

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

In the matter of an Application for Writ in the nature of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Vethanayagam Celesty Anpalagan,
368/3, Main Street,
Jaffna.

PETITIONER

CA No. CA/Writ/0364/2019

v.

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 Gunasekara,
Member,
University Services Appeals Board,
No. 20, Ward Place,
Colombo 07.
5. The University of Jaffna,
Thirunelvelly,
Jaffna.
6. Prof. K. Kandasamy,
Competent Authority,
Chairperson,
Council of the University of Jaffna
University of Jaffna,
Thirunelvely, Jaffna.
7. Mr. V. Kandeepan
Registrar,
Secretary,
Council of the University of Jaffna,
University of Jaffna,
Thirunelvely, Jaffna.
8. Dr. T. Mangaleswaran
Rector,
Vavuniya Campus.
9. Prof. G. Mikunthan
Dean, Graduate Studies.
10. Prof. J. P. Jeyadevan
Dean, Science
11. Dr. K. Suthakar
Dean, Arts
12. Prof. (Mrs.). T. Mikunthan
Dean, Agriculture

13. Dr. S. Raviraj
Dean, Medicine
14. Prof. A. Atputharajah
Dean, Engineering
15. Prof. T. Velnamby
Dean, Management Studies & Commerce
16. Dr. (Mrs). S. Sivachandran
Technology (Acting Dean)
17. Dr. A. Pushpanathan
Business Studies – Vavuniya.
18. Prof. P. Ravirajan
19. Ms. S. Abimannasingham
Notary Public
20. Dr. Aru Thirumurugan
President of the Tellipalai Dhurgai
Devasthanam.
21. Mr. P. Eswaradasan
Administrative Service.
22. Mr. D.K.P.U. Gunathilake
Deputy General Manager (CEB, Northern)
23. Rev. Fr. M. Jero Selvanayagam
Former Rector, St. Patrick's
24. Mr. v. Kanagasabapathy
Finance Commission of Sri Lanka
25. Dr. P. Lakshman

Consultant, Jaffna Teaching Hospital.

26. Mr. Mano Sekaram
CEO and Co- Founder at 99X Technology.
27. Dr. T. Sathiyamoorthy
Director/ Jaffna Teaching Hospital
28. Dr. S. Sivasegaram
Professor, Peradeniya Mech. Eng.
29. Prof. C. Sivayoganathan
Emeritus professor, Peradeniya.
30. Prof. Jayadewa Uyangoda
Senor Professor of Political Science
31. Mr. N. Vethanayahan
Government Agent Jaffna
32. Mr. N. Vishnukanthan
Lawyer, Colombo.
33. Dr. (Mrs). S. Srimuraleetharan
Hindu Studies (Acting Dean)
34. Dr. (Mrs.) A. Nanthakumar
Applied Science- Vavuniya
35. Mrs. T. Raveenthiran
36. Mr. A. L. Juffer Sadique
Retired Registrar UOM

08th -36th Respondents are Members,
Council of the University of Jaffna
University of Jaffna

Thirunelvely, Jaffna.

37. Mrs. Thevaki Gnanakarunyan,
Senior Lecturer,
Allied Health Science,
University of Jaffna.

RESPONDENTS

- 02 (a) Mithri Wickramasinghe,
Chairman,
University Services Appeals Board,
No. 20, Ward Place,
Colombo 07.
- 03 (a) Sugath Caldera, PC,
Vice Chairman,
University Services Appeals Board,
No. 20, Ward Place,
Colombo 07.
- 04 (a) Prof. W.G.D. Dharmaratna,
Member,
University Services Appeals Board,
No. 20, Ward Place,
Colombo 07.
1. Prof. S. Sri Satkunarajah
Vice Chancellor,
Chairperson,
Council of the University of Jaffna
University of Jaffna,
Thirunelvely, Jaffna.
2. Prof. S. Vasantharuba
Dean/ Agriculture
Member.
3. Prof. S. raguram

