

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

In the matter of an Application for a mandate in the nature of a Writ of *Prohibition*, a Writ of *Certiorari* and a Writ of *Mandamus* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) application No: 312/21

Prof. (Dr). Chelliah Elankumaran,
19A, Mariamman Lane,
Thirunelvely South, Jaffna

PETITIONER

-Vs-

1. The University of Jaffna, Jafna.
2. Prof. S. Srisatkunarajah,
Vice-Chancellor,
University of Jaffna, Jaffna.
3. Prof. K. Kandasamy,
Former Competent
Authority in place of Vice-Chancellor,
University of Jaffna, Jaffna.
4. Prof. R. Vigneswaran,
Associate Professor.
Former Vice-Chancellor,
University of Jaffna, Jaffna.
5. Prof. (Ms.) V. Arasaratnam,
Senior Professor.
Former Vice-Chancellor,
University of Jaffna, Jaffna.
6. Prof. S. Kannathasan,
Dean /Faculty of Graduate
Studies (Ex-Oficio Member),
University of Jaffna, Jaffna.

7. Prof. P. Ravirajan,
Dean /Faculty of Science (Ex
Officio Member),
University of Jaffna, Jaffna.
8. Dr. K. Suthakar,
Dean / Faculty of Arts (Ex Officio Member),
University of Jaffna, Jaffna.
- 8A Prof. S. Raguram,
Dean / Faculty of Arts (Ex Officio Member),
University of Jaffna, Jaffna.
9. Prof. B. Nimalathan,
Dean /Faculty of Management Studies
&Commerce (Ex-Officio Member),
University of Jaffna, Jaffna.
10. Prof. S. Raviraj,
Dean /Faculty of Medicine (Ex-Officio
Member),
University of Jaffna, Jaffna.
- 10A Prof. R. Surendhirakumaran
Dean /Faculty of Medicine (Ex-Officio
Member),
University of Jaffna, Jaffna.
11. Dr. K. Pirabakaran,
Dean /Faculty of Engineering (Ex-Officio
Member),
Ariviyal Nagar, Kilinochchi.
12. Dr. S. Vasantharuba,
Dean /Faculty of Agriculture, (Ex-officio
Member),
Ariviyal Nagar, Kilinochchi
13. Dr. Mrs. S. Sivachandran,
Dean/Faculty of Technology,
(Ex-Officio Member),
Ariviyal Nagar, Kilinochchi.

14. Mrs. D. Thabotharan,
Dean/Faculty of Allied Health Sciences
(Ex-Officio Member),
University of Jaffna,
Jaffna.

15. Mrs. S. Srimuraleetharan,
Dean/Faculty of Hindu Studies,
(Ex-Officio Member),
University of Jaffna,
Jaffna.

15A Mr. S. Padmanathan,
Dean/Faculty of Hindu Studies,
(Ex-Officio Member),
University of Jaffna, Jaffna.

16. Prof. K. Velauthamoorthy,
Senate Rep to Council,
Department of Chemistry,
University of Jaffna, Jaffna.

17. Prof. P. Balasundrampillai,
Emeritus Professor,
UGC Appointed Member,
117/7 Ambalavanar Road, Jaffna.

17A Mr. P. Anton Punithanayagam,
UGC Appointed Member,
Attorney-at-Law,
41, Cemetery Road,
Rambaikulam, Vavuniya.

18. Dr. S. Mohanathas,
Former Vice-Chancellor,
UGC Appointed Member,
532, Kandy Road, Jaffna.

18A Mr. T. Vimalan,
UGC Appointed Member,
District Director,
Land Reform Commission,
District Secretariat, Jaffna.

19. Mr. P. Thiyagarajah,
UGC Appointed Member,
Former Member PPSC,
53/4, Annasaththiram Lane, Jaffna.

19A Mr. D. Rengan,
UGC Appointed Member,
Attorney-at-Law,
Solicitor of England & Wales,
566/5, K. K. S. Road, Jaffna.

20. Eng. V. Suthaka,
Chief Engineer RDA,
UGC Appointed Member,
50 Forest Office Lane, Chundikuli, Jaffna.

20A Mrs. Srinithy Nanthasekaran,
UGC Appointed Member,
Retired High Court Judge,
19/150 Farm Road, Mattakkuliya,
Colombo 15

21. Mr. M. Thiruvathavooran,
Attorney-at-Law,
UGC Appointed Member,
210, Kankesanthurai Road, Chunnakam.

21A Eng. Ms. T. Shanthathevi,
UGC Appointed Member,
Project Engineer,
6, Thambasiddy Road, Point Pedro.

