

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

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

CA (Writ) Application No: 164/2017

- 1) P.S. Yatapana,
No. 32/4, Jayanthi Mawatha, Piliyandala.
- 2) S. I. Jayasuriya,
No. 55/2. Attidiya Road, Ratmalana.
- 3) C.P.N. Attygalle,
537/1, Old Road,
Kottawa, Pannipitiya.
- 4) P.N.P. Fonseka,
No. 121, Bandaranayake Mawatha,
Katubedda, Moratuwa.

PETITIONERS

Vs.

- 1) The University of Moratuwa.
- 2) Prof. A.K.W. Jayawardana,
Vice-Chancellor, University of Moratuwa.
- 3) M.M.P.D. Samarasekara,
Director,
Institute of Technology,
University of Moratuwa.
- 4) Madhawa Dewasurendra,
Member.
- 5) A.W. Seneviratne,
Member.

- 6) R.M.A.P. Samaradiwakara,
Member.
- 7) Prof. K.K.C.K. Perera,
(Dean, Faculty of Engineering).
- 8) Prof. M.L. De Silva,
Member (Dean, Faculty of Architecture).
- 9) Architect Ashley De Vos.
- 10) Prof. S.M.A. Nanayakkara.
- 11) J.K. Lankathilake.
- 12) Dr. A.M.N. Alagiyawanna.
- 13) Prof. J.R. Lucas.
- 14) Dr. T.A.G. Gunasekara.
- 15) K.C. Sanjeevani Perera.

The 3rd to 15th Respondents are members of
The Board of Management,
Institute of Technology,
University of Moratuwa.

- 16) Prof. R.A. Attalage,
Deputy Vice Chancellor.
- 17) P.M. Karunarathna,
Dean, Faculty of Information & Technology.
- 18) Prof. (Mrs.) D. Dias,
Dean, Faculty of Graduate Studies.
- 19) Dr. T. Siyambalapitiya.
- 20) Geethanjali Rupika Ranawaka,
- 21) Eng. Vajira Kulathilake.
- 22) Eng, Mangala P.B. Yapa.
- 23) Eng. Sanjiva Senanayake,
- 24) Architect Ashley de Vos.
- 25) Manohara De Silva P.C.
- 26) Ashroff Omar.
- 27) Suresh Shah.

16th to 27th Respondents are
Members of the Council,
University of Moratuwa.

28) A.L. Joufer Sadique,
Registrar, University of Moratuwa.

1st – 25th Respondents are at
University of Moratuwa,
Katubedda, Moratuwa.

29) University Grants Commission,
No. 20, Ward Place, Colombo 7.

30) Palitha Fernando P.C., Chairman.

31) Neville Abeyratne.

32) Dr. Neela Gunasekera.

The 30th to 32nd Respondents are
members of
The University Services Appeals Board,
No. 94/10, Ananda Rajakaruna Mawatha,
Colombo 8.

RESPONDENTS

Before: Arjuna Obeyesekere, J / President of the Court of Appeal

Counsel: Shantha Jayawardena with Chamara Nanayakkarawasam, Hiranya
Damunupola and Dinesh De Silva for the Petitioners

Manohara Jayasinghe, Senior State Counsel for the Respondents

Argued on: 3rd July 2020

Written Submissions: Tendered on behalf of the Petitioners on 26th October 2018 and 25th
September 2020

Tendered on behalf of the Respondents on 21st January 2019 and
13th August 2020

Decided on: 10th June 2021

Arjuna Obeyesekere, J., P/CA

The Petitioners have submitted an appeal to the University Services Appeals Board (**USAB**) in January 2014, seeking the payment of an allowance known as the 'Academic Allowance' that is paid to all Lecturers of Universities coming under the purview of the 29th Respondent, the University Grants Commission (**UGC**). By an order delivered on 8th November 2016, the USAB, having come to the conclusion that the Petitioners have been denied their academic allowance unreasonably, had nonetheless concluded that the USAB does not have the jurisdiction to direct the UGC or the 1st Respondent, the University of Moratuwa to pay an allowance to an employee of a University.