Dean/Arts

4. Mrs. D. Thabotharan
Dean/ Allied Health Science
5. Dr. K. prapaharan
Dean/ Engineering
6. Prof. S. Kannathasan
Dean/ Graduate Studies
7. Mr. S. Padmanaban
Dean/ Hindu Studies
8. Prof. B. Nimalathan
Dean/ Management Studies
9. Prof. r. Surenthirakumaran
Dean Medicine
10. Mr. S. Siveruban
Dean/ Sir Ponnambalam Faculty of Performing and
Visual Arts.
11. Prof. K. Velauthamurthy
Department of Chemistry.

1 -10 added Respondents are Members Council of
the University of Jaffna
University of Jaffna,
Thirunelvely, Jaffna.
12. Mr. Panchnathan Sutharsan
13. Mr. Pathinathar Anton Punethanayagam
14. Mr. Thillaiambalavanar Vimalan
15. Prof. Mahinda S. Rupasinghe

16. Prof. Kumudu Wijewardana
17. Rev. Prof. G. Pilendran
18. Mr. D. Rengen
19. Mrs. Srinithy Nandasekaram
20. Eng. (Ms). T. Shanthathevi
21. Mr. Kapilan Karunanathan
22. Rev. Dr. P. J. Jebaratnam
23. Mr. Kulendran Sivaram
24. Mrs. Manohari Ramanathan
12 -25th Added Respondents are UGC appointed
Members
Council of the University of Jaffna
University of Jaffna
Thirunelvely, Jaffna.

ADDED RESPONDENTS

BEFORE : M. Sampath K. B. Wijeratne J. &
Wickum A. Kaluarachchi J.

COUNSEL : S. N. Vijith Singh with H. B. N. Thamboo
for the Petitioner.

Manohara Jayasinghe DSG for 5th and 7th
Respondents.

K.G. Jinasena with C. Abeywickrema for
the 37th Respondent.

ARGUED ON : 25.07.2023

DECIDED ON : 22.09.2023

M. Sampath K. B. Wijeratne J.

Introduction

The Petitioner instituted these proceedings against the 1st to 37th Respondents seeking *inter-alia*, a writ of *certiorari* quashing the order of the University Services Appeals Board No. USAB 907 dated 7th May 2019, a writ of *certiorari* quashing the appointment of the 37th Respondent to the post of Senior Lecturer (Grade II) in Medical Laboratory Sciences by the University of Jaffna and a writ of *mandamus* directing the Respondent to forthwith appoint the Petitioner in the position of Senior Lecturer (Grade II) in Medical Laboratory Sciences.

The 5th, 7th, and 37th Respondents filed their statement of objections seeking to dismiss the application of the Petitioner.

The Petitioner tendered a counter affidavit in reply to the statement of objections filed.

Upon the close of pleadings, the matter was fixed for argument and the learned Counsel for the Petitioner, 5th and 7th Respondents, and 37th Respondent made their submissions.

Factual background

The Petitioner had been a visiting lecturer at the University of Jaffna. On the 3rd December 2015, the University of Jaffna called for applications for the post of Senior Lecturer (Grade II) in Medical Laboratory Sciences ('P 3'). The Petitioner submitted his application for the aforesaid post on the 7th of January 2016¹.

The recruitment scheme that specifies the required qualifications is marked as 'P 5'. The necessary qualifications are;

1. A degree with a specialization in the relevant subject with First or Second Class (Upper Division) Honours and at least 01 year of

¹ Page 6 of 'P 3'.

experience in teaching / research / professional work / postgraduate studies; or

2. A degree with specialization in the relevant subject with Second Class (Lower Division) Honours and at least 01 year of experience in teaching / research / professional work / postgraduate studies; or
3. (a) A degree with specialization in the relevant subject without Honours or any other degree with at least Second-Class Honours, and
(b) A postgraduate Degree of at least 02 academic years duration in the relevant subject with a research component by way of thesis/dissertation; or
4. Such academic or professional qualifications or professional experience as may be approved by the University Grants Commission upon the recommendation of the Higher Educational Institution concerned.

