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

Neshakumaran Vimalaraj,
No. 454/A,
Somasuntharam Road,
Kaluthavalai 4.

CA (Writ) App. No. 655/2025

PETITIONER

Vs.

1. University Grants Commission,
   No. 20, Ward Place,
   Colombo 07.

2. Kapila Seneviratne,
   The Chairman,
   University Grants Commission,
   No. 20, Ward Place,
   Colombo 07.

3. Professor K.L. Wasantha Kumara,
   Vice Chairman,
   University Grants Commission,
   No. 20, Ward Place,
   Colombo 07.

4. Secretary,
   University Grants Commission,
   No. 20, Ward Place,
   Colombo 07.

5. Pro. Vallipuram Kanagasingam,
   Vice Chancellor,
   Eastern University of Sri Lanka
   Vantharumoolai,
   Chenkalady.

6. Registrar,
   Eastern University of Sri Lanka
   Vantharumoolai,
   Chenkalady.

7. Prof. R. Sulaiman Lebbe,
   Council Member.

8. T.A.C.N. Thalangama,
   Council Member.

9. Sivapriya Vilvarednam,
   Council Member.

10. N. Sivalingam,
    Council Member.

11. S.M.B.M. Azhar,
    Council Member.

12. Nimal F. Perera,
    Council Member.

13. Dr. Sunderalingam Vinothan,
    Council Member.

14. A.P. Sumanasiri,
    Council Member.

15. U.S. Amarasinghe,
Council Member.

16. B.H.N. Jayawickrama,
Council Member.

17. Dr. T. Gadambanathan,
Council Member.

18. Hemantha Kumara,
Council Member.

19. Safrin Salahudeen,
Council Member.

20. T. Sivanathan,
Council Member.

21. K.A.D. Chathura Tharanga,
Council Member.

The 7th to 21st Respondents are all members of the Council of the Eastern University of Sri Lanka, and all c/o., the Eastern University of Sri Lanka Vantharumoolai, Chenkalady.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Nilshantha Sirimanne with Deshura Goonetilleke instructed by Amila Kumara for the Petitioner.

Dilantha Sampath, S.C. for the Respondents.

Argued on: 06.11.2025

Delivered on: 19.12.2025

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner to this Application is a graduate of the University of Eastern Province, and later he has secured certain postgraduate qualification from an Indian University, including an MBA in Human Resource Management. Thereafter, he has been employed in the Land Reforms Commission as a director. However, in the meantime, in response to an advertisement to secure an appointment in the Council of the Eastern University, the Petitioner had applied, and consequently the Petitioner had been appointed as a member of the Council on 02.03.2023 by the document marked as **P7** for a period of three years. However, after the current Government came into power, new members of the University Grants Commission have been appointed, which is the 1st Respondent. Later, the Petitioner was asked to tender his resignation before the expiry of his three-year term by the document marked as **P11**. However, he has been removed by letter dated 26.03.2025 (**P18**) despite his resistance to such a removal. Accordingly, he challenges his removal by this Application.

This Application was supported on 17.09.2025, and thereafter formal notice was issued on the Respondents, who filed their respective objections. This matter was taken up for argument on

06.11.2025 before me, and the following submissions were made by the Counsel on both sides in support of and in opposition of the application; hence this judgement.

Arguments

The first contention of the Counsel for the Petitioner, Mr. Sirimanne, is that removal of the Petitioner from the post as a Member of the University's Council by **P18** is violative of Section 44(3) of the University Act; therefore, it is illegal. He further argued that since the 1st Respondent has not given any reasons for the said decision, except for the mere blank policy decision given in writing, it is also irrational and capricious. In addition to that, he contended that the said decision to remove the Petitioner without a hearing is a denial of natural justice; therefore, the Petitioner is entitled to the relief as prayed for in the prayer.

The second contention of Mr. Sirimanne is that the 'National policy' is contained in the particular Act, namely the Universities Act, which was not amended by the so-called national policy, and if there is such a national policy, it can also be challenged if it is against the law or the Constitution; therefore, the Petitioner is entitled to the reliefs as prayed for.