The Petitioners thereafter invoked the jurisdiction of this Court, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision of the Board of Management of the Institute of Technology of the University of Moratuwa refusing to pay the academic allowance to the Petitioners;
- b) A Writ of Mandamus directing the Respondents to pay the academic allowance to the Petitioners.

Although the Petitioners had sought a Writ of Certiorari to quash the order of the USAB, the Petitioners did not actively pursue the said relief, thus leaving this Court to determine whether the Petitioners are entitled to the above relief independent of the findings of the USAB.

The issue that arises for determination in this application is whether the Petitioners are entitled to the payment of the said academic allowance that is paid to the lecturers of all State Universities. As the Universities Act uses the word, 'teacher' to collectively refer to a Professor, Associate Professor, Senior Lecturer, Lecturer and Assistant Lecturer etc, I shall, where appropriate in this judgment, use the word 'teacher/s' when referring to a lecturer/s.

The Petitioners, some of whom have Bachelor's Degrees and all of whom have Master's Degrees have joined the Faculty of Engineering of the 1st Respondent as Engineering Teaching Assistants (ETAs) during the period 1977 – 1985. Over a period of time, the Petitioners have received promotions as ETAs – Grade I and Senior ETAs. The Petitioners state that as ETAs, their duties were *identical to that of lecturers* and that they conducted classes, lectures and tutorials for those students who were reading for the Bachelor of Science in Engineering and the National Diploma in Technology. It is admitted that ETAs are on a different salary scale to teachers. It is also admitted that ETAs are not paid the academic allowance and that payment of the academic allowance is limited to teachers.

The Petitioners state that in the year 2000, the Minister of Education, by an Order made under Section 24A of the Universities Act marked '**P8**' established the Institute of Technology of the University of Moratuwa (ITUM)(**the Institute**). The following provisions of '**P8**' relate to the Staff of the Institute:

Paragraph 21(2) - *“On the establishment of the Institute, the Staff of the Institute shall be provided on release by the University from among its own staff, or be appointed by the Commission or the University, as the case may be.”*

Paragraph 21(3) – *“Where an officer, teacher or other employee of the University has been released for service to the Institute on a full time basis, the Institute shall pay him the salary and the allowances of his substantive post in the University. In any other case, the Institute may pay such officer, teacher or other employee, such allowance as it may determine in consultation with the University and the approval of the Commission.”*

The Petitioners state that applications were called for the post of Lecturer (Probationary) / Senior Lecturer Grade I / Senior Lecturer Grade II at the Institute. The Petitioners had responded by submitting their applications and had been interviewed by the Institute. By a letter dated 18th October 2000, annexed to the petition marked '**P10a**', the Petitioners had been informed that the University Council had decided to release the Petitioners from their present employment, and that they will be attached to the Institute on a full time basis under the provisions of paragraph 21(2). The said decision was to become effective from 1st November 2000

and the Petitioners were to become members of the Staff of the Institute from that date.

The Petitioners had been informed by letter dated 1st November 2000, annexed to the petition marked 'P11' that they have been appointed to the post of Lecturer (Probationary) of the Institute with effect from 1st November 2000. In terms of 'P11', the Petitioners had been placed on the salary scale of a Lecturer (Probationary) of Rs. 11,000 per month with an entitlement to ten increments at the rate of Rs. 375. Apart from the salary, the Petitioners were to be paid an allowance of 30% of the basic salary and a Monthly Compensatory Allowance (MCA) of Rs. 1000 per month.

'P11' also specified that:

*'if you are presently in receipt of a take home pay which is higher than the take home pay receivable in the new post, you would be entitled to receive a monthly allowance on a personal to the holder basis to **ensure that your take home pay would not be reduced as a result of accepting this appointment.**'*

The intention right from the beginning therefore has been that the Petitioners cannot be paid less than what they were being paid as ETAs. The critical factor in 'P11' is that the Petitioners were being placed on the salary scale of their new designation of teacher, which was lower than the salary that the Petitioners were drawing as ETAs but the Petitioners were due to be paid an allowance to ensure that the take home pay of each Petitioner was the same as October 2000 – i.e. the last salary that the Petitioners drew prior to their appointment as teachers in terms of 'P11'.

