

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

In the matter of an application for writs in the nature of Certiorari, Mandamus and Prohibition under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C.A. CASE NO. WRT/0083/20**

1. L.A. Samanlatha Pushpakumari,  
No. 15/1/1, Temple Road,  
Maradana, Colombo 10.
2. R.M. Ushan Pushpakumara Perera,  
No. 331/2, Deniya Junction, Suwarapola,  
Piliyandala.
3. M. Lahiru Roshana,  
No. A 1/1, Sooriyamalpura Flats, Prince  
Gate, Colombo 12.
4. A.R.E.R. Rajamanthri,  
No. 45, Polhena Road, Yakkala.

**PETITIONERS**

**Vs.**

1. University of the Visual & Performing Arts,  
No. 21, Albert Crescent, Colombo 07.
2. Prof. W.M. Abeyrathna Bandara,  
Competent Authority,  
University of the Visual & Performing Arts, No.  
21, Albert Crescent, Colombo 07.

3. Dr. Indika Ferdinando,  
Dean Faculty of Dance and Drama, University  
of the Visual & Performing Arts, No. 21, Albert  
Crescent, Colombo 07.
4. Snr. Prof. Sarath Chandrajeewa,
5. Snr. Prof. Mudiyanse Dissanayake,
6. Prof. Michal Fernando,
7. Dr. Sunil Wijesiriwardena,
8. Ashoka Handagama,  
4<sup>th</sup> to 8<sup>th</sup> all at University of the Visual &  
Performing Arts, No. 21, Albert Crescent,  
Colombo 07.
9. Asela Rangadewa,
10. Nilakshi De Alwis,
11. Prof. Kusuma Karunaratne,
12. Yamuna Nishanthi Peiris,
13. Ravibandu Vidyapathi,
14. Prof. Dhanapala Owitagedara,
15. Mahinda Wimalasiri,  
9<sup>th</sup> to 15<sup>th</sup> all at University of the Visual &  
Performing Arts, No. 21, Albert Crescent,  
Colombo 07.
16. Dr. S.P.D. Liyanage,  
Dean-Faculty of Postgraduate Studies,  
University of the Visual & Performing Arts, No.  
21, Albert Crescent, Colombo 07.
17. Chiltus Dayawansa,  
Dean-Faculty of Music,  
University of the Visual & Performing Arts, No.  
21, Albert Crescent, Colombo 07.

18. M.H. Jagath Raveendra,  
Dean Faculty of Visual Arts,  
University of the Visual & Performing Arts,  
No. 21, Albert Crescent, Colombo 07.
19. Iranga Samindani Silva,
20. Mangalika Jayatunga,
21. C. Maliyadda,
22. Gunasena Thenabadu,
23. Dharmasiri Bandaranayake,
24. B.M.K. Mohottala,
25. T. Dharmarajah,
26. Lakshman Abeyrathne,  
19<sup>th</sup> to 26<sup>th</sup> all at University of the Visual &  
Performing Arts, No. 21, Albert Crescent,  
Colombo 07.
27. P.G.S.P. Nanayakkara,  
Assistant Registrar-Establishments, University  
of the Visual & Performing Arts, No. 21, Albert  
Crescent, Colombo 07.
28. B.M. Dayawansa,  
Registrar,  
University of the Visual & Performing Arts, No.  
21, Albert Crescent, Colombo 07.
29. University Grants Commission,  
No. 20 Ward Place, Colombo 07.
30. T.P.N.S. Pathirage,  
Kokila Asapuwa, Galwala Cross Road,  
PadaviWatta, Pothanegama, Anuradhapura.

31. S.A.A. Subhasinghe,  
No. 340D, Mahawatta Road,  
Himbutana, Angoda.
32. Piyal Kariyawasam,  
No. 15/3/1, 1<sup>st</sup> Lane, Church Road,  
Pelawatte, Battaramulla.
33. Dr. T.C. Dandeniya,  
No. 8/158, Big City, Balika Nivasa Road,  
Rukmale, Pannipitiya.
34. R.G.G.S. Ruppegoda,  
No. 129, Bopitiya Road, Delthota.
35. L.N.G.D.S. Wijegunasekara,  
"Sandun", Edmond Mawatha,  
Eluvila, Panadura.
36. H.T.S. Dissanayake,  
"SandaKumudu", Gemunu Mawatha, Honiton  
Place, Awissawella.
37. B.W.R.D. Wijeratne,  
No. 250/D/37, Wewegodella Watta,  
Kalpitimulla, Hunumulla.
38. D.A.K.D. Sunil Shantha,  
No. 369/30, Shanti Mawatha, Makumbura,  
Pannipitiya.
39. M.P. Sararuk Priyadarshana,  
Mahawithikuliya, Withikuliya, Nikaweratiya.
40. R.H. Dissanayake,  
No. 16, Wennawatta Road, Wellampitiya.

