

**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 a Writ of
Certiorari, a Writ of Mandamus and Writ
of Prohibition under Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

A. T. Muditha Sahandani
No. 74/6, Tangalle Road,
Devinuwara.

PETITIONER

C.A. Case No.WRT-286/20

Vs.

1. University Grants Commission
2. Prof. Sampath Amarathunge
Chairman.
3. Prof. Janitha Liyanage
- 3A. Snr. Prof. Chandana P. Udawatte
4. Prof. A. K. W. Jayawardane
5. Prof. Vasanthi Arasaratnam
6. Prof. Kollupitiye Mahinda Sangarakitha
Thero
- 6A. Ven. Prof. Kotapitiye Rahula Thero
7. Prof. Premakumara de Silva
8. Mr. Palitha Kumarasinghe PC
9. Dr. Priyantha Premakumara
10. Mr. L. P. H. Waduge
- 10A. Mr. R. H. W. A. Kumarasiri

11. Prof. Mohan de Silva
Former Chairman
12. Prof. P. S. M. Gunaratne
13. Prof. Hemantha Senanayake
All are of
University Grants Commission
No 20, Ward Place, Colombo 07.
14. Prof. E. M. P. Ekanayake
Vice Chancellor
Wayamba University of Sri Lanka,
Kuliyapitiya.
15. Mr. K. G. Brito
Registrar,
Sri Jayawardenapura University
Nugegoda.
16. Ms. Y. A. A. Abeysinghe
17. Ms. Tinesha S, Nanayakkara
18. Ms. G. N. P. Mallika
19. Mr. E. G. Ajith Dammika
20. Ms. C. D. Amarathunga
21. Mr. Wijayarathe, T. D. A. M.
22. Ms. M. P. G. Silva
23. Ms. Kahawela, K. H. W. K. G.
24. Ms. Lakmali, K. G. I.
25. Ms. Jayaweere, R. K. H. A.
26. Ms. Sarojinidevi, T.
27. Mr. Janaka Ranjana, S. M.
28. Ms. Bandara, R. M. D. M.
29. Ms. Wijethungaarachchi, I. U.
30. Mr. Sivarash, S.
31. Ms. Fouzena, M. T.

32. Mr. Arulkumaran, M.
33. Ms. Abeysinghe, H. K. I. P.
34. Ms. Ranasinghe, E. H. M.
35. Ms. Meddage, M. D. N. K.
36. Mr. Hisnathas, A.
37. Ms. Chathurika, P. D. S.
38. Mr. Sawanawadu, D. S. R. C.
39. Ms. Wijerathne, G. W. N. R.
40. Mr. Basnagala, E.
All of
C/O, the Secretary,
University Grants Commission
No 20, Ward Place, Colombo 07.
41. Ms. Senani Kalugama
Registrar,
University of Ruhuna,
Wellamadama, Matara.
42. University Services Appeals Board
43. Palitha Fernando, PC
- 43A. Mr. Maithri Evan Wickramasinghe PC
44. Neville Aberathne, PC
- 44A. Snr. Prof. W. G. D. Dharmaratne
45. Dr. (Mrs) Neela Gunasekara
- 45A. Mr. Sugath Caldera
42nd to 45th of
No. 20, Ward Place,
Colombo 07.

RESPONDENTS

BEFORE : **M. SAMPATH K. B. WIJERATNE, J**
WICKUM A. KALUARACHCHI, J

COUNSEL : K. G. Jinasena for the Petitioner.
Nayomi Kahawita, SSC for the Respondents.

ARGUED ON : 07.07.2023

DECIDED ON : 08.08.2023

WICKUM A. KALUARACHCHI, J.