The Petitioner claimed that he possesses the academic qualifications under the first part of Clause (3) (a), a degree with a specialization in the relevant subject without honours, and a postgraduate degree of more than two academic years duration in the relevant subject with a research component by way of thesis/dissertation. ('P 5' / 'R 1' / '37 R 1')

According to the Petitioner, he has successfully completed his Master of Philosophy (M.Phil.), the postgraduate degree, in Biochemistry at the University of Jaffna, the other qualification required under Clause (3) (b), with a three-year full-time research component. The Petitioner states that it is *closely related* to the required qualifications and that he had more than six years of teaching experience at the time relevant to this application ('P 6'). Accordingly, the Petitioner claimed that he is eligible to be appointed to the post of Senior Lecturer, Grade II in Medical Laboratory Sciences.

The Respondents did not challenge the fact that the Petitioner has the necessary postgraduate qualifications. The relevancy of Petitioner's basic degree in the subject is the issue.

The Petitioner states that he specialized in Agricultural Chemistry, which includes Biochemistry and Nutrition. It is further stated that among the 122 credits of the Medical Laboratory Sciences curriculum, 80 credits resemble the agriculture curriculum. Accordingly, the Petitioner submitted that around 66% of subjects are closely related to his basic degree. A comparison between the curriculum of the degree in Medical Laboratory Sciences and the degree in Agriculture Science is annexed marked 'P 7'.

The Petitioner stated that in addition, he has done his M.Sc. degree in Nutrition and Food Technology which is also relevant to Medical Laboratory Sciences. The Petitioner stated that according to the curriculum in his study area, Biochemistry is the major subject of Medical Laboratory Sciences.

According to the Petitioner, the closing day for the applications was 8th January 2016. The interview was only held on 15th November 2016, which was too late. The Petitioner alleged that while there were two vacancies for the post advertised, only one candidate, the 37th Respondent, was called for the interview, ignoring the Petitioner who had better qualifications. However, the advertisement 'P3', calling for applications for the post clearly states that only the shortlisted applicants will be called for the interview.

The Petitioner also alleged that the subcommittee appointed by the University of Jaffna who selected the candidates to be called for the interview did not consist of any experts on Medical Laboratory Sciences and also did not consist of any medical academic, medical professional, or allied health science professional.

In reply, the 5th and 7th Respondents denied the allegation of the Petitioner and stated that² the members of the committee had the competence to make a proper, accurate, and fair assessment. Be that as it may, it is important to note that the qualifications of the candidates were also scrutinized by another subcommittee.

In fact, the duty of the committee was not to evaluate the suitability of the applicants but, to see whether the applicants had the basic qualifications to be called for an interview. This fact is reflected in the observations made by the

² At paragraph 9 of the objections.

subcommittee in their report dated 21st September 2016, submitted along with the Petition as an attachment to the document marked 'P 12'.

The Petitioner states that the Vice Chancellor of the University of Jaffna informed the Petitioner by his letter dated 4th November 2016 ('P 8') that the Petitioner's bachelor's degree is irrelevant to Medical Laboratory Sciences. The Petitioner accuses that the said letter was well-planned and reached the Petitioner after the interview. The Petitioner alleges that the appointment of the 37th Respondent was meticulously planned and made sure that there would be no competition from other candidates.

Since the Petitioner was not called for the interview, the Petitioner appealed to the Grievance Committee of the University of Jaffna on the 20th of October 2016. However, up to the date of this Petition, the Petitioner was not informed of their findings.

The 37th Respondent's appointment is on the basis that she possesses a B.Sc. Zoology degree with a first class and also, she has followed the M.Sc. degree for three years including full-time two years of research. The Petitioner asserted that no universities in India offer a two- or three-year full-time research in M.Sc. The Petitioner's assertion is merely a simple statement that is not supported by any material. The Petitioner asserts that, despite being repeatedly asked for proof of her full-time research in the M.Sc. degree, the 37th Respondent and the University of Jaffna failed to provide those. As a result, the Petitioner disputed the fact that the 37th Respondent has the research component of the required qualification. According to the Petitioner, the 37th Respondent's study areas were B.Sc. Zoology and M.Sc. Micro Biology which is totally irrelevant to the Medical Laboratory Sciences. The Petitioner further states that if the University of Jaffna decides that Micro Biology is relevant to Medical Laboratory Sciences, Biochemistry should be more relevant to Medical Laboratory Sciences, based on the allied Health Science Curriculum. However, the above position is disputed by the 5th, 7th, and 37th Respondents.

According to the Petitioner, the 37th Respondent does not have a Master's Degree in the relevant field, and therefore, the 37th Respondent does not possess the required qualifications under Clause 3 (b). The Petitioner stated that upon the Vice Chancellor's request on the 8th October 2018, the curriculum for Medical Laboratory Sciences and B.Sc. Agriculture was

analysed. The Petitioner stated that this should have been done before the selection was made.

The Petitioner being aggrieved by the decision of the Council of the University of Jaffna, appointing the 37th Respondent to the position of Senior Lecturer (Grade II) in Medical Laboratory Sciences and not calling the Petitioner for the interview, has lodged a complaint with the University Services Appeals Board, (hereinafter referred to as the 'USAB') initially and thereafter, on the direction of the USAB has submitted a formal appeal on the 13th of March 2017 ('P 12'). The USAB has inquired into the appeal and by its order dated 7th of May 2019 dismissed the appeal of the Petitioner. According to the Petitioner, the reasons provided in the Order dismissing the appeal was that '*the USAB has neither the expertise nor the jurisdiction to pronounce the correctness of the University authorities. There is no irregularity or illegality in respect of the decision*' ('P 17').

The Petitioner alleges that the Order of the USAB contains only re-production of what transpired at the inquiry and there were no its own findings whatsoever. Accordingly, the Petitioner contended that the USAB failed to consider the evidence as well as the documents filed before it. Consequently, the Petitioner submitted that the order of the USAB is arbitrary, capricious, *mala fide*, and against the legitimate expectation of the Petitioner.

Analysis

The preliminary issues

The Respondents alleged that the Petitioner is guilty of *laches*. However, although this application was instituted nearly three years after the interviews, the Petitioner made his formal appeal to the USAB on the 13th of March 2017. The USAB delivered its order only on the 7th of May 2019 and the Petitioner instituted these proceedings challenging the order of the USAB on the 28th of August 2019, within three and half months. Therefore, in my view, the Petitioner cannot be held guilty of *laches*, an inordinate delay.

The 37th Respondent asserted that three individuals out of the several members of the subcommittee were not made parties to this application. Her contention is that the Petitioner has failed to bring in all the necessary parties to the application, which should result in the dismissal of this application. In fact,

the Petitioner made the subcommittee members parties to this application but left out three of them. The reason is best known to the Petitioner. Nevertheless, the decision sought to be quashed in this application is the decision made by the USAB, and therefore, in my view the subcommittee members are not necessary parties.

The substantive issues

In this writ application, the Petitioner seeks to quash the USAB decision, that dismissed the appeal preferred by the Petitioner. The USAB dismissed the appeal on the ground that the question as to whether the Petitioner's qualifications are relevant or not to the field of discipline is a matter that the university has to decide. The USAB expressed the view that such a decision has to be made on expert evidence on the matter and that there was no such evidence before the Board. Further, it was stated that there is no irregularity or illegality in respect of the impugned decision.

The powers, duties, and functions of the USAB are set out in Section 86 of the University's Ac No. 16 of 1978, as amended that reads as follows;

'86 (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 appointment 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.'

The Petitioner contends that the USAB failed in its duty by not conducting its own investigation into the impugned appointment. In this application, this Court is called upon to review the said decision of the USAB.

Consequently, it is pertinent to examine whether issues pertaining to academic matters fall outside the jurisdiction of this Court. Professor Wade in his renowned book titled *Administrative Law*³ states as follows;

³ H.W.R. Wade, C. F. Forsyth, *Administrative Law* 11th Edition, at p. 537.

‘The Court, in any case, 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 justified⁴.’

In the case of *Abeyundara Mudiyanseelage Sarath Weera Bandara v. University of Colombo and others*⁵ the Court of Appeal observed as follows in this regard;

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

In the case of *Dr. Karunananda v. Open University of Sri Lanka and others*⁶ the Supreme Court addressed the above issue in a manner that demonstrates the parameters of the Court's intervention.

‘Therefore, although there may be cautionary remarks indicating a reluctance to enter into academic judgment, I am not in agreement with the view that academic decisions are beyond challenge. There is no necessity for the Courts to unnecessarily intervene in matters "purely of academic nature," since such issues would be best dealt with by academics, who are “fully equipped” to consider the question in hand. However, if there are allegations against decisions of academic establishments that fall under the category stipulated

⁴ Clark v. University of Lincolnshire and Humberside [2000] 1 WLR 1988, as referred to in Administrative Law by Wade and Forsyth.

⁵ CA (Writ) Application No. 844/2010; CA minutes of 8th June 2018.

⁶ [2006] 3 Sri LR 225; at pages 236-237.

in terms of Article 126 of the Constitution, there are no provisions to restrain this Court from examining an alleged violation relating to an infringement or imminent infringement irrespective of the fact that the said violation is in relation to a decision of an academic establishment.”

In the more recent case of *Dr. Jayawardena v. University of Colombo*⁷ His Lordship Arjuna Obeyesekere J., sitting in the Court of Appeal (as His Lordship then was) having considered the aforementioned authorities observed 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 1st 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.’

In the case of *Dalpat Abasaheb Solunke and Others v. Dr. B.S. Mahajan and others*⁸, the Indian Supreme Court observed thus:

‘ It is needless to emphasize that it is not the function of the court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc.’

In *Chairman, J and K State Board of Education Vs. Feyaz Ahmed Malik and Others*⁹, the Indian Supreme Court while stressing the importance of the

⁷ CA. Writ 137/2018.

⁸ AIR 1990 SC 434.

⁹ AIR 2000 SC 1039.

functions of the expert body observed that the expert body consisted of persons coming from different walks of life who were engaged in or interested in the field of education and had wide experience and were entrusted with the duty of maintaining higher standards of education. The decision of such an expert body should be given due weightage by courts.

I will now proceed to examine the relevant facts of the instant application with the legal standing mentioned earlier in mind.

In the argument before this Court, the Petitioner raised several grounds in support of his application. The main ground is that the Petitioner's bachelor's degree with a specialization is relevant to the subject of Medical Laboratory Sciences, which was denied by the University authorities. The Petitioner's bachelor's degree falls under the first part of the qualification required under Clause 3 (a). There was no issue regarding the relevancy of Petitioner's post-graduate degree, the second requirement, under Clause 3 (b).

According to the letter issued by the Assistant Registrar, Examinations and Admissions, of the University of Jaffna on the 29th March 2004 ('P 2A'), the Petitioner has a specialization in Agricultural Chemistry in his bachelor's degree. The Petitioner asserts that his specialization is pertinent to the Medical Laboratory Sciences curriculum.

The qualifications of the applicants for the aforementioned post were examined by a subcommittee. The advertisement published by the Faculty of Medicine of the University of Jaffna ('P 3') itself states that only short-listed applicants will be called for an interview. The subcommittee comprised Prof. V. Tharmaratnam, Council Member (Chairman), Prof. S. Srisatkunarajah, Professor in Mathematics, Prof. G. Mikunthan, Dean/Graduate Studies, Prof. T. Velnampy, Dean/ Management Studies and Commerce, Prof. N. Gnanakumaran, Dean/ Arts. The Petitioner challenged the composition of the subcommittee on the grounds that it does not consist of any member related to Medical Laboratory Sciences. Be that as it may, the Petitioner himself submitted a report prepared by another subcommittee which made the same recommendation before the interview. The seven members of the subcommittee were Prof. (Ms) V. Arasaratnam, Vice-Chancellor (Chairperson), Dr. S. Raviraj, Dean Medicine, Dr. S. Balakumar, representing Head, Biochemistry, Dr. S. Kannathasan, Head Pathology and the Senate

nominee, Dr. P. Lakshaman and Mr. S. Rangarajah, both the Council Nominees, Mrs D. Thabotharan, Head/ AHS (as an observer). Accordingly, the subcommittee comprises the Dean of the Faculty of Medicine, the Heads of the Pathology and Biochemistry departments, one other academic, and two other members. The Vice-Chancellor, who is also an academic, had been the Chairperson. The post in question was in the Medical Faculty, and it is apparent that the majority of the members are from that faculty. The qualifications of the four applicants had been evaluated by this subcommittee as well and recommended that only the 37th Respondent is eligible to be called for an interview and none other.

The Petitioner's argument that the subcommittee that short-listed the applicants who should be called for the interview did not consist of any medical academic, medical professional allied health science professional is defeated by his own document, the annexure to 'P 12'.

The Petitioner submitted to this Court a comparison between the curriculum of the degree in Medical Laboratory Sciences and the degree in Agricultural Science, prepared by him, marked as 'P 7'. The 5th and 7th Respondents submitted the document marked 'R 3' containing the B.Sc. Agriculture curriculum for the year 1998 and the curriculum for the Bachelor of Science degree in Medical Laboratory Sciences marked 'R 4'. However, as it was correctly observed by the USAB, this Court also does not have the expertise to pronounce upon the relevancy of the subjects without any external assistance such as expert evidence. This Court lacks such evidence in this application. Therefore, as it was observed by Professor Wade in his treatise *Administrative Law* and in the judicial precedence of this country which I have cited above in this judgment, it is best for this Court to leave it to competent personnel.

The 5th and 7th Respondents also submitted a report prepared by the Head of the Unit of Allied Health Science Ms. D. Thabotharn ('R 2') on the relevancy of the B.Sc. Agriculture degree to the B.Sc. in Medical Laboratory Sciences curriculum. Based on the analysis, the Head of the unit of Allied Health Sciences has expressed the view that most of the subjects in the agriculture curriculum deal with plants, cultivation, crops, seeds, weeds, animals, poultry, dairy, meat, fish production, soil science, and food science whereas, the M.Sc. in Medical Laboratory Sciences curriculum deal with the Laboratory analysis

of the clinical specimens in Haematology, Clinical Micro Biology, Chemical Pathology, Histopathology, and Blood Banking. Accordingly, the finding was that the B.Sc. agriculture curriculum has no relevance to the B.Sc. in Medical Laboratory Sciences curriculum, except for the few observations mentioned in 'R 2'.

Consequently, the Vice Chancellor of Jaffna University informed the Petitioner in his letter dated 4th November 2016 that since the Petitioner does not possess a degree with specialization in the relevant subject, he is not qualified for the post of Senior Lecturer (Grade II). It was also stated that since the Petitioner submitted his certificate of M.Sc. in Nutrition and Food Technology obtained from the Madhuri Kamaraj University (Distance Education), only after the closing date of the applications and the Petitioner has not even mentioned this qualification in his application, the Petitioner has failed to satisfy the requirements for the post ('P 8'). In fact, although the Petitioner has obtained his M.Sc. postgraduate degree on the 28th November 2015 ('P 2B') he has not mentioned the same in his application for the post ('P4') dated 7th January 2015. Obviously, any document submitted after the closing date of the applications should not be taken into account. Moreover, the issue with the Petitioner's qualification is with respect to the relevance of his bachelor's degree and not with his postgraduate degree. Accordingly, I am of the view that the reasons given by the Vice Chancellor in his letter 'P 8' are reasonable and adequate. Consequently, the decision is not arbitrary and unconscionable.