22. Dr. A. Thirumurugan,
Former Principal,
UGC Appointed Member,
246-4/A, Temple Road, Jaffna.

23. Mr. V. Kanakasabapathy,
Retired Director General,
UGC Appointed Member,
79/3 W.A. Silva Mawatha, Colombo 06.

2nd, 6th to 23rd Respondents are Members of
the Council of the University of Jaffna.

24. Mr. V. Kandeepan,
Registrar and Secretary to the Council,
University of Jaffna,
Jaffna.

25. Prof. Rev. G. Pilendran,
Retired Professor,
UGC Appointed Member,
University of Jaffna,
Jaffna.

26. Prof. Mrs. S. Kuganathan,
Department of Fisheries,
University of Jaffna,
Jaffna.

25th and 26th Respondents are the
Members of the Preliminary
Investigation Committee.

27. Mrs. S. Elangovan,
Attorney-at-Law,
Chairman / Tribunal,
Rasathoddam Veethy,
Jaffna.

28. Mr. R. T. Vignarajah,
Attorney-at-Law,
Member / Tribunal,
UGC Appointed Member,
Moolai, Chulipuram.

29. Mr. P. Vigneswaran,
Former Member PPSC,
Retired Provincial Director / Education,
Member / Tribunal,
70/22 Arasady Road, Jaffna.

27th to 29th Respondents are the Members of
the Formal Inquiry Committee.

30. Mr. M. K. Muthukumar,
Attorney-at-Law,
Chairman / Review Panel,
Registrar's Office,
University of Jaffna,
Jaffna.

31. Mrs. S. Vijayarani,
Attorney-at-Law,
Member / Review Panel,
Registrar's Office,
University of Jaffna,
Jaffna.

32. Mrs. E. A. Yohanayagam,
Divisional Secretary,
DS Office, Nallur,
Jaffna.

30th to 32nd Respondents are Members
of the Review Panel.

33. Mr. S. Paramarajah,
Chairman,
Fresh Formal Inquiry Panel,
Registrar's Office,
University of Jaffna, Jaffna.

34. Mr. K. Ariyanayagam,
Member,
Fresh Formal Inquiry Panel,
Registrar's Office,
University of Jaffna, Jaffna.

35. Dr. Selvi Thiruchandram,
Member,
Fresh Formal Inquiry Panel,
Registrar's Office,
University of Jaffna, Jaffna.

33rd to 35th Respondents are Members of the
Tribunal who held Fresh Formal Inquiry.

36. Prof. Mahinda S. Rupasinghe,
Emeritus Professor,
UGC Appointed Member,
11/9, Wimala Road,
Wanaguru Mawatha,
Hokandara 10118.
37. Prof. Jegath Weerasinghe,
Senior Professor,
UGC Appointed Member,
407, Bauddhaloka Mawatha, Colombo 07.
- 37A Mr. Kapilan Karunanathan,
UGC Member, Director,
Northern Food Company,
48-1/4 Lilly Avenue, Colombo - 6.
38. Prof. Kumudu Wijewardene,
Former Professor,
UGC Appointed Member,
30/3, Samdradevi Mawatha, Etul Kotte, Kotte.
39. Mr. P. Sutharsan,
SLEAS, Assistant Director,
UGC Appointed Member,
69B, Clock Tower Road, Jaffna.
40. Mr. K. Rushankan,
Educational Career Consultant,
UGC Appointed Member,
37, Thalayady Lane, Thirunelvely.
- 40A Rev. Dr. P. J. Jebaratnam,
UGC Appointed Member,
Vicar General, Bishop's House, Jaffna.

36th to 40th Respondents are also Members
of the Council of the University of Jaffna

RESPONDENTS

41. Mr. S. Sivaruban,
Dean,
Faculty of Performing and Visual Arts,
Ex-Officio Member, University of Jaffna,
Jaffna.

42. Prof. G. Mihunthan,
Senate Rep to Council,
Dept of Agricultural Biology,
Ariviyal Nagar, Kilinochchi.

43. Mr. K. Sivaram,
UGC Appointed Member,
Director, MK Agri Products,
185 Temple Road, Nallur, Jaffna.

44. Mrs. Manohari Ramanathan,
UGC Appointed Member,
Attorney-at-Law,
38 Melbourne Avenue,
Bampalapitya, Colombo -4

41st to 44th Added Respondents are also
Members of the Council of the University of
Jaffna.

ADDED RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel: Farzana Jameel, PC with Thushani Machado and Shahanie Mackie

instructed by Sanjeewa Kaluarachchi for the Petitioner.

