities of the Higher Educational Institution concerned. The USAB dismissed the appeal subject to the above-stated variation but kept the matter open for the Petitioner to reactivate the

appeal if the findings of the independent panel are adverse to him. Consequent to the Order of the USAB the University appointed a panel to evaluate the marks given to the Petitioner under items 1.5 and 1.6 and being aggrieved by the evaluation done by that panel, the Petitioner re-invoked the jurisdiction of the USAB by reactivating his appeal to the USAB. By the Order dated 20.08.2019 marked as P12, the USAB held that it could not grant relief mentioned hereinbefore sought by the Petitioner from the USAB and dismissed the appeal. The main reason for the dismissal of the appeal is that the USAB has no expertise to decide on the expertise of the members of the independent panel appointed to reconsider the Petitioner's marks. Even though, in the Petition to his Writ Application, the Petitioner seeks to quash the Orders dated 31.07.2018 marked as P5 and 20.08.2019 marked as P12, on 19.10.2022 when the matter was taken up for argument the learned Counsel appearing for the Petitioner stated to Court that he is seeking a Writ of Certiorari only to quash the Order dated 20.08.2019 and a Writ of Mandamus directing the Respondents to appoint the Petitioner in the position of Full Professor. He stated that he is not seeking a Writ to quash the Order dated 31.07.2018. Accordingly, both parties filed written submissions

At the outset, it has to be noted that in the submissions on behalf of the Petitioner nowhere has stated or demonstrated that the decision mentioned in P12 is illegal, arbitrary unreasonable or perverse and the Court also could not see any illegality, arbitrariness, unreasonableness or perverseness in that decision. According to the celebrated dictum of Lord Brightman, in Writ matters Court is not concerned with the decision of the statutory body but the decision-making process. The Petitioner does not claim that the decision-making process of the USAB is tainted by any procedural error. Under such circumstances, this Court would not interfere with the Order dated 20.08.2019 of the USAB.

The USAB by Order dated 20.08.2019 dismissed the Appeal of the Petitioner on the basis that it has no expertise to decide on the expertise of the members of the independent panel appointed to reconsider the marks of the Petitioner. The Petitioner has been given no marks out of 10 under Item 1.5 and 2 marks out of 20 under 1.6. The position of the Petitioner is that he is entitled to 9 and 17 marks respectively for those items. The Petitioner claims that the independent panel has not considered under item 1.5 his role as a resource person for 14 years. He further claims that the marks allocated to him under 1.6 are unfair and unjust. In sub-paragraph VII of paragraph 18 in the written submissions the Petitioner has admitted that all 5 members in the independent panel appointed in consequent to the directions of the USAB are highly qualified but none of the research area the 5 panel members falls in the area of specialization of the Petitioner. As correctly held by the USAB neither this Court nor the USAB has the expertise to decide on the expertise of the first interview panel or the independent panel subsequently appointed. As mentioned hereinbefore since there is no material before Court that the decision of the USAB contained in P12 is illegal or arbitrary or unreasonable or perverse or tainted by procedural error, this Court would not seek to substitute its view.

In the case of *Dr. C.J.A. Jayawardena Vs University of Colombo and 28 Others*¹, his Lordship Justice Arjuna Obeyesekere investigated whether academic issues are outside the jurisdiction of this Court. In delivering the judgement his Lordship observed that;

“The issue that this Court must decide in this application is whether the decision of the 1st Respondent not to appoint the Petitioner to the post of Associate Professor/Professor is illegal, irrational or unreasonable.

¹ CA (Writ) Application No. 137/2018; CA Minutes of 22nd of June 2020.

In considering the above issue, this Court would first like to lay down the parameters within which Courts have previously acted when faced with decisions by academic institutions, especially since this is a matter on which a great deal of emphasis has been placed by the learned Senior State Counsel in resisting this application.

*In **Administrative Law** by Wade and Forsyth,² it has been pointed out that Courts will be reluctant to enter into "issues of academic or pastoral judgment which the University was equipped to consider in breadth and in-depth but on which any judgment of the Courts would be jejune and inappropriate. That undoubtedly included such questions as what mark or class a student ought to be awarded or whether an aegrotat was justified."*

*In **Abeyesundara Mudiyanseelage Sarath Weera Bandara vs University of Colombo and others**³, having considered several English cases in this regard, this Court held as follows:*

"The consistent judicial opinion therefore, is that in matters which lie within the jurisdiction of the educational institutions and their authorities the Court has to be slow and circumspect before interfering with any decision taken by them in connection therewith. Unless a decision is demonstrably illegal, arbitrary and unconscionable, their province and authority should not be encroached upon. This is mainly because of want of judicially manageable standards and the necessary expertise to assess, scrutinize and judge the merits and/or demerits of such decisions. Dealing with the scope of interference in matters relating to orders passed by the authorities of educational institutions, the Courts should normally be very slow to pass orders in

² H.W.R. Wade, C.F. Forsyth, *Administrative Law* (11th Edition, Oxford University Press 2014) page 537.