On the other hand, the learned State Counsel, Mr. Dilan Sampath argues that a national policy is in the public domain; therefore, the Petitioner can also have access to the national policy. As such, the notice thereof need not be given or informed as a reason for the removal from office, as they are merely implementing the said national policy.

The next argument of Mr. Sampath is that no court will interfere with the national policy, even if it is not reflected in any enactment, as such national policy can be changed when a new Government comes into power.

His second argument is that in all the letters written by the Petitioner to the University Grants Commission, he has accepted the fact that he can be removed and will resign; however, the Petitioner wants to know the reasons behind such a decision. Since the reasons are given in **P7** itself as the reason to implement the national policy, such reasons need not be given in writing to the Petitioner. The other ancillary argument advanced by Mr. Sampath is that the Petitioner has acquiesced in those letters, stating that he is prepared to resign if the reasons are given. Therefore, there is nothing new for him to resign.

Factual matrix

The Petitioner has challenged the removal on the basis that it is illegal and is violative of the Universities Act. However, the Respondents have made an attempt to justify that on the basis that such removal was effected in implementing National policy. The Petitioner's removal from the post of a Council member was effective from February 2025. Prior to the removal, he was asked to resign; since he declined or failed to do so, the Respondents then took steps to remove him, as reflected in the documents marked as **P18**. Accordingly, it is very clear that the Petitioner has been removed from his post of a Council member in the course of implementing national policy.

National policy versus Election manifesto

Now, the question that has arisen for consideration, as argued by Counsel for and on behalf of the Petitioner, is whether National policy, or what is not spelt out in black and white, can be implemented in the guise of National policy or not. No policy so far has been spelt out in a document placed before this Honourable Court, except an election manifesto marked as **R2**.

If the Respondents are permitted to adopt the manifesto of a particular political party, and what is spelt out in that manifesto is imposed as National Policy, that itself poses discriminatory treatment

in so far as it affects members of other political parties, because in a democracy, what is spelt out in an election manifesto is a decision taken by one political party. If such politicized decisions are adopted as National Policy without being considered by opposing parties, it would further amount to imposing a hegemonic rule.

Therefore, National Policy should relate to matters that protect the rights of each and every individual; otherwise, not only opposing political parties, but also those who propose opposing ideas and those who are not aligned with any political party, will be affected. Accordingly, National Policy should be formulated to protect the rights of each and every individual in society.

This was elaborated by Ronald Dworkin in his famous book "Taking Rights Seriously" (1977)[1];

> *"In order to save them, we must recognize as competing rights only the rights of other members of the society as individuals.* ***We must distinguish the 'rights' of the majority as such, which cannot count as a justification for overruling individual rights, and the personal rights of members of a majority, which might well count****. The test we must use is this.* ***Someone has a competing right to protection, which must be weighed against an individual right to act, if that person would be entitled to demand that protection from his government on his own title, as an individual, without regard to whether a majority of his fellow citizens joined in the demand****."*[2] [Emphasis is mine]

It was argued for and on behalf of the Respondents by Mr. Sampath, the learned State Counsel, that the National policy is available in the public domain and if the Petitioner or any other person were to search, he can easily have access to such a policy. However, unless it is placed before the

[1] Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, Cambridge (MA) 1977)
[2] Page 194.

Court by way of a document or provided for in the form of an Act of Parliament, the Court is not supposed to take cognizance of such a policy. If a policy is in the form of an Act, that has to be taken cognizance of by the Court, and the Court has to follow such a policy.

An election manifesto is a pledge made by a political party to its voters, soliciting a mandate. However, such an election manifesto cannot be accepted or adopted as a policy, even if such political party is elected to power by the voters. If such an election manifesto is accepted as the policy of a country, then two question arise.

One is whether what is spelt out in an election manifesto gives any right to a government to implement such an election manifesto, even if it is violative of any existing law, (statutory or common), or the Constitution.