The petitioner, who was employed as a Management Assistant (Grade-III) of the Ruhuna University, applied for the post of Assistant Registrar/Assistant Secretary of the University Grant Commission (hereinafter referred to as the "UGC"). The petitioner has been called for a written examination, and the Secretary of the UGC, by his letter dated 13th June 2018 informed the petitioner that she had been successful at the written examination. The petitioner had obtained 173 marks at the written examination, as per the examination results sheet marked P-8 with the petition. Thereafter, the petitioner has been called for an interview by the letter dated 06th July 2018 marked P-9. In the said letter, it is stated that the marking scheme for the structured interview is attached to the letter as Annex-1. It is also stated in P-9 that as per the scheme of recruitment, a minimum of 40% marks should be obtained in order to consider for an appointment. According to the marks sheet of the interview (P-18), the petitioner obtained 33.65%, and thus she was informed that she is unsuccessful at the interview. Subsequently, the petitioner filed an appeal before the University Services Appeals Board (hereinafter referred to as "USAB") praying to set aside the decision made by the 1st respondent, UGC to appoint the 12th to 18th or any other applicants as Assistant Registrars and to appoint the petitioner as an Assistant Registrar/Assistant Secretary. After considering the application, as it transpires from the decision

marked P-24, the USAB has dismissed the appeal preferred by the petitioner.

Being aggrieved by the said decision, the petitioner filed this writ application seeking the following reliefs.

- I. A mandate in the nature of Writ of Certiorari to quash the decision made by the 1st respondent UGC to appoint the 16th to 40th as Assistant Registrars/Secretaries of the 1st respondent UGC.
- II. A mandate in the nature of Writ of Certiorari to quash the order made in P-24 by the 42nd to 44th respondents of the 41st respondent, USAB.
- III. A mandate in the nature of Writ of Mandamus compelling the 1st respondent UGC to conduct fresh interviews in terms of the procedure laid down in P-3 and P-14.
- IV. Direct the 9th respondent, the secretary of 1st respondent, UGC to make available to the court the individual marks sheet used by the 9th to 15th respondents, the members of the Selection Committee appointed by the 1st respondent, UGC.
- V. A mandate in the nature of Writ of Prohibition preventing the 1st respondent UGC of calling applications to fill the existing vacancies for the post of Assistant Registrar/Secretary until the final determination of this application.

Before dealing with other matters, it is to be noted that a writ of prohibition cannot be issued until the final determination of the writ application. Therefore, the prayer (F) (the aforesaid relief V) of the petition cannot be granted.

It is stated in the statement of objections filed on behalf of the respondents that the marking scheme, which was duly approved by the UGC in the year 2016 was used at the interview, and the petitioner was not selected for the appointment because she had not obtained the

required 40% in the interview. Praying to dismiss the petition, it is further stated in the statement of objections that the specified correct procedure has been followed in selecting Assistant Registrars.

The petitioner then filed her counter affidavit. At the hearing of the application, the learned Counsel for the petitioner and the learned Senior State Counsel for the Respondents made oral submissions.

The learned Counsel for the petitioner advanced his arguments on the following grounds.

- I. Although it is stated in the letter P-9 that the marking scheme for the structured interview is attached to P-9, a document (P-10) containing only the subtopics in the marking scheme for the structured interview was attached to P-9. As the marking scheme for the structured interview was not given to the petitioner prior to the interview, a fair interview was not held, and UGC contravened the scheme of recruitment and procedure.
- II. The Selection Committee had not been properly constituted, the Selection Committee failed to comply with the procedure followed in the past and no proper marking scheme had been used.
- III. The decision of the USAB to dismiss the petitioners appeal on the ground that the board has no jurisdiction to intervene is erroneous. The finding of the USAB that the evaluation process and the marks given to the petitioner are beyond the expertise of this Board is illegal and irrational. Thus, the USAB order has been made in contravention of the provisions in the Universities Act.

First, I deal with the aforesaid first argument of not giving the marking scheme to the petitioner prior to the interview. Citing the judgments of fundamental rights cases, ***Perera and Nine others v. Monetary Board of the Central Bank of Sri Lanka and Twenty-two Others*** - (1994)

1 Sri L.R. 152 and ***Perera and Another v. Cyril Ranatunga, Secretary Defence and Others*** - (1993) 1 Sri L.R. 39, the learned counsel for the petitioner contended that all the criteria relevant to promotions should be publicized in advance so that all candidates have equal opportunities of advancing their claims.