³ CA (Writ) Application No. 844/2010; CA Minutes of 8th June 2018.

regard thereto and such matters should normally be left to the decision of the educational authorities.”

Observing the aforementioned authority Justice Arjuna Obeyesekere further held as follows: *“This Court is therefore of the view that while due recognition will be given to the view of the decision maker, whether the decision relates to academic matters or otherwise, this Court can, and will, in the exercise of the jurisdiction vested in it by Article 140 of the Constitution. examine whether the impugned decision of the 1 Respondent is tainted with illegality. irrationality or procedural impropriety. This Court would however exercise extreme caution if asked to consider, for example as in this case, whether a decision of a selection board or panel to award less marks than what a petitioner claims is rightfully due, is irrational or unreasonable.”*

The Petitioner in the instant Application alleges that the University has violated the 1st Order dated 31.07.2018 marked as P4 in appointing the members to the independent panel. Nevertheless, when perusing the Order dated 20.08.2019 of the USAB marked as P12, this Court could see that the Counsel appeared for the Petitioner before the USAB admitted that he had no objections to the members appointed to the independent panel. On the other hand, if the University violated the Order of the USAB marked as P4, the Petitioner could have easily brought it to the notice of the USAB without waiting until the decision of the independent panel was made as the USAB has given permission in the 1st Order marked as P4 to the Petitioner to reactivate his Appeal to the USAB. Therefore, I am of the view that there is no merit in the allegation of the Petitioner about the violation of the Order marked as P4 by the University in appointing the members to the independent panel.

The Petitioner alleges that the members of the independent panel had been appointed without obtaining the prior approval of the USAB or Senate or University Council or Petitioner. In P4, the USAB has not imposed such a requirement. The Petitioner also alleged that as directed by the USAB by the Order marked as P4, the observations of the 17th Respondent were not considered by the independent panel. In the Order marked as P12, the USAB has observed that the copies of the previous proceedings before the USAB had been made available to the independent panel. It has held that in the absence of any material that the observations were suppressed from the panel or that the panel did not consider the observations the USAB is unable to hold the evaluation has been done without considering the observations of the 17th Respondent. Under such circumstances, the view of this Court is that the said allegation of the Petitioner has no merits.

The Petitioner seeks a writ of mandamus directing the Respondents to appoint him to the post of Full Professor in Botany. It is settled law that for a Mandamus to issue, the Petitioner must have a legal right and the Respondents must have a corresponding public duty.

In *Credit Information Bureau of Sri Lanka Vs. Messers Jafferjee and Jafferjee (Pvt) Ltd*⁴, the Supreme Court referred to the conditions that should be fulfilled prior to issuance of a writ of mandamus.

“There is rich and profuse case law on mandamus, on the conditions to be satisfied by the applicant. Some of the conditions precedent to the issue of mandamus appear to be:

⁴ (2005) 1 SLR page 89.

a) *The applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought..... The foundation of mandamus is the existence of a legal right.*

b) *The right to be enforced must be a “public right” and the duty sought to be enforced must be of a public nature....”*

Referring to the above case, in *Kaluarachchi Vs Ceylon Petroleum Corporation and Others*⁵ Fernando J, stated that, *“the foundation of mandamus is the existence of a legal right. A court should not grant a Writ of Mandamus to enforce a right which is not legal and not based upon a public duty.”*

Furthermore, in the case of *Ratnayake And Others Vs. C.D. Perera and Others*⁶ Sharvananda, J. held as follows;

“The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform. Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest...”

In the instant Application, selection to the post of Full Professor has been done by a panel of experts through their expertise considering the marks obtained by the applicants. In such a situation no applicant has a legal right to be appointed to the post nor the panel has a public legal duty towards the Petitioner or the other applicants to appoint him/them to the post. Under the above-stated circumstances, I hold that the

⁵ SC Appeal No. 43/2013; SC Minutes of 19th June 2019.

⁶ (1982) 2 Sri LR 451.

Petitioner is not entitled to the reliefs sought in the Petition to this Writ Application.
Therefore, the Application is dismissed without costs.

Application dismissed

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL