

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

C. A. WRIT APPLICATION  
NO. 187/2014

In the matter of an application for mandates in the nature of a writ of *Certiorari* and a writ of *Mandamus* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**SONDAPPERUMA ARACHCHIGE  
DON SUDEEPA PRIYANGA  
JYATHILAKA**

474/1, Heenkenda, Ragama.

**PETITIONER**

**VS.**

1. **UNIVERSITY OF COLOMBO**  
No. 94, Cumarathunga Munidasa  
Mawatha, Colombo 03
2. **DR. W. K. HIRUMBUREGAMA**
- 2A. **PROF. LAKSHMAN  
DISSANAYAKE**  
Vice-Chancellor
3. **PROF. PREMAKUMARA DE  
SILVA**
4. **DR. TUDOR WEERASINGHE**
- 4A. **DR. R. C. K. HETTIARACHCHI**
5. **PROF. ATHULA RANASINGHE**
6. **PROF. W. CHANDRADASA**
7. **PROF. V. T. TAMILMARAN**
- 7A. **MS. W. A. INDIRA  
NANAYAKKARA**
8. **PROF. H. D. KARUNARATNE**
- 8A. **DR. R. SENAHIRAJA**

9. PROF. ROHAN JAYASEKARA
- 9A. PROF. JENNIFER PERERA
10. PRO. K. R. R. MAHANAMA
11. PROF. SUNIL CHANDRASIRI
- 11A. PROF. NAYANI MELAGODA
12. PRO. INDRALAL DE SILVA
- 12A. PROF. LAKSHMAN  
DISSANAYAKE
13. PROF. D. N. SAMARASEKARA
14. MR. RAJAN ASIRWADAM
15. MR. KANG-ISWARAN
- 15A. MRS. C. MUBARAK
16. MR. THILAK KARUNARATNE
17. DR. HARSHA CABRAL
18. MR. AMITHA K. U. GAMAGE
- 18A. PRO. SAVITHRI  
GOONASEKARA
- 18B. PROF. ROHAN JAYASEKARA
19. MR. A. P. GUNARATNE
- 19A. W. A. WIJEWARDENA
20. MR. SAMANTHA RAJAPAKSHA
- 20A. DR. SANJEEWA  
WEERAWARNA
21. MRS. LEISHA DE SILVA  
CHANDRASENA
- 21A. PROF. LAKSHMAN  
RATNAYAKE
22. DR. CUDA WIJERATNE
- 22A. DR. RAJEE JAYAMAHA
23. MR. C. MALIYADDA
- 23A. JAHAN PRASANNA  
AMARATHUNGA
24. MR. H. M. N. WARAKAULLE
- 24A. MR. NIGEL HATCH
25. MR. P. W. SENARATHNE
- 25A. MR. J. M. SWAMINATHAN

All of No. 94, Cumarathunga  
Munidasa Mawatha, Colombo 03

26. PROF. G. N. WICKRAMANAYAKE
- 26A. DR. K. P. HEWAGAMAGE

Director, University of Colombo  
School of Computing (UCSC)

27. PROF. N. D. KODIKARA,

Deputy Direct, UCSC

- 27A. PROF. K. P. HEWAGAMAGE

28. MR. PIYASENA RANAPERUMA  
28A. MR. DEWASURENDRA  
29. MR. D. C. A. GUNAWARDENA  
29A. D. M. A. HARASGAMA  
30. MR. G. P. SENEVIRATHNE  
30A. DR. SANJEEWA  
WEERAWARMA  
31. MR. G. K. A DIAS  
31A. MR. J. M. SWAMINATHAN  
32. DR. K. P. HEWAGAMAGE  
33. MR. SANJEEWA MUDALIGE  
33A. PROF. SUMEDHA JAYANETTI  
34. PROF. K. H. TENNAKKOON  
34A. DR. PAVITHRA KAILASAPATHY  
35. PROF. P. S. M. GUNARATHNE  
35A. RUWAN KERAGALA  
36. MR. M. D. D. PIERIS  
37. MR. D. B. SAPARAMADU  
37A. RANIL RAJAPAKSE  
38. MR. MANO SEKARAM  
39. PROF. D. N. RANASINGHE  
39A. S. T. NANDASARA  
40. DR. G. D. S. P. WIMALARATHNE  
41. DR. D. A. S. ATHUKORALE

All of UCSC, No. 35, Reid Avenue,  
Colombo 07

42. UNIVERSITY GRANTS  
COMMISSION

No. 20, Ward Place, Colombo 07

43. C. I. KEPPETIYAGAMA  
44. T. N. K. DE ZOYSA

Both of UCSC, No. 35, Reid  
Avenue, Colombo 07

**RESPONDENTS**

**BEFORE:** **M. M. A. Gaffoor, J.**

**COUNSEL:** K. G. Jinasena with D. K. Vikum Jayanath for the Petitioner

Indra Ladduwahetty with Lilanthi De Silva for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Prasanna S. Ekanayake for the 26<sup>th</sup> Respondent

M. Jayasinghe, S.C for the 42<sup>nd</sup> Respondent

**WRITTEN  
SUBMISSIONS**

**TENDERED ON:** 30.07.2018 (by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents)  
31.07.2018 (by the Petitioner and the 26<sup>th</sup> Respondent)

**DECIDED ON:** **01.02.2019**

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**M. M. A. Gaffoor, J.**

The Petitioner in this application who obtained a Bachelor of Science Degree in Computing and Information Systems with Second Class Honors (Lower Division) from the University of London in 2001 ('P1'), was appointed as an Assistant Lecturer on Temporary basis in the University of Colombo School of Computing (hereinafter mentioned as 'UCSC') with effect from 15<sup>th</sup> November 2004 (the said Letter of Appointment has been marked as 'P2') and later, the 1<sup>st</sup> Respondent University on 10<sup>th</sup> August 2006 appointed the Petitioner as a Probationary Lecturer (the said Letter of Appointment has been marked as 'P3'). Subsequently, the 1<sup>st</sup> Respondent University by a letter dated 22<sup>nd</sup> March 2007 marked as P3A, proceeded to backdate the said appointment effective from 1<sup>st</sup> June 2006.

According to the Petitioner, during his tenure as a Probationary Lecturer, he had also completed his Master of Science Degree and has completed the requirements which are necessary in order to apply for the post of Senior Lecturer Grade II, in February, 2014.

The Petitioner has stated that he was informed by way of email dated 14<sup>th</sup> June 2014 that he should not be conducted lectures in the UCSC anymore. According to the Petitioner, this mail was sent to him by the Academic Coordinator of the UCSC.

The Petitioner further stated that he was received a letter regarding an inquiry which the title was “Complaints on Neglecting official duties and Teaching” issued under the signature of the Senior Assistant Registrar of the UCSC (marked as ‘**P13**’) requesting him to be present an inquiry committee on 28<sup>th</sup> February 2014 to give a statement. Having received the said letter **P13**, he informed his inability to attend the inquiry due to his official duties and he also informed his free dates to attend the inquiry and subsequently on 31 March 2014, the petitioner was informed by the Senior Assistant Registrar to be present before an inquiry committee on 3<sup>rd</sup> April 2014. Accordingly, the Petitioner had appeared himself and gave a statement which was marked as ‘**P18**’.

Furthermore, the Petitioner stated that no proper and impartial inquiry was conducted by the said Committee of Inquiry which appointed without any authority obtained from the Council of the 1<sup>st</sup> Respondent, the University. Thus he had submitted a complaint **P12** (“COMPLAINT: SEVERE HARASSMENT BY THE DIRECTOR OF THE UCSC”) dated 1<sup>st</sup> May 2014 to the 2<sup>nd</sup> Respondent, the Vice-Chancellor of the 1<sup>st</sup> Respondent University with a copy to the Chairperson of the 42<sup>nd</sup> Respondent, the UCSC, seeking their intervention to guarantee a fair process of his application and for confirmation and promotion.

Under the said Circumstances, the Petitioner in this application, has pleaded for *inter alia* the issuance of a writ of *Certiorari* in order to the decision made by the Respondents to conduct a disciplinary inquiry against the Petitioner as well as mandates in the nature of writ of *Mandamus* in order to confirm in the Petitioner’s position to promote him to the post of senior Lecturer Grade II, to order the respondents to process the said application **P12** submitted by the Petitioner, and to direct the 26<sup>th</sup> Respondent to make available the recommendations made by the Board of Management of the UCSC with regard to the Petitioner.

The 1, 2(A) and the 26<sup>th</sup> Respondents, in their Statement of Objections, have taken few preliminary objections and made their strong submissions.

To proceed further, I will deal with those objections and the submissions which are most important in this case.

The main argument of the Respondents is that the Petitioner’s Probationary period was terminated by letter marked as “**2R7**” dated the 23<sup>rd</sup> June 2014, effective from the 1<sup>st</sup> June 2014.