Sumathi Dharmawardena, PC ASG with A. Weerakoon, SC for the
Respondents.

Written submissions tendered on:

28.10.2024 and 26.11.2024 by the Petitioner.

28.10.2024 by the Respondents.

Argued on: 20.07.2023 and 04.06.2024

Decided on: 02.06.2025

S. U. B. Karalliyadde, J.

The Petitioner was a Professor attached to the Department of Economics in the University of Jaffna (the 1st Respondent). By the letter dated 12.07.2012 (D27), he was appointed as the acting Head of the Department of Economics for one month in terms of Section 51(3) of the Universities Act, No. 16 of 1978 (the Act) as the Head of the Department was made the Dean of the Faculty of Arts. The appointment of the Petitioner made under Section 51 (3) of the Act was extended thrice for three months. By the letters dated 04.10.2012 and 30.01.2013 (D28), he had requested from the then Vice Chancellor to make his appointment permanent for three years in terms of Section 51(1) and 51(2) of the Act. Nevertheless, the Petitioner's appointment was not made permanent for the reason that if his appointment as the Head of the Department had been made permanent, there would be unrest among the students, as there were complaints from the female students against him about the sexual harassment.

The Petitioner received the letter dated 03.06.2013 marked as P2 requesting to attend a preliminary investigation about those complaints and to record his statements. The 25th and the 26th Respondents were appointed by the University Council to conduct the preliminary investigation, but the Petitioner objected for the appointment of the 26th Respondent as he is junior in the academic service to the Petitioner and therefore is not entitled to conduct the inquiry in terms of paragraph 6.2 of Chapter XXII of the

Establishment Code of the University Grants Commission and Higher Education Institutes (the Code). By the letter dated 05.06.2013 (marked as P4), the Petitioner was informed to place his objections regarding the inquiry panel before the Council, and the inquiry was postponed to 13.06.2013. Consequent to the Petitioner's request, the objections placed were tabled at the Council meeting and by the letter dated 11.06.2013 (marked as P6), the Petitioner was informed that the Council had confirmed the appointments of the 25th and 26th Respondents to the inquiry panel. Thereafter, the preliminary investigation proceeded in the absence of the Petitioner as he did not participate in the proceedings, and the 25th and 26th Respondents submitted the preliminary investigation report marked as P8 to place before the Council meeting. The Petitioner alleges that in his absence, the preliminary investigation had been completed *ex parte* on 27.06.2013, violating the principles of natural justice. Thereafter, the charge sheet dated 23.07.2013 marked as P10 was issued alleging the abuse of power in the form of improper conduct, namely sexual harassment, against the female students. The Petitioner argues that P10 contravenes the provisions of Chapter XXII of the Code, as the charges are vague and ambiguous, and the charges do not indicate a specific offence. The Petitioner argues that an explanation of charges should be provided within 15 days from the date of the charge sheet (P10), and alleges that the relevant documents were provided to him only on 12.08.2013, despite his request to provide them. Thereafter, the Petitioner submitted his explanation on 26.08.2013 (P12). By the letter dated 30.09.2013 marked as P13, the Petitioner was informed that the

Council did not accept his explanation and therefore will proceed with the formal inquiry. By the letter marked as P13, the Petitioner was interdicted with effect from 01.10.2013 and declared the university premises out of bounds from 07.10.2013.

The Council appointed the 27th to 29th Respondents to conduct the formal inquiry against the Petitioner. At the commencement of the formal inquiry, the Counsel appeared for the Petitioner raised a preliminary objection about the appointment of 25th and 26th Respondents to the preliminary investigation committee for the reason that the 25th Respondent is junior to him in the academic staff and the 26th Respondent was appointed by the then Vice Chancellor without any power to appoint him in contravention to the paragraph 1.1(b) and 1.3 of the Chapter XXII of the Code. Further, the Petitioner has taken up the position that the preliminary investigation was carried out by the 25th and 26th Respondents, without recording his statement, and therefore, the principles of natural justice were violated. However, the inquiry tribunal consisting of the 27th to 29th Respondents dismissed the preliminary objections raised by the learned Counsel appearing for the Petitioner by the order dated 26.07.2014 marked as P15(a) - VII. The Petitioner states that, thereafter, when the formal inquiry commenced on 30.08.2014, an amended charge sheet dated 30.08.2014 marked as P14, which was identical to P10, was served on him. At the formal inquiry, evidence was led by both prosecution and defence, and the formal inquiry was concluded on 01.07.2017. Thereafter, the parties were allowed, to file written submissions and the tribunal which was consisted with the 27th to 29th Respondents submitted their inquiry report dated