The Petitioner also stated that he received the letter ('P 8') after the interview. The Petitioner's attempt was to say that the interview was held without communicating reasons for not calling him for the interview. However, there is no proof before the Court that the Petitioner received the letter late.

Nevertheless, at this juncture, the pertinent question arises as to whether the committee should have given a hearing to the Petitioner before short-listing the applicant. In the case of *Jawaharlal Nehru University v. B. S.*¹⁰, the Indian Supreme Court was dealing with a case where a student of the university was removed from the rolls for unsatisfactory academic performance without being given any pre-decisional hearing. Delivering the judgement on the

¹⁰ (1981) SCC (1) 618.

above issue Reddy J., observed that if the competent academic authorities examine and assess the work of a student over a period of time and declare his work unsatisfactory, the rules of natural justice may be excluded. It was held that *'the very nature of academic adjudication appears to negate any right of an opportunity to be heard'*.

The task of the subcommittees had been to assess the educational qualifications of the applicant and not to assess the abilities of the applicants. Moreover, as I have already stated above, the advertisement calling for applications itself states that only the short-listed applicants will be called for an interview. In the above circumstances, it is my considered view that the subcommittee need not give a hearing to the applicants at the stage of shortlisting.

In light of the above analysis, I hold that the decision of the Vice Chancellor, that the Petitioner has not satisfied the requirements for the post of Senior Lecturer (Grade II) in Medical Laboratory Sciences is not tainted with illegality, irrationality, or procedural impropriety.

Does the 37th Respondent possess the necessary qualifications?

The 37th Respondent falls under the second category of Clause 3 (a). Admittedly, the 37th Respondent possesses a B.Sc. degree in Zoology with a first class¹¹. Under the second category, the relevancy of the bachelor's degree is not a requirement, if the applicant has a bachelor's degree with at least a second-class honour.

However, the Petitioner challenges that the 37th Respondent has done two years of full-time research in her post-graduate degree. But the subcommittee that considered the applications for shortlisting considered the letters issued by the Principal, Vice Principal, Dr. Joy S. Michael (Co-Supervisor of the 37th Respondent's M.Sc. research thesis) of Christian Medical College, Vellore, India and arrived at the conclusion that the 37th Respondent has completed M.Sc. Micro Biology of three years duration with two years of full-time research.¹²

¹¹ P 34(ii) attached to the document submitted by the Petitioner marked 'P 15b'

¹² The two subcommittee reports attached to the document marked 'P 12'.

The two subcommittees that evaluated the qualifications of the applicants determined that the 37th Respondent possesses the necessary qualifications. The first subcommittee recommended her to be called for an interview and the second subcommittee even recommended her appointment.

As a result, based on the same reasoning provided above in this judgment in respect of this issue, I hold that the decision to appoint 37th Respondent to the post of Senior Lecturer (Grade II) in Medical Laboratory Sciences is not subject to illegality, irrationality or procedural impropriety.

Conclusion

In light of the above analysis, I am clearly of the view that the Petitioner has failed to present a case to this Court that necessitates an intervention of this Court by establishing illegality, irrationality or procedural impropriety of the impugned decision of the USAB dismissing the appeal preferred by the Petitioner. Also, the decision is arbitrary, capricious, or *mala fide*.

As a result, I would hold that the application of the Petitioner must fail. Consequently, the application is dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

Wickum A. Kaluarachchi J.

I Agree.

JUDGE OF THE COURT OF APPEAL