A perusal of this Termination Letter **2R7** shows that, the Council of the University of Colombo, at its 485<sup>th</sup> Meeting held on 18<sup>th</sup> June 2014 had decided to terminate the Petitioner's services as Probationary Lecturer with effect from 1<sup>st</sup> June 2014, on the expiry of maximum permissible period of 08 years on 31<sup>st</sup> May 2014 allowed under Section 72 of the Universities Act, No 16 Of 1978 as amended by Section 05 of the Universities (Amendment) Act, No. 01 of 1995. The decision was informed to the Petitioner by way of a letter dated 23<sup>rd</sup> June 2014.

The said letter **2R7** is reproduced below in its entirety:

UNIVERSITY OF COLOMBO

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Our Ref. No: C/F/8

23<sup>rd</sup> June 2014

Mr. S. A. D. S. P. Jayathilaka,  
Lecturer (Probationary),  
University Colombo School of Computing

Through: Director/ University Colombo School of Computing.

Dear Mr. Jayathilaka,

**TERMINATION OF SERVICES**

I wish to inform you that you have completed the maximum permissible period of probation of eight years on 31/05/2014 allowed under Section 72 of the Universities Act, No. 16 of 1978 as amended by Section 5 of the Universities (Amendment) Act, No. 1 of 1995.

It was observed that you have failed to obtain the requisite postgraduate qualifications for confirmation and promotion, even at the expiry of the said period of probation.

I regret to inform you that the University is not in a position to grant further extensions of your period of probation beyond the specified period of eight years, under the existing regulations.

In view of these circumstances, the Council of the University of Colombo, at its 485<sup>th</sup> Meeting held on 18/06/2014, decided to terminate your services at the end of the said period of probations.

Accordingly, I am compelled to terminate your services with effect from 01/06/2014.

Yours sincerely,

(Sgd.)

Prof. K. S. Chandrasiri

Acting Vice-Chancellor

Copies to: Director/UCSC  
Deputy Bursar/UCSC  
Senior Assistant Librarian  
Auditor General

It is, therefore, vital to answer the question on which basis the Petitioner has been terminated from the University. The Termination letter clearly says that the University Council had decided to terminate the Petitioner's services as a Probationary Lecturer in with effect from 1<sup>st</sup> June 2014, **on the expiry of maximum permissible period of 08 years on 31<sup>st</sup> May 2014 allowed under Section 72 of the Universities Act, No 16 Of 1978 as amended by Section 05 of the Universities (Amendment) Act, No. 01 of 1995.** Therefore, the Respondents are in a position that the fateful termination of the Petitioner by the Respondent University held through the agreement clauses which were accepted by both parties.

It is to be noted that, in fact, in this application, the Petitioner never referred to this event of termination in his petition, and he has not challenged such termination of his services before this Court. Therefore, in this main point, the Respondents submitted that the relief prayed for by the Petitioner is futile because the issue whether he should be confirmed in services does not arise after his services had been terminated. It was imperative on the Petitioner to challenge the termination of his services if he sought a writ of *Mandamus* from this Court confirming him from his probationary position. The Petitioner has failed to do so.

Further, The 1<sup>st</sup> and 2(A) Respondents in their Statement of Objections stated that in terms of Clause 12 of the Petitioner's (Probationary Lecturer) Letter of Appointment **P3**, the Petitioner was required to register locally for a Postgraduate

research degree within three months of his appointment and obtain such degree within two years of his registration if the Petitioner had registered for a full time course of study, or within three years of the date of his registration or if the Petitioner had been registered for a part time course of study and obtaining such degree was a condition precedent to his confirmation as Senior Lecturer (Grade II) of the 1<sup>st</sup> Respondent University. They further submitted that the maximum period of probation for the Petitioner is eight years in terms of Clause 2 of his Letter of Appointment and that the Petitioner failed to obtain the requisite postgraduate qualification in terms of Clause 12 of his letter of appointment within the stipulate period and that the 1<sup>st</sup> Respondent was compelled to terminate the probationary period of the Petitioner.