29.12.2017 marked as P18, where the Petitioner was found guilty to all the charges by the 27th and 28th Respondents with the partial agreement of the 29th Respondent (P18(a)). Then the Petitioner filed the Writ Application bearing No.88/2018 seeking to quash the inquiry report marked P18. While this application was pending, the 29th Respondent submitted a detailed inquiry report prepared by him, dated 15.07.2018, marked as P30, where he has concluded that the Petitioner should be exonerated from the charges against him. When this matter was taken up on 30.10.2018 in this Court, the learned State Counsel appeared for the Respondents made an application to appoint a different committee (review panel) to consider the evidence already recorded and to make fresh recommendations to the Council and for the Council to come to a final determination on the said recommendations (P31). The review panel by the report dated 12.03.2019 marked as P34 recommended that if the Council decide to hold a fresh inquiry, it to issue a charge sheet and complete the inquiry within two months. The Petitioner, by letter dated 06.04.2019 marked as P35, objected to the said recommendations and requested to exonerate him from the charges. The 3rd Respondent, by letter dated 03.06.2019 marked as P37, informed the Petitioner that the Council at its 436th meeting accepted the recommendations of the review panel and the letter marked as P35 will be tabled at the next Council meeting. Thereafter, the Petitioner has withdrawn the Writ Application No.88/2018, reserving his rights to file a fresh Writ Application (P38).

The 3rd Respondent issued a charge sheet dated 09.08.2019, marked as P39, to the Petitioner based on the abuse of power and improper behaviour towards the female students. The Petitioner argues that the charges in P39, in essence, are identical to the previous charges in the charge sheet marked as P14, it has been issued without jurisdiction, and the Review panel acted beyond their scope. The Petitioner further argues that the 29th Respondent's report marked as P30 has been disregarded when framing charges, and the charge sheet contains previously disregarded findings and includes the findings of the Preliminary Investigation Committee. Furthermore, the Petitioner's legitimate expectation that the disciplinary authority would act in terms of the Code has been violated. Therefore, the Petitioner argues that the charge sheet marked as P39 is *ultra vires*, illegal and null and void.

The Petitioner, by letter dated 18.06.2014 marked as P16, requested the Council to reinstate him in terms of the Public Administrative Circular No. 6/2004 dated 15.12.2004 (P21(a)). He has been reinstated by the letter dated 01.01.2015 marked as P17 with effect from 01.10.2013 in terms of the Circular marked as P21(a) and the Public Administrative Circular No. 6/2004(1) dated 30.12.2011 (P21(b)). According to the letter marked P17, the Petitioner has been paid his full salary and placed on compulsory leave with effect from 01.01.2015. The Petitioner argues that the reinstatement is contrary to the Circulars marked as P21(a) and P21(b) and therefore is illegal and null and void.

Under the above-stated circumstances, before instituting the instant Application, the Petitioner had instituted a Writ application bearing No. CA Writ 373/2019 in this Court seeking relief addressing his above-stated grievances. The CA Writ 373/2019 was supported on 15.09.2020, the learned Senior State Counsel appeared for the Respondents gave the undertaking that the second formal inquiry will be completed within 3 months. Thereafter, by the letter dated 19.09.2020 marked as P43, the Petitioner submitted his explanation to the charge sheet marked as P39. The Petitioner states that on 29.01.2021, the learned Senior State Counsel appeared for the Respondents, sought further time to conclude the inquiry. However, the inquiry did not commence by March 2021. By the letter dated 24.03.2021 marked as P45, the 2nd Respondent requested the Petitioner to attend the inquiry on 29.03.2021. The Petitioner states that he had requested the list of witnesses by the letter dated 23.10.2020 marked as P44.

The Petitioner states that he has sought a postponement of the inquiry as he was given very short notice of the inquiry and had no information provided as to the inquiry panel members and the list of witnesses. Thereafter, by the letter dated 31.03.2021 marked as P45A, the Petitioner was informed that the inquiry has been fixed to be held on 07.04.2021. The Council, on its 447th meeting held on 26.2020 (B27), has appointed a three-member tribunal (33rd to 35th Respondents). The Petitioner states that even though a three-member tribunal was appointed, only two members took part in the inquiry on 07.04.2021. At the inquiry, the Petitioner's Counsel had raised objections regarding the

composition of the tribunal, the format of the charge sheet and the fact that the list of witnesses was not issued to him to participate in the inquiry. Thereafter, by the letter dated 08.04.2021 marked as P47, the Petitioner had raised concerns on the conduct of the inquiry.