Marking scheme which was used for the interview has been produced marked R-4 with the statement of objections. The learned Senior State Counsel for the respondents contended that not only the sub-topics relating to the marking scheme contained in P-10 but also the entire marking scheme contained in R-4 was sent to the petitioner. In the letter P-9 that was sent to the petitioner, it is specifically stated that the marking scheme for the structured interview is attached herewith - Annex 1. Also, it is stated in P-9, “as per the scheme of recruitment, minimum of 40% marks should be obtained in order to consider you for an appointment.”

The receipt of the letter P-9 has not been disputed by the petitioner. By perusing the letter P-9, it could be easily understood that in the marking scheme for the structured interview which is said to have been annexed with P-9, among other things, it has been referred to the minimum 40% marks that should be obtained in the interview. The letter P-10, the petitioner allegedly received does not contain anything about minimum 40% marks. Therefore, the petitioner could have easily comprehended that the marking scheme cannot be P-10, which only contains subtopics for the structured interview. However, at any stage prior to the interview, the petitioner had not informed the University Grants Commission that she did not receive the marking scheme for the structured interview mentioned in P-9. The respondent’s position is that they have sent the entire marking scheme with P-9. Respondents submitted that the same marking scheme used in 2016 and approved by the 1st respondent Commission was used in 2018, and on the previous occasion also, the marking scheme was sent to the candidates

prior to the interview with the letter calling for the structured interview, which also included the written examination results. Hence, there was no reason to disbelieve that the same marking scheme, which was marked R-4, had been sent to the petitioner with the letter P-9, as stated in the said letter. Furthermore, there is no material to accept the petitioner's position taken at the stage of filing this application that she received only the subtopics of the interview (P-10) because the petitioner has never complained before that she did not receive the marking scheme. In the circumstances, this court accepts the position that the marking scheme had been published prior to the interview and before the interview, it had been sent to all candidates who were called for the interview.

Pointing out the columns in the marks sheet, the learned Counsel for the petitioner further contended that according to the marks sheet of the interview for the post of Assistant Secretary/Assistant Registrar, the basis on which the marks were given at the interview is unreasonable. His contention was that the petitioner should have been given 40% marks. In the course of his argument, the learned counsel pointed out that the petitioner obtained 173 marks for the written examination (P-8), secured 6th place, but for her knowledge of the subject, she was given 4 marks out of 10 at the interview. As correctly contended by the learned Senior State Counsel for the respondent, performing at the interview is different from obtaining marks in the written examination. According to the examination results sheet marked P-8, the marks obtained by the petitioner for the English language is 40. She did the written examination in Sinhala medium. Considering the way that the petitioner performed in the interview, the Selection Committee has given her 4 marks out of 10 for subject knowledge. Therefore, no logical argument could be advanced that the petitioner should have been given more marks for her knowledge of the subject because she had obtained 173 marks for the written examination.

It is to be noted that when there is a written examination and an interview, the person who obtained the highest marks in the written examination would not essentially be selected as the first in the interview. Sometimes the person who obtained the highest marks in the written examination may be disqualified in the interview. Therefore, the argument that the petitioner had a legitimate expectation that she would be selected in the interview has no merit.

Now, I proceed to consider the aforesaid second argument of not properly constituting the Selection Committee and not following a proper marking scheme. The learned Counsel for the petitioner contended that required number of members were not there in the Selection Committee and even the Chairman was not there.

The document P-18 is the marks sheet of the interview for the post of Assistant Secretary/Assistant Registrar (Internal Category). P-17 is the recommendation of the Selection Committee. In P-17, the Selection Committee recommended 25 candidates who had obtained 40% or above at the structured interview to be considered for appointment to the post of Assistant Secretary/Assistant Registrar. This recommendation of the Selection Committee has been signed by the Chairman of the UGC and the other six members of the Selection Committee. Hence, it is evident from P-17 that seven members, including the chairman of the UGC, conducted the interview and made the said recommendation. Therefore, the allegation made at the stage of filing this application that the Selection Committee has not been properly constituted cannot be accepted because not only there is no material to accept the said allegation, but also the document P-17 is a documentary testimony to conclude that the Selection Committee had been properly constituted.