By a further letter dated 1st November 2000, marked 'R1', the University Grants Commission, under the heading, '*Determination of salary payable to Engineering Teaching Assistants of the University of Moratuwa who are to be appointed to the post of Teachers at the Institute of Technology, University of Moratuwa*' had informed the 2nd Respondent, Vice Chancellor of the 1st Respondent as follows:

"The Commission has approved the payment of the difference between the present salary drawn by the Engineering Teaching Assistants and the salary

payable to those who are appointed to the post of Lecturer (Probationary) in the form of an allowance to be paid on a 'personal to the holder basis'. The new appointees will be placed on the initial of the salary scale and also pay (sic) a 'personal' allowance as specified above. This allowance will not be counted for the calculation of the academic allowance of 30%."

'R1' therefore recognised that the Petitioners will be placed on the salary scale of a teacher as well as recognised the entitlement of the Petitioners to the academic allowance of 30%, calculated on the basic salary of a teacher.

The Petitioners had expressed their displeasure with the above determination of their salary and by a letter dated 14th February 2001, annexed to the petition marked 'P14a', the Petitioners had proposed *inter alia* as follows:

"The payment of the difference between the salary drawn by ETA and the salary payable to those who are appointed to the post of lecturer (Probationary) in the form of an allowance will not be justifiable as it will result in lowering of present salary step we were enjoying in the old scale.

This will cause immense losses to us at future revisions of salary scales.

In our case, since the salary step of previous post is higher than the last step of the new scale (i.e. Probationary Lecturer), the only possible placement should be to retain the salary step we have been enjoying as ETA, having made it personal to us as Lecturer (probationary) and whatever the allowances that are paid to Lecturer (probationary) to be paid to us without any discrimination."

What the Petitioners were seeking therefore was to be placed on the higher salary scale that they were receiving as ETAs, which is higher than the salary scale they were to be placed as teachers, as well as receive all allowances including the academic allowance that were being paid to teachers. In other words, the Petitioners were seeking the best of both salary scales. If the above request was acceded to, the Petitioners, while being lecturers, would have drawn a gross salary higher than what was being paid to a Senior Lecturer, thus creating an anomaly within the system.

Each of the Petitioners have thereafter been issued with a letter of appointment dated 16th July 2001 marked 'P16' by the Vice Chancellor of the 1st Respondent,¹ appointing them to the post of Lecturer (Probationary). The salient features of the letter of appointment are re-produced below:

- "3. This post is permanent and since you are a confirmed Engineering Teaching Assistant in the Division of Inter-disciplinary of the Institute of Technology, University of Moratuwa, you would in terms of Section 72(1)(c) of the Act, and its subsequent amendments as applicable, receive exemption from the requirement of undergoing a further period of probation.*
11. *The post carries a consolidated salary scale of Rs. 11,000 – 10 x 375 – 14,750 (B04) per mensem. You will be placed on the initial salary step of Rs. 11,000 per month with effect from 1st November 2000 and you are entitled to receive the following allowances:*
- (i) An Academic allowance of 30% of the salary – i.e. Rs. 3300*
 - (ii) Monthly Compensatory Allowance of Rs. 1000*
 - (iii) Monthly allowance of Rs. 5500 payable on a personal to the holder basis until you secure qualifications required to be promoted to the post of Senior Lecturer Grade II, to ensure that your present take home pay including salary and Monthly Compensatory Allowance would not be reduced as a result of accepting this appointment. This allowance would appropriately be recalculated in an event a revision of salaries of Academic Staff is retrospectively effected, to ensure that your take home pay would remain unchanged."*

Thus, the request made by the Petitioners by 'P14a' was partially allowed, in that although they were placed on a salary scale of a teacher, they were given an entitlement to the academic allowance as well as a special allowance to ensure that the take home pay will not be reduced. The Petitioners were thus assured of receiving the same take home salary that they would have received had they

¹ Vide page 93 of the documents annexed to the petition.

continued as ETAs in the 1st Respondent University as opposed to joining the Institute as teachers.