Secondly, even if there is a failure on the part of the ruling party, which is now the Government in power, to comply with what is set out in their election manifesto, can somebody, (for example a voter), sue the Government in power for such failure on the basis of a breach of what is spelt out in the said election manifesto, even such manifesto is violative of the existing law or the Constitution.

My answer to both questions in the negative, for the reason that if the manifesto is violative of existing law and the Constitution, it cannot be treated as a valid contract between the voter and the voted, unless the voted (the new elected Government) changes the existing law and the Constitution as enunciated by Justice Priyantha Jayawardene in the case of *M.A. Sumanthiran v. Hon. Mahinda Yapa Abeywardana, Speaker of Parliament and Another* [2024].[3] Otherwise

[3] SC FR Application No. 37/2024 [SC Minutes 29.02.2024]

adopting what is spelt out in an election manifesto as National policy amounts to violation of the Legislative power and Executive power of the people as well.

If the Respondents so desire to change the National policy which is already reflected in the Universities Act, the easiest way for them to do so, is to have it resolved through the Legislature, namely the Parliament. Then, at least the elected representatives of the people will be able to debate on it and take a decision to change the said National policy already reflected. Otherwise, the adoption of an election manifesto in lock, stock, and barrel blindly amounts to working in a single party.

The Petitioner argued that the so-called National policy which the Respondents relied upon to remove the Petitioner is not in written form and is violative of the Universities Act. Therefore, even if there is such a policy, if it is violative of a statutory provision by which the very same Respondents, including the University Grants Commission, were created and the very same Respondents have been appointed, such a policy cannot be acceptable to the Court for two reasons. Firstly, such a policy is not spelt out anywhere, and secondly, such a policy is in violation of the statutory provisions. Therefore, as ably argued by Mr. Sirimanne for the Petitioner, some policy which is in an election manifesto cannot be implemented by any government as National policy by a statutory body created by statute if it is violative of such a statute.

He relies heavily on Justice Mark Fernando's judgement in *Augistine Perera and Others v. Richard Pathirana, Minister of Education and Others* [2002][4]. The issue in the said case before the Court was the salary anomaly was created by a Cabinet Paper issued in respect of salaries of principals of Class I, II, and III, particularly in relation to the salary of Class I teachers. The anomaly so

[4] [2003] 1 Sri L.R. 125

created was challenged in the said case in a Fundamental Rights Application, where the State Counsel advanced the argument based on the fact a Cabinet decision is a part of policy decisions, and therefore, no Court can go into such issue. However, Justice Fernando rejecting the said argument, deduced the following reasons;

> *"Finally, it is no doubt true that the Executive-the President under Article 42, and the Cabinet as a whole under Article 43-is responsible to Parliament. However, those provisions do not mean that Parliament is the only institution empowered to review executive decisions, and do not in any way exclude judicial review, under and in terms of the Constitution, of all executive decisions, including those relating to 'policy' (as for instance in Ramupillai v Perera), particularly on the ground of infringement of fundamental rights. In any event, the decision impugned in this case-that the new salary scales of Principals Class I should not be retrospective - is an ad hoc decision, and by no stretch of the imagination a matter of 'policy'."*

Accordingly, policy decisions are also amenable to judicial review if it contravenes or violative of any constitutional provisions, as per Article 12 of the Constitution; additionally, with all due respect to Justice Fernando, I will advance the frontiers further by holding that the judicial review conferred on this Court is by way of Article 140 of the Constitution also applies if it is violative of statutory provisions from which the same authority has derived its powers, on the basis of National policy.

Irrationality and unreasonableness

The next matter that should be considered is whether the removal of the Petitioner in the guise of implementing National policy is a violation of natural justice.