In substantiating the argument of not following a proper marking scheme, the learned Counsel for the petitioner drew the attention of the

court to the following portion from the judgement of *Perera and Nine others v. Monetary Board of the Central Bank of Sri Lanka and Twenty-two Others*: “If persons were appointed in terms of a scheme of recruitment the scheme must be produced and explained in terms of the need for the post and the nexus between the work to be performed and the criteria for selection. If the selections were based on an examination the marks must be produced, if on interview on a group basis the marks earned under each criterion of selection must be produced. If at the interview the marking was on an individual basis the marks given by each member of the panel to each candidate under each of the selection criteria should be made available.”

In reply to the argument that a proper marking scheme had not been followed, the learned Senior State Counsel for the respondents contended that the marking scheme, which was duly approved by the commission in the year 2016 was used at the interview held in the year 2018 without any amendment, and only in instances where the marking scheme is changed, it is referred to the 1st respondent for approval. The said approved marking scheme had been sent to the candidates and interviews were held. Therefore, I cannot see any substance in the argument that a proper marking scheme has not been used at the interview. In addition, the results sheet of the written examination was published on the web page of the Examination Department, and the petitioner stated in her petition that she obtained the results sheet. The same has been marked as P-8 with the petition. The marks sheet of the structured interview marked P-18 reveals that the Selection Committee has evaluated the candidates and given marks at the interview in terms of the marking criteria set out in the marking scheme. Also, it is evident from document P-17 that the list of qualified candidates for appointment and the list of not qualified candidates have been specified separately under the signature of all seven members of the Selection Committee. Therefore, it is evident that Selection Committee had been properly constituted. Hence, all requisites

specified in the aforesaid case of *Perera and Nine others v. Monetary Board of the Central Bank of Sri Lanka and Twenty-two Others* have been fulfilled in the interview process in the instant action.

The other argument remains to be considered is that the aforesaid third argument of dismissing the petitioner's appeal by the USAB on the ground of not having jurisdiction. The learned counsel for the petitioner contended that dismissing the petitioner's appeal is illegal, irrational and the said order has been made in contravention of the provisions of the Universities Act No. 16 of 1978.

The section 86(a) of the Universities Act reads as follows:

86. "The Appeals Board shall have and may exercise the following powers, duties and functions:

- (a) to conduct investigations into appointments and promotions alleged to have been made to the staff of the Commission and to Higher Educational Institutions in contravention of the schemes of recruitment and the procedures for appointment in force at the time such appointments or promotions were made or alleged to have been made and into allegations that appointments or promotions have not been made to posts when vacancies have arisen in such posts;"

It is apparent from the aforesaid section 86(a), if the appointments and promotions are made in contravention of the schemes of recruitment and the procedure for appointment or promotions, the appeals board can intervene and conduct investigations. According to USAB decision marked P-24, it is mentioned that "We do not observe any illegality that this board possess jurisdiction to intervene with the evaluation process and the marks given to the appellant as observed earlier are beyond the expertise of this board to pronounce upon". It is further stated in P-24 that "This board has not been conferred with the jurisdiction in terms

of Section 86 of the Universities Act to set aside an appointment already made and to make an order substituting another with a fresh appointment. If there was any illegality in the recruitment process, all that we could have done was to express our findings but would not have been able to make an order setting aside an appointment already made.”

It is apparent from the aforesaid findings of the USAB that since they have not found contravention of the scheme of recruitment and procedure for appointment, USAB has concluded that they have no jurisdiction to intervene. For the reasons stated above, I am also of the view that there was no illegality in the recruitment process and no contravention of the scheme of recruitment or the procedures for appointments. Therefore, I hold that the decision of the USAB to dismiss the petitioner’s appeal is correct and not illegal or irrational.

For the foregoing reasons, the application for writs of certiorari, the writ of mandamus and the writ of prohibition prayed for by the petitioner is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M. Sampath K. B. Wijeratne J.

I agree.

JUDGE OF THE COURT OF APPEAL