The Petitioners claim that in terms of '**P16**', they were paid the academic allowance of 30% of the salary.

The Petitioners state that as they were holding permanent posts in the 1st Respondent, it was contrary to the provisions of the Universities Act to appoint them as Lecturer (Probationary). The Petitioners had also been aggrieved by the decision to place them at the initial salary step of teacher and pay them an equalization allowance to ensure that their take home pay as teachers at the Institute were not less than what they would have received as ETAs at the University.

The Petitioners admit that the Institute appointed a Committee comprising of the Acting Director of the Institute, Professor Malik Ranasinghe, Professor B.L. Tennekoon and two others to consider the above request of the Petitioners. The recommendation of the Committee had been considered by the Board of Management of the Institute and thereafter the Council of the 1st Respondent. By letter dated 17th January 2002, annexed to the petition marked '**P14b**' the Director of the Institute had informed the UGC as follows:

" The Council at its 253rd meeting held on 3rd December 2001 having taken into consideration the details forwarded by the above memos along with the recommendation of the Board of Management decided to forward the following recommendations to the UGC having noted that this mechanism would ensure that the group of personnel affected would receive the same take home pay and basic salary which they were in receipt in the post of Engineering Teaching Assistant prior to their appointments to the post of Lecturer (Probationary).

Recommendations

1. *According to Section 5C of the Universities (Amendment) Act No. 1 of 1995, a person holding a permanent post, when appointed to a post of teacher in the same department need not undergo a probationary period.*

Therefore, staff falling into this category must be considered confirmed and that they be designated as 'lecturer'.

2. *To place them on the salary scale and pay allowances applicable to his/her post immediately prior to the post of teacher in the Institute, on personal to the holder basis, if the gross salary applicable to the present post of teacher is lower than that of the post immediately (held) prior to the post of teacher in the Institute.*
3. *He/she must be converted to the salary applicable to the post (of teacher) if and when the basic salary applicable to the post becomes equal or higher to the basic salary of the personal to the holder salary. If the gross salary drawn by the staff members is lower than the gross salary applicable to the post (of teacher), at any stage prior to the conversion, such difference to be paid as a special allowance."*

The underlying rationale behind the above recommendation was to 'ensure that the group of personnel affected would receive the same take home pay and basic salary which they were in receipt in the post of Engineering Teaching Assistant prior to their appointment to the post of Lecturer (Probationary).'

The decision of the UGC on the above recommendation is set out in its letter dated 27th September 2002, marked '**R2**' and reads as follows:

1. *According to Section 5C of the Universities (Amendment) Act No. 1 of 1995, a person holding a permanent post, when appointed to a post of teacher in the same department need not undergo a probationary period. Therefore, staff falling into this category must be considered confirmed and that they be designated as 'lecturer'.*
2. *To place them on the salary scale and pay allowances applicable to post held immediately prior to the post of teacher in the Institute, on personal to the holder basis, if the gross salary applicable to the new post of teacher is lower than that of the post held immediately prior to the post of teacher in the Institute.*

3. *To convert their salary whenever the basic salary applicable to the post of teacher becomes equal or higher to (the) personal to the holder salary, or if the gross salary drawn by the staff member is lower than the gross salary applicable to the post of teacher, at any stage prior to the conversion, such difference to be paid as a special allowance."*

The following salient features are evident from 'R2':

- a) The salary mechanism contained in 'R2' was personal to the Petitioners.
- b) 'R2' recognises, and it is in fact admitted by all parties that the basic salary of a teacher was lower than the basic salary that the Petitioners were drawing as ETAs.
- c) Thus, in terms of 'R2', the Petitioners were afforded a special privilege of being placed on the same salary scale and the same salary step that they would have been had they remained as ETAs at the 1st Respondent – vide paragraph 2 (referred to as the *personal to the holder basis*).
- d) However, 'R2' provided for a conversion from the said salary to the salary step of a teacher, on a future date.
- e) The future date would be when the basic salary of a teacher became higher than the personal to holder salary that was to be paid to the Petitioners (i.e. the salary scale of an ETA).
- f) What is critical to this application is that until the conversion took place, and provided there was a difference between the take home pay of the two posts (i.e. teachers and ETAs), such difference was to be paid in the form of an allowance.