On 18.04.2021, which was the second day of the inquiry, the Petitioner had attended the inquiry in person and informed the tribunal that he is waiting for a reply to the letter marked P47. Thereafter, the inquiry was re-fixed for 26.04.2021. On the third day of the inquiry, the Petitioner submitted a written submission (P50) on the objections to the tribunal. The Petitioner states that the tribunal disregarded his submission and informed him that a ruling on the objections will be given at the end of the inquiry, and attempted to resume the inquiry. The Petitioner further avers that he objected to the tribunal's attempt to question a witness who was residing in the USA via Zoom video conferencing, however, as the tribunal disregarded his objection and continued with the inquiry, the Petitioner and his Counsel walked out of the inquiry. The Petitioner states that in terms of the proceedings dated 26.04.2021 marked as P47A III, the inquiry was proceeded *ex parte* after the Petitioner walked out of the inquiry. The Petitioner states that he received a letter dated 27.04.2021 informing that the next hearing of the inquiry will be held on 28.04.2021, and thereafter, by the letter dated 27.04.2021 marked as P51, informed his inability to attend the inquiry. Petitioner alleges that the inquiry held on 28.04.2021 had been conducted *ex parte* and had recorded evidence of a witness via Zoom video conferencing. Therefore, the Petitioner argues that the entire inquiry

proceeding is arbitrary, unreasonable, *ultra vires* and violates the legitimate expectation of the Petitioner.

Therefore, being aggrieved by the aforesaid factors, the Petitioner has invoked the Writ jurisdiction of this Court seeking the following substantive reliefs, *inter alia*,

- b. Grant and issue a Writ of Certiorari quashing the charge sheet produced marked P39 issued by the 2nd Respondent
- c. Grant and issue a Writ of Certiorari quashing the Report of the Preliminary Investigation Committee produced marked P-8
- d. Grant and issue a Writ of Certiorari quashing the appointment of the members of the Preliminary Investigation Committee
- e. Grant and issue a Writ of Certiorari quashing the determination of the Council of the 1st Respondent (2nd to the 23rd Respondents), if any, made in pursuance of the recommendations of the Review Panel (P34)
- f. Grant and issue a Writ of Certiorari quashing the decision of the 1st Respondent of placing the Petitioner on Compulsory leave and declaring the University premises out of bounds (P17)
- g. Grant and issue a Writ of Prohibition prohibiting the 1st and/ or 2nd and/or the Council (2nd to the 23rd Respondents) from taking further steps in pursuance of

the recommendations of the Review Panel and charge sheet issued in pursuance thereof, produced marked P39

- h. Grant and issue a Writ of Prohibition restraining the 1st and/or the 2nd, 6th to 23rd, 36th to 40th Respondents or any one or more of them from taking any steps and/or making any decision or determination in furtherance of the purported *ex parte* proceedings and Report, if any
- i. in the event any steps and/or decision or determination is made by the 1st and/or the 2nd, 6th to 23rd, 36th to 40th Respondents or any one of them in furtherance of the purported *ex parte* any one or more of proceedings and Report, grant and issue a Writ of Certiorari quashing any such decision or determination made by 1st and/ or the 2nd, 6th to 23rd, 36th to 40th Respondents or any one or more of them made in furtherance of the purported *ex parte* proceedings and Report
- j. Grant and issue a Writ of Mandamus directing the 1st and/or the 2nd, 6th to 23rd, 36th to 40th Respondents to make a decision/determination according to Law on the basis of the findings of the Review Panel (P34)
- k. Grant and issue a Writ of Mandamus directing the 1st and/or 2nd. 6th to 23rd. 36th to 40th Respondents to release his increments withheld during his period of compulsory leave in terms of Paragraph 14.3 of Chapter X of the Establishment Code for UGC & HEIs, marked in P11(A)

l. To issue a Writ of Mandamus directing the 1st and/or 2nd 6th to 23rd 36th to 40th

Respondents to rectify the effective date of the Petitioner's full salary and compulsory leave as 23.07.2014, and to pay the increments during Compulsory Leave

m. Grant and issue a Writ of Mandamus directing the 1st Respondent and/or the 2nd, 6th to 23rd, 36th to 40th Respondents) to release the half salary withheld during his period of interdiction from 01/10/2013 to 31.12.2014 and to release the two increments due on 29.11.2013 and 29.11.2014

This Court first observed that, apart from the facts and reliefs sought relating to the conduct of the second formal inquiry, all the other facts, issues raised and reliefs sought by the Petitioner in the instant Application are identical to those of CA Writ 373/2019. Except for the reliefs prayed for in prayers (h) and (i) in the instant Application, the rest of the reliefs prayed for are identical to the reliefs prayed for in the Petition of CA Writ 373/2019. I have addressed all the reliefs prayed for in the prayer to this Application, except prayers (h) and (i) in CA Writ 373/2019. Therefore, this Court will not address the relief prayed for in prayers (b) to (g) and (j) to (m).