Therefore, the following Clauses of the **P3** are noteworthy:

Clause 12:

*“You are required to register locally for a Postgraduate research degree within three months of your appointment and obtain such degree within two years of your registration, if you have registered for a full time course of study, or within three years of the date of your registration if the Petitioner had been registered for a part time course of study, as the case may be. Obtaining such degree shall be a condition precedent to your confirmation.” (Vide page 02, P3)*

Clause 02:

*“The post is permanent and unless your appointment is terminated earlier. You will be on probation initially for a period of three years, which period may be extended by the Council of this University by one year at a time for a further period not exceeding five years. Extension beyond the maximum permissible period of eight years will not be granted under any circumstances” (vide page 01, P3)*

It has been observed that the Petitioner had enrolled for the aforesaid degree in the year 2002, before his appointment as a Probationary Lecturer in 2006 but had not obtained the said degree when he applied for the post of Probationary Lecturer. It was also averted by the three Respondents that the Petitioner was selected to the post of Probationary Lecturer because of his pending degree in Masters of Science in Advanced Computing inasmuch as the other selected candidates had First Class or Second Upper degrees in a four year degree programme while the Petitioner had only a Second Class Lower division class as an external student in three year degree programme at the relevant time. Thus, the Petitioner was selected to the post of Probationary Lecturer because he had



enrolled for the degree in Master in Advanced Computing and the said degree had nothing whatsoever to the Petitioner obtaining a Postgraduate qualification in terms of Clause 12 of his letter of appointment after his appointment as a Probationary Lecturer.

In addition to above averments, the 1<sup>st</sup> and 2(A) Respondents stressed that the Petitioner had very unsatisfactory tenure of service as a Probationer had allegations that he had acted in violation of rules of the university, had made lapse in marking Answer Scripts, lapse in Conducting lectures, verbal altercations with his Superiors and neglecting official duties. (*Vide para. 9 of the Statement of Objections of the 1<sup>st</sup> and 2(A) respondents dated 02.03.2017*). Therefore, these Respondents further submitted that, in any event, the unsatisfactory record of the Petitioner during his probationary period disentitles him for confirmation in terms of Clause 14 of his letter of appointment dated the 10<sup>th</sup> of August 2006.

Clause 14 of the said letter of appointment is reads as follows:

***“If your services are unsatisfactory while you are on probation or you fail to reach the requisite standard of proficiency in Sinhala/Tamil or you fail to obtain such qualifications or ....., you are liable to be discontinued at any time during the period of probation or at the end of it.”***

Therefore, these Respondents submitted further that the Petitioner has misrepresented and or suppressed material facts to this Court by stating in his Petition and the Affidavit that he had the requisite qualifications by obtaining the Master of Science in Advanced Computing.

The 26<sup>th</sup> Respondent has strongly raised a question that neither the Petitioner refer to the event of termination in his application in any circumstances, nor has he amended his applications in order to mention this situation. Therefore, the 26<sup>th</sup> Respondent further submitted that the Petitioner came to this Court in the year of 2014, but he has not made any attempt to amend his application within four to five years afterwards.

In, **NAMUNUKULA PLANTATIONS LTD. vs. MINISTER OF LANDS AND OTHERS** [S.C. Appeal No. 46/2008, S. C. Minutes dated 13.03.2012] Saleem Marsoof, P.C., J. observed that:

*“It is settled law that a person who approaches the Court for grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and*

*should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. Learned Deputy Solicitor General has in this connection invited our attention to the decision of this Court in W.S. ALPHONSO APPUHAMY Vs L. HETTIARACHCHI (SPECIAL COMMISSIONER, CHILAW), (1973) 77 NLR 131, in which it was found that an applicant for a mandate in the nature of a writ of mandamus had suppressed and misrepresented material facts. This Court decided the case on its merits, but observed that the case was one in which the principles set out in the celebrated English decision of KING V THE GENERAL COMMISSIONERS FOR THE PURPOSE OF THE INCOME TAX ACTS FOR THE DISTRICT OF KENSINGTON-EX-PARTE PRINCESS EDMOND DE POIGNAC (1917) 1 K.B. 486 would have applied, and the Court, in its discretion, could have dismissed the application in limine.” (Page at 8)*

**In JAYAWEERA vs. ASSISTANT COMMISSIONER OF AGRARIAN SERVICES RATNAPURA AND ANOTHER, [(1996) 2 SLR 70], the Court of Appeal held that:**

*“A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief.”*

**In COLLETES LTD. vs. COMMISSIONER OF LABOUR AND OTHERS, [(1989) 2 SLR 06], the Court held that:**

*“It is essential, that when a party invokes the writ jurisdiction or applies for an injunction, all facts must be clearly, fairly and fully pleaded before the court so that the court would be made aware of all the relevant matters.”*

In all the circumstances, I am of the opinion that the Petitioner has no legitimate ground in seeking the reliefs prayed for in this application.

Therefore, I dismiss the application with Costs.

***Application dismissed.***

**JUDGE OF THE COURT OF APPEAL**