The underlying principle in 'R2' therefore was to ensure that the take home salary of the Petitioners remained the same, despite them having agreed to join the Institute.

Based on the above decision of the UGC, the Institute had issued a supplementary letter of appointment dated 13th January 2003, marked 'R3', which reflects the decision in 'R2', informing the Petitioners as follows:

"I am pleased to inform you that as per University Grants Commission decision at its 615th meeting held on 9th August 2002, your designation will be changed from Lecturer (Probationary) to Lecturer, with effect from 1st November 2000 and the post is confirmed.

Further, until further notice, you will be placed on salary step Rs. 22,925 of the B-03(a) scale (19,125 – 8x475 – 22,925) the scale attached to the previous post you held (ETA Grade I) before appointment as Lecturer in the Institute of Technology University of Moratuwa with effect from 1st November 2000. You would also be paid the following allowances applicable to the post of ETA Grade I as follows.

<i>MCA:</i>	<i>Rs. 2250 (10% of the salary)</i>
<i>Interim allowance:</i>	<i>Rs. 1200</i>

The above salary scale and allowances will be made on personal to the holder basis until the gross salary applicable to the post of teacher is lower than that of the post held immediately prior to the post of teacher in the Institute of Technology University of Moratuwa.

***Your salary will be converted** to the salary attached to the post of teacher when the basic salary applicable to the post of teacher becomes equal or higher to personal to the holder salary or if the gross salary drawn by you is lower than the gross salary applicable to the post of teacher you hold at any stage prior to the conversion, such difference will be paid as a special allowance.*

All other conditions stipulated in the letter of appointment issued to you dated 16th July 2001 remains unchanged."

It is clear that the terms of remuneration in 'P16' were replaced by the above terms of remuneration in 'R2'. What is critical is that the Petitioners request for the above formula and the payment of an academic allowance – vide 'P14a'- was partially rejected in that the 1st Respondent and the UGC, while agreeing to placing the Petitioners on the salary scale of an ETA, did not agree to the payment of an academic allowance to the Petitioners.

If the Petitioners, while holding the official designation of 'teacher' were to be paid the salary scale that they were entitled to as ETAs, which admittedly was higher than the basic salary of a teacher, and the academic allowance as well, that would have led to an anomaly, with the Petitioners receiving a gross salary higher than what they would be entitled to in their official designation of teacher. Hence, the rationale for not paying the academic allowance to the Petitioners. This is a reflection of the underlying principle that their take home salary cannot be less than what they would have enjoyed as ETAs.

The fact of the matter was that the Petitioners were drawing a higher salary in their previous post as ETAs as a result of being placed at the upper end of the salary scale by virtue of having served periods varying between 17-25 years. However, when they joined the Institute, they did so as teachers, and were placed at the lower end of the salary scale of a teacher. The result was that the Petitioners were getting as teacher, a salary which was lower than what they drawing as ETAs. Hence, the resolution offered to the Petitioners by the above decision of the UGC and reflected in '**R3**' was that the Petitioners would be placed on the salary step that they were in, as ETAs.

The Petitioners were now being placed in a hybrid situation, which originated at their request. That is, while their designation was teacher, they were going to be paid the salary of an ETA (on a personal to holder basis), which was higher than what the Petitioners would have been entitled to as teachers, subject to an adjustment by way of an allowance, to ensure that they received the same take home salary had they not joined the Institute.

The UGC decision was that the salary and allowances specified in '**R3**' would be paid as long as the gross salary payable to a teacher was less than the aggregate of that specified in '**R3**'. However, the UGC did contemplate there being a day when the basic salary of a teacher may be higher than what the Petitioners would receive as an ETA in terms of '**R3**'. Once that day arrived – i.e. the conversion date - in terms of '**R3**', the salary of the Petitioners were to be converted to that of a teacher.