The Petitioner argues that the entire inquiry proceeding is arbitrary, unreasonable and *ultra vires* and has violated his legitimate expectation of a fair and speedy disciplinary proceeding. The Petitioner's argument is based on the following grounds,

1. The inquiry tribunal consisted of only two members (the 33rd and the 34th Respondents) instead of three members in violation of paragraph 8.5 of Chapter XXII of the Code.
2. Not recording the objections raised by the Petitioner and not providing a ruling at the time he raised objections before the inquiry tribunal violates paragraph 11.5 of Chapter XXII of the Code.
3. Conducting the inquiry *ex parte* violates paragraph 11.2 of Chapter XXII of the Code.
4. The evidence recorded is not in line with the period mentioned in the charge sheet marked as P39
5. Delay in conducting the inquiry

The first ground is on the constitution of the inquiry tribunal. The Petitioner argues that the Council has appointed three members to the inquiry tribunal (33rd to 35th Respondents), and if three members are appointed, it is mandatory for all the members to participate in the inquiry. However, only two members conducted the inquiry, which is a violation of paragraph 8.5 of Chapter XXII of the Code. Paragraph 8.5 reads as follows,

“In the case of serious offences in which persons holding high office in the commission or a higher educational institution are involved, the disciplinary authority may in its discretion appoint a tribunal of inquiry consisting of not more

than three persons drawn from those to whom power to hold disciplinary inquiries has been dedicated in paragraph 6”

The argument of the Respondents on this is that one of the members was unable to serve in the tribunal and the members were appointed by the Council in terms of paragraph 6,1 of Chapter XXII of the Code. Paragraph 6,1 reads thus,

“Either the Disciplinary Authority or a person or persons comprising a tribunal, drawn from those in sub-para 6:1:1 may hold a disciplinary inquiry or a preliminary disciplinary inquiry.”

It is evident from paragraph 8.5 that, as the disciplinary authority, the Council has the power to appoint a tribunal not exceeding three members. Nowhere in the said paragraph indicate that if three members are appointed, they all should participate in the inquiry proceedings, and there is no requirement that a minimum of three members should be present. According to paragraph 6.1, even a single member is empowered to carry out an inquiry. Therefore, this Court cannot agree with the argument of the Petitioner that once three members are appointed, there should be three members throughout the inquiry proceedings.

Petitioner also argues that not recording his objections and not providing a ruling at the time he raised objections is a violation of paragraph 11.5 of Chapter XXII of the Code. Paragraph 11.5 reads as follows,

“Where any matter of procedure or any objection or procedural grounds is raised at a disciplinary inquiry, the decision of the Tribunal/Inquiry Officer shall be final. The principle on which decision may be taken is that the objective of the inquiry is to arrive at the truth speedily, and that technicalities whether procedural or otherwise should not be allowed to impede the progress of the inquiry. All objections and rulings thereon with reasons where necessary should be recorded at the stage at which they are raised.”

Citing the last sentence of paragraph 11.5, the Petitioner argues that his objections marked as P50 were not recorded in the inquiry proceedings marked as P47A-III and the tribunal stated that a ruling will be given after the inquiry. In this regard, the Respondents argue that all the objections were recorded and considered by the inquiry tribunal. When reading paragraph 11.5 as a whole, it is clear that when any objection is raised before the inquiry tribunal, the decision of the tribunal with regard to such objection shall be final, and such decision can be taken with the view of completing the inquiry on time without any hindrance from such objections. The Petitioner himself has stated the fact that the inquiry panel has stated that a ruling would be given on the conclusion of the inquiry. Paragraph 11.5 does not imply that when an objection is raised, it should be provided a ruling at the time it is raised. Therefore, considering the above facts, this Court cannot agree with the argument of the Petitioner that the inquiry tribunal has violated paragraph 11.5 of the Code.

The Petitioner further argues that on the third and fourth days, the inquiry had been conducted *ex parte* in violation of paragraph 11.2 of Chapter XXII of the Code. Thus, creating procedural irregularities violating the basic principles of natural justice. Paragraph 11.2 reads as follows,

“If the accused person absents himself without any valid reasons, the inquiry should be adjourned and he should be warned that proceedings will be held ex-parte. The inquiry, when resumed, should be proceeded with ex-parte if the accused person persists in his absence”.