41. S.M. Satharasinghe,  
"SandaKumudu", Gemunu Mawatha, Honiton  
Place, Awissawella.
42. M. A.S.B. Manthilake,  
No. 36 C, Doragamuwa, Wattegama.
43. M.P. Sandapathi Priyadarshana,  
No. 67/1 E, Pani Dodamwatta,  
Batawala Road, Weligama.
44. J.A.R. Jayasinghe,  
No. 335/D, Bhodirukkharama Road,  
Pamunugama, Alubomulla,  
Panadura.
45. Prof. Rohana Mahaliyanaarachchi,  
The Vice Chancellor,  
University of the Visual and Performing Arts,  
No. 21, Albert Crescents, Colombo 07.
46. Priyantha Udagedara,  
Dean,  
The Faculty of Graduate Studies,  
University of the Visual and Performing Arts,  
No. 21, Albert Crescents, Colombo 07.
47. P.K.S.P. Ratnakumara,  
Dean,  
Faculty of Music,  
University of the Visual and Performing Arts,  
No. 21, Albert Crescents, Colombo 07.
48. Prof. Kusuma Karunaratne,
49. Prof. Rohana Lakshman Piyadasa,
50. Prof. Nimal Dangalla,

51. Ranjith Liyanage,  
52. J.A.S.P. Aravindana,  
48<sup>th</sup> to 52<sup>nd</sup> Respondents are  
The Members of the Council,  
University of the Visual and Performing Arts,  
No. 21, Albert Crescents, Colombo 07.

**RESPONDENTS**

**BEFORE : K. M. G. H. KULATUNGA, J.**

**COUNSEL :** Rasika Dissanayake with Shabbeer Huzair, instructed by  
Sanjeeva Kaluarachchi, for the Petitioners.

Sandun Nagahawatta, for the 30<sup>th</sup> to 35<sup>th</sup> Respondents.

Nayomi Kahawita, SSC, for the State (University of Visual and  
Performing Arts).

**SUPPORTED ON : 18.03.2025**

**WRITTEN SUBMISSIONS ON : 28.04.2025 and 12.06.2025**

**DECIDED ON : 04.11.2025**

**JUDGEMENT**

**K. M. G. H. KULATUNGA, J.**

1. Four petitioners have preferred this application for a writ, *inter alia*, seeking writs of *mandamus* to compel the respondents to recruit them to the respective posts at the University of Visual and Performing Arts for which the petitioners applied.
2. The petitioners have, in the course of this application challenged the recruitment, appointment, and eligibility of the successful candidates

who are named as the 30<sup>th</sup> - 44<sup>th</sup> respondents to this application. As submitted by the petitioners, the 1<sup>st</sup> respondent named is the University of the Visual and Performing Arts (“UVPA”); the 2<sup>nd</sup> respondent was the Competent Authority of the UVPA and has since ceased to hold office; and the 3<sup>rd</sup> respondent is the Dean of the Faculty of Dance and Drama of UVPA.

3. The 3<sup>rd</sup> – 8<sup>th</sup> respondents are the members of the Panel who conducted the Practical Test in respect of the 1<sup>st</sup> and 2<sup>nd</sup> petitioners; the 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> respondents are the members of the Panel who conducted the Practical Test in respect of the 3<sup>rd</sup> petitioner; the 3<sup>rd</sup>, 11<sup>th</sup> to 14<sup>th</sup> respondents are the members of the Panel who conducted the Practical Test in respect of the 4<sup>th</sup> petitioner; the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> respondents are the members of the Panel who conducted the interviews on 08.04.2019 in respect of the 1<sup>st</sup> and 2<sup>nd</sup> petitioners; the 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> respondents are the members of the Panel who conducted the interviews on 09.04.2019 in respect of the 3<sup>rd</sup> petitioner; the 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> respondents are the members of the Panel who conducted the interviews on 18.03.2019 in respect of the 4<sup>th</sup> petitioner; the 3<sup>rd</sup>, 16<sup>th</sup> -26<sup>th</sup> respondents were the Members of the Council of UVPA at the time of filing this application; the 27<sup>th</sup> respondent is the Assistant Registrar - Establishments of UVPA, who was present at the time the respective Interviews pertaining to certificates were conducted; the 28<sup>th</sup> respondent is the Registrar of UVPA; the 29<sup>th</sup> respondent is the University Grants Commission (“UGC”); and the 45<sup>th</sup> respondent is the present Vice Chancellor of UVPA.
4. It is also submitted that the 16<sup>th</sup> respondent has ceased to hold the office of Dean of the Faculty of Graduate Studies, and the 46<sup>th</sup> respondent above named has been appointed to the said post; the 17<sup>th</sup> respondent has ceased to hold the office of Dean of the Faculty of Music, and the 47<sup>th</sup> respondent above named has been appointed to the said