In essence, by virtue of joining the Institute, the Petitioners could not get a take home pay less than what they would otherwise have received. The 1st Respondent,

and the UGC, by '**R2**' had given the Petitioners an assurance that if such a situation occurs, the equilibrium will be restored in the manner provided therein.

The Respondents have submitted a document marked '**R4a**' setting out the comparison of the gross salary of a teacher and the actual salary that was paid to the 1st Petitioner from 1st November 2000 to 1st July 2014. The above narration as at 1st November 2000 can be demonstrated by the following table:

Description	ETA/actual payment to the Petitioners	Teacher
Basic salary	20550	16250
MCA	2250	1500
10% allowance	2055	1625
30% academic allowance	-	4875
Gross Pay	24855	24250

The 1st Petitioner has received for the month of November 2000, which is the date on which she assumed duties at the Institute, a salary of Rs. 24855, which is Rs. 605 higher than what she would have received as a Teacher. According to '**R4a**', this position continued until November 2006, and was applicable in respect of all Petitioners.

Had the Petitioners been paid the academic allowance of 30% calculated on their basic salary, the Petitioners would have received an additional sum of Rs. 6165, and a total take home salary of Rs. 31,020, which is much higher than what they were entitled to as teachers and thereby creating an anomaly with the salary paid to other teachers. It is therefore evident from the above table that the Petitioners were not being paid the academic allowance of 30% for the reasons that I have already adverted to.

Even though the Petitioners were not being paid the academic allowance, the Petitioners continued to receive a salary, as represented to them by '**R3**', which was marginally higher than what they would have received had they opted to be placed at the starting step of a teacher.

The grievance of the Petitioners that culminated in this application appears to have been triggered by three events. The first is that the Petitioners appear to have reached the highest point in their salary scale and their basic salary was therefore stagnant. The second is that the salary of teachers had been increased. The result was that the difference between the basic salary that was drawn by the Petitioners and the basic salary of a teacher had narrowed. The third event is the increase of the academic allowance of a lecturer/Senior lecturer in the following manner:

- August 2011 - 58% - 64%
- January 2013 - 75% - 80%
- January 2014 - 80% - 85%
- December 2014 - 100% - 120%
- January 2016 - 116% - 136%

As would be seen from the above, an academic allowance of approximately 30% of a low basic salary ensured that the Petitioners received about the same take home pay of a teacher. However, the saturation of the Petitioners' basic salary and the increase of the basic salary of a teacher and the academic allowance created a situation where the gross salary of a teacher was now higher than the gross salary of an ETA that the Petitioners had opted to draw (i.e. the personal to the holder salary).

This can be demonstrated by the following tables for different periods:

As at 1st January 2007 –

Description	ETA/actual payment to the Petitioners	Teacher
Basic salary	48250	39050
COL allowance	1750	1750
25% academic allowance	-	9762
Gross Pay	50000	50562

As at 1st November 2010

Description	ETA /actual payment to the Petitioners	Teacher
Basic salary	48250	42550
COL allowance	5250	5250
25% academic allowance	-	10637
Gross Pay	53500	58437

As at 1st January 2012

Description	ETA/actual payment to the Petitioners	Teacher
Basic salary	48250	43250
COL allowance	5850	5850
Special allowance	2412	2162
64% academic allowance	-	27680
Gross Pay	56512	76780

As at January 2014

Description	ETA/actual payment to the Petitioners	Teacher
Basic salary	52895	47655
COL allowance	7800	7800
Special allowance	7934	7148
5% allowance	2500	2382
85% academic allowance	-	40506
Gross Pay	71129	103110

Thus, when the gross salary of a teacher increased beyond the gross salary of the Petitioners, the Respondents should have ensured that the Petitioners received the same salary as what they would have received had they been paid at the salary of a teacher. In other words, the Respondents should have given effect to paragraph 3 of 'R2' by the payment of a *special allowance* to cover the difference.² The Respondents however does not appear to have made that adjustment.