The Petitioner contends that the inquiry was conducted *ex parte* on the third day of the inquiry after he walked out of the inquiry due to his objections as to examining a witness via Zoom video conferencing was disregarded by the inquiry tribunal. Further, the inquiry has also been conducted on the fourth day despite his request (P51) not to conduct the inquiry owing to procedural irregularities. The argument of the Respondents regarding this is that, in terms of paragraph 1.5 of Chapter XXII of the Code, any order made under the provisions of the Code should not be invalidated for the reason of non-compliance with any provision unless it results in a failure of justice. Paragraph 1.5 reads thus,

“No proceedings or orders made under these provisions shall be invalid by reason only of any infirmity or the non-observance of any provisions, if these have not resulted in a failure of Justice.”

The Respondents argue that there is no failure of justice as the Petitioner was given the right of legal representation by allowing the witnesses to be cross-examined by the Petitioner's Counsel, and all the statements and objections made were recorded. The Respondents argue that the Petitioner has acted maliciously and with a deliberate intention to avoid the inquiry proceedings.

This Court will now look into whether there is a violation of paragraph 11.2 of Chapter XXII of the Code resulting in a procedural irregularity. Whether the tribunal had failed to follow the proper procedure laid down in the Code depends on whether the provisions of the Code are mandatory or directory in nature. N. S. Bindra's Interpretation of Statutes (12th edn) at page 435 states thus,

“One of the important tests that must always be employed in order to determine whether a provision is mandatory or directory in character is to consider whether the non-compliance of a particular provision causes inconvenience or injustice and, if it does, then the court would say that that provision must be complied with and that it is obligatory in its character.”

Accordingly, if injustice has been caused, the Courts can direct the parties to comply with that particular provision. In terms of paragraph 1.5, the proceedings or an order made under the Code cannot be invalidated for non-observance of any provision in the Code unless it results in a failure of justice. However, in the case of *Council of Civil*

Service Unions v Minister for the Civil Service,¹ Lord Diplock described procedural impropriety as one of the grounds for judicial review as follows,

“I have described the third head as “procedural impropriety” rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice...”

Considering the above, this Court is of the view that the tribunal should have warned the Petitioner that the inquiry will be carried out *ex parte* if the Petitioner abstains himself from participating in the inquiry and thereafter the tribunal should have re-fixed the inquiry without continuing the inquiry proceedings in terms of paragraph 11.2 of Chapter XXII of the Code. The tribunal should have given such a warning to the Petitioner when he walked out on the 3rd day of the inquiry. The tribunal had the power to provide such a warning in terms of paragraph 11.2 and continue the inquiry if the Petitioner persisted in not appearing before the tribunal on the day the inquiry was refixed after such warning. The Respondents argue that no failure of justice was caused to the Petitioner and therefore, in terms of paragraph 1.5, there is no requirement to comply with paragraph 11.2. However, this Court is of the view that there is a violation

¹ [1985] AC 374.

of the right to be heard as the inquiry proceeded *ex parte*. In the case of *B. Surinder Singh Kanda v The Government of the Federation of Malaya*,² Lord Denning held that,

“If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.”

Considering the above, this Court is of the view that the tribunal had failed to follow the procedure laid down in the Code by not warning the Petitioner of the *ex parte* hearing and thereby causing a failure of justice as he was denied the opportunity to know the evidence presented against him and to challenge it.

The Petitioner argues that the evidence recorded is not in line with the period mentioned in the charge sheet marked as P39. The Petitioner states that the 1st witness, Suvedda Piratheepan, had studied under the Petitioner in her second year in 2011. Even though the 1st witness was admitted to the University in 2007, she rejoined in the year 2010 after ending the civil war that prevailed in the country, and according to the sworn translation of the inquiry proceedings (CA-2), the witness has admitted that she studied the subject taught by the Petitioner in 2011. The 3rd witness, Ms. Thevakumaran Janani had admitted to the University for the academic year 2010/2011 and had studied under

² [1962] UKPC 10

the Petitioner in her 1st year in 2011 (CA-4) and the 4th witness Ms. Sasitha Mohanraj had admitted to the University in 2009 and studied the subject which the Petitioner has taught in her 2nd year (CA-5). Therefore, the contention of the Petitioner is that the Petitioner did not teach these three witnesses within the period mentioned in the charge sheet marked as P39 (12.10.2012 to 15.04.2013). The argument of the Respondents in this regard is that by the order of the tribunal, the identification of the witnesses was verified by the Assistant Registrar (Admission Branch) of the 1st Respondent along with the relevant documents, including the student identification cards.