As argued by the Petitioner, no reasons are given other than the mere implementation of the National policy in removing the Petitioner. It also must be noted and remembered that the Petitioner has been appointed by the letter marked as **P7** for three years, and his term only expires on 15th January 2026 from the date of appointment in January 2023. Therefore, if the Petitioner is removed for any other reason, namely on the grounds of mental or physical health or a disciplinary matter, that is acceptable to the Court, and the Petitioner would be liable to be removed. However, the reasons that are given by **P18** cannot be acceptable.

Therefore, I hold that as such reasons are not given (other than the National policy reason given in the said letter), and such removal is violative of the statute, particularly Section 48B of the Universities Act, the removal is illegal, capricious, and irrational, as there is no reason given.

Procedural impropriety

The next matter that comes into consideration is whether the Respondents, particularly the 1st Respondent, are empowered to remove the Petitioner from the office within the time stipulated in the said letter of appointment; **P7.** It is my view that, without giving any reasons and without even giving him a hearing or an inquiry, removing him is illegal; therefore, the Respondents have violated the rules of natural justice as well. Particularly, when the Petitioner asked for the reasons for his removal by his letter **P18** or requested an inquiry by **P8**, the Respondents have failed to do such a thing, since the Respondents have already taken the decision in November to ask or request all the Council members to resign with effect from 13th February 2025. Therefore, since the decision has already been taken in November, even the letter marked as **P11** requesting the Petitioner to tender his resignation is illegal.

Therefore, it is my view that the whole process is irrational, illegal, against the rules of natural justice, and against the law and statutory provision. It is my view that a *Writ of Certiorari* lies in favour of the Petitioner in this case to quash the decision contained in **P11** and **P18**.

To support the above reasoning, I wish to rely on the following passage from Lord Diplock's judgement, *C.C.S.U. v. Minister for Civil Service* (GCHQ case) [1985] [5], in reviewing administrative decisions of such quasi-judicial authorities;

> *"My Lords, I see no reason why simply because a decision-making power is derived from a common law and not a statutory source, it should for that reason only be immune from judicial review. Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety." That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community; but to dispose of the instant case the three already well-established heads that I have mentioned will suffice.*
>
> *By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the*

[5] Council of Civil Service Unions and Others v. Minister for the Civil Service [1985] 1 A.C. 374

event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness" (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v. Bairstow [1956] A.C. 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. "Irrationality" by now can stand upon its own teet as an accepted ground on which a decision may be attacked by judicial review.

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. But the instant case is not concerned with the proceedings of an administrative tribunal at all."

However, in the case of *Colonel U.R. Abeyratne v. Lt. General N.U.M.M.W. Senanayake and Others* [2020][6], His Lordship Justice Obeyesekere has gone one step further regarding the test of reasonableness, vide my judgement *Raj Rajaratnam v. Governor of the Central Bank of Sri Lanka and Others* [2025][7].

In addition to that, now I will consider whether the Petitioner is entitled to obtain a *Writ of Mandamus* compelling the Respondents to reappoint him to the same post. Since the removal is illegal, and the decision taken to request the Petitioner to tender the resignation is illegal, it is my view that a *Writ of Mandamus* also lies to compel the Respondents to allow the Petitioner to function till the period expires on 15th January 2026. As *Writ of Mandamus* is the other side of *Certiorari*, and legally, I am bound to issue a *Writ of Mandamus.*

Conclusion

For the reasons adumbrated above, *Writ of Certiorari* is issued as prayed for in *(b)*, *(c)*, and *(g)* of the Petition, to quash the decisions contained in **P11** and **P18**, as well as a *Writ of Mandamus*, compelling the Respondents to allow the Petitioner to function as a Member of the Council until the expiry of his period of tenure, as prayed for in *(f)* and *(h)* of the Petition.

In addition to that, I venture to order Rs. 10,500/- (Ten Thousand Five Hundred Rupees) as the cost of litigation, payable by the Respondents to the Petitioner.

JUDGE OF THE COURT OF APPEAL

[6] CA (Writ) Application No: 239/2017 [CA Minutes 07.02.2020]
[7] CA (Writ) Application No. 440/2025 [CA Minutes 20.11.2025]