² Vide penultimate paragraph of 'R3'.

It is in the above circumstances that the Petitioners complained to the USAB about the non-payment of the academic allowance.

I have already set out the evolution of the Petitioners from ETA to a teacher while maintaining their salary as an ETA on a personal to holder basis but subject to ensuring that their take home pay was not less than what they would have earned had they continued as ETAs. Having opted for the above scheme, which was beneficial to the Petitioners at that time, the Petitioners cannot later claim an entitlement to the academic allowance, when doing so is more beneficial to the Petitioners. The learned Senior State Counsel has quite rightly pointed out that the Petitioners would be paid their academic allowance when the conversion takes place and the Petitioners start receiving a salary of a teacher. The fact of the matter is that the conversion has not taken place and therefore I am of the view that the Petitioners are not entitled to the payment of the academic allowance which is a component of the salary paid only to a teacher.

The Respondents have submitted that the basic salary of a teacher is substantially less than the *personal to holder salary* that the Petitioners are receiving. If the academic allowance of 136% is calculated at the *personal to holder salary*, that would be unjust and be a windfall to the Petitioners. The learned Senior State Counsel submitted that if this happened, the gross remuneration that the Petitioners would receive will exceed that of other teachers including Professors and that such a situation would be unfair and inequitable and lead to an anomaly.

However, all is not lost for the Petitioners, for the reason that in terms of paragraph 3 of 'R2', until the conversion takes place, the Petitioners are entitled to be paid the difference by way of a special allowance. It appears from the above table for January 2014 that the Petitioners have only been paid a sum of Rs. 71129 whereas had they been placed on the salary scale of a teacher, the Petitioners would have received Rs. 103,110. In terms of 'R3', the Petitioners are entitled to be paid the difference by way of a special allowance, if payment has not been made already.

The Petitioners have sought a Writ of Mandamus directing the Respondents to pay them the academic allowance. I have already held that the Petitioners are not entitled to the payment of an academic allowance. I am therefore not in a position to grant the Writ of Mandamus that has been prayed for.

However, I am of the view that in terms of 'R2' and 'R3' the Petitioners are entitled to receive a gross take home pay which is equivalent to what a teacher in the grade that the Petitioners were eligible to be in, would receive. The Petitioners have a legal entitlement in terms of 'R2' and 'R3' to receive such a sum of money in the form of a special allowance until the conversion date, and I am of the view that the Respondents have a corresponding legal duty to pay such sum of money. A Writ of Mandamus would thus be available to the Petitioners, directing the Respondents to comply with 'R2' and 'R3' by the payment of a special allowance.³

As held by the Supreme Court in Ranjane Pathirana vs Secretary, Ministry of Environment and Natural Resources and Others,⁴ "*In the field of public law the writ of mandamus is a powerful weapon the Courts use freely to prevent breach of duty and injustice.*" While this Court cannot grant relief where none has been prayed for,⁵ this Court has the power to issue a Writ which has been prayed for, *albeit* in a modified form.⁶

Accordingly, I issue a Writ of Mandamus directing the 1st – 28th Respondents to take the salary that the Petitioners would have been entitled to as a teacher inclusive of the academic allowance, and deduct the actual salary paid to the Petitioners, and thereafter take steps to pay the said difference, if any, to the Petitioners by way of a special allowance as provided for in 'R2' and 'R3'. As this may involve a significant sum of money for which the 1st Respondent may not have any financial allocation, I direct that the said calculation be done within three months from today and that the said payment be made within a period of one year from today.

I make no order with regard to costs.

President of the Court of Appeal

³ See Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt) Ltd [2005] 1 Sri. L.R. 89 at 93

⁴ SC Appeal No. 78/2006; SC Minutes of 5th March 2000.

⁵ Vide Dayananda vs Thalwatte [2001] 2 Sri LR 73.

⁶ See Premachandra and Dodangoda vs Montague Jayawickrema and Bakeer Markar [1993] 2 Sri LR 294.