Even though the Respondents had produced the student identity cards of the 1st, 3rd and 4th witnesses marked as R42(a) to R42(c), those identity cards only indicate the date of admission of these witnesses to the University and not the period during which the Petitioner has taught them. When examining the inquiry proceedings marked as CA-2 to CA-4, this Court can observe that the 1st witness had been a student of the Petitioner in 2011, the 3rd witness had been admitted to the 2010/2011 academic year and studied under the Petitioner in the second year in 2011 and the 4th witness had been admitted in 2009 and studied under the Petitioner in her 2nd year. Even the Assistant Registrar (Admission Branch) of the 1st Respondent in her evidence (CA-5) had confirmed the fact that the 1st, 3rd and 4th witnesses had studied the Petitioner's subjects in the years 2010, 2011 and 2010 respectively. Considering the above facts, this Court agrees with the Petitioner that the evidence of those witnesses is not in line with the period mentioned in the charge sheet. Therefore, this Court decide that the prosecution has

failed to prove that the witnesses were taught by the Petitioner in the years mentioned in the charge sheet.

The Petitioner further argues that the delay in the conclusion of the inquiry for more than 10 years is a severe breach of procedural fairness and a violation of the principle of natural justice. The Petitioner has drawn the attention of Court to the fact that the preliminary investigation has commenced in 2013, first formal inquiry was concluded in 2017, the second charge sheet P39 was issued on 09.08.2019 and thereafter the second formal inquiry was commenced on 07.04.2021 and concluded on 28.04.2021 and the final inquiry report dated 25.06.2021 marked as CA 9(a) was delivered to this Court on 06.06.2022. The Petitioner also drew the attention of the Court to the fact that the Respondents have failed to adhere to the undertaking given by the learned State Counsel appearing for the Respondents before this Court to conclude the inquiry within three months in CA Writ Application No. 373/2019. The Respondents drew the attention of the Court to the fact that the delay in conducting the second formal inquiry was due to the difficulty in gathering members of the tribunal and witnesses under the Covid-19 restrictions that prevailed in the country at that time. This Court can accept the fact that the reason to conclude the second formal inquiry was due to Covid-19 pandemic prevailing in the country. However, the question remains as to the delay within the period from commencing the preliminary investigation (17.04.2013) up to the date of the second charge sheet marked P39 (09.08.2019). Even though the Petitioner has filed CA Writ Application No. 373/2019 seeking reliefs relating to the

aforesaid period, the Petitioner has not raised the issue of the delay in completing the inquiry proceedings. C.D. Field's 'Law relating to estoppel' revised by Gopal S. Chaturvedi³ states thus,

“In order to constitute abandonment or waiver, it must be a voluntary act on the part of the person possessing the rights. Acquiescence or standing by when there is a duty to speak or assert a right creates an estoppel. In such cases knowledge of the act must be brought by the acquiescing party. Acquiescence does not mean simply an intelligent consent, but may be implied if a person is content not to oppose irregular acts which he knows are being done.”

In *Nawinna Kottage Dona Lalitha Padmini and Another v N.K.D. Pradeepa Nishanthi Kumari and Another*⁴, where the Petitioners in that case participated in the hearing of the appeal and failed to bring to the attention of the Provincial High Court that the Respondents failed to file the petition of appeal within the stipulated time and raised the time bar objection for the first time in the Supreme Court. Priyantha Jayawardena PC, J., citing the above passage from C.D. Field's 'Law relating to estoppel', held that, *“waiver of an objection by a party aggrieved does not afford them the right to raise such objection at a later stage, as they are estopped by their prior conduct”*. In the instant Application, except for the issues raised relating to the conduct of the second formal inquiry, the rest of the issues raised are identical to the ones raised in CA Writ

³ 3rd Edn, at page 166.

⁴ SC/HC/CA/LA No. 134/2016, SC Minutes of 07.09.2018

Application No. 373/2019. The Petitioner has not raised the issue of delay in the CA Writ Application No. 373/2019. Therefore, the Petitioner is estopped from taking the argument on the delay in completing the inquiry proceedings in this instant Application.

Considering all above above-stated facts and circumstances, this Court is inclined to grant reliefs prayed for in prayers (h) and (i) in the Petition and not grant the other reliefs prayed by the Petitioner. Therefore, this Court grants only the reliefs prayed for in prayers (h) and (i) of the Petition.

JUDGE OF THE COURT OF APPEAL

M. T. Mohammed Laffar, J.

I agree.

JUDGE OF THE COURT OF APPEAL