post; and the 19<sup>th</sup>, 20<sup>th</sup>, 23<sup>rd</sup>, and 24<sup>th</sup> respondents have ceased to hold the office of the Members of the Council and the 48<sup>th</sup>, 49<sup>th</sup>, 50<sup>th</sup>, 51<sup>st</sup>, and 52<sup>nd</sup> respondents abovenamed have been appointed as the Members of the Council of UVPA.

5. The petitioners' main complaint is that when the respective posts were advertised, there was a letter issued by the UGC [P-17(b)] that there was a requirement to explore the possibility of absorbing the support staff who have qualified under categories 1, 2, and 3 of the UGC Circular No. 721. The petitioners' standing and qualifications at the time of filing this application appear to be as follows:

a. The 1<sup>st</sup> petitioner has been employed by the University as an Instructor (Grade III) since 5<sup>th</sup> January 2012 and was promoted to Instructor (Grade II) with effect from 5<sup>th</sup> January 2017. She is part of the academic support staff, and her duties have primarily involved conducting practical sessions and demonstrations in Miming, an elective subject component within the core discipline of Acting. Although the petitioner asserts to have introduced Miming to the University, this was disputed by the University, which referred to an advertisement (marked R-2) showing that Miming was an established subject before her appointment. Her role does not include lecturing responsibilities, as outlined in UGC Circular No. 988 and relevant University guidelines. While this case was pending before the Court of Appeal, she applied for the position of Lecturer (Probationary) in Acting and Performance but was unsuccessful in 2023.

b. The 2<sup>nd</sup> petitioner has served as a visiting lecturer at the University from 16<sup>th</sup> November 2015 to 18<sup>th</sup> May 2019. His engagement was based on semester-specific appointments for a limited number of hours (e.g., 20, 30, or 45 hours). He is not a permanent member of the academic staff and was unsuccessful

at interviews held in 2019 for a permanent lecturer post. Despite having submitted a new application for a vacancy in Play Writing and Directing in the Department of Drama, Oriental Ballet, and Modern Dancing, the interview process is yet to be concluded.

- c. The 3<sup>rd</sup> petitioner was a visiting lecturer at the University from 16<sup>th</sup> November 2015 to 27<sup>th</sup> March 2020, also on a semester-based appointment with limited lecture or demonstration hours. The 3<sup>rd</sup> petitioner is also not part of the permanent academic staff and had been unsuccessful at the 2019 interviews.
- d. The 4<sup>th</sup> petitioner was initially appointed as an Instructor (Grade III) on 15<sup>th</sup> March 2011 and promoted to Instructor (Grade II) on 15<sup>th</sup> March 2016. He was later recruited as a Lecturer (Unconfirmed) in the Department of Kandyan Dance within the Faculty of Dance and Drama, effective from 23<sup>rd</sup> December 2021. His recruitment was carried out under the prevailing academic staff recruitment scheme adopted by the University Council at its 182<sup>nd</sup> Meeting on 10<sup>th</sup> June 2021 (*vide* R-1).

### **Facts.**

6. This application had been filed on 11.05.2020. The petitioners are seeking writs of *mandamus* directing that the petitioners be appointed to the respective positions they applied for. Simultaneously the petitioners are also seeking to quash the appointments of the 30<sup>th</sup> - 44<sup>th</sup> respondents. This application has taken over five years to be heard and determined. The reasons for the delay may be attributable to any of the parties, which is not relevant. However, the lapse of time has resulted in certain intervenient circumstances and also a change of circumstances that has been brought to the notice of this Court. Considering the overall grounds of challenge relied upon by the petitioners are broadly twofold: (1) the petitioners not being fairly afforded an opportunity to face the relevant interviews and practical tests, and (2) correspondingly, certain respondents who have been

successful in securing employment after the interviews have been afforded an unfair and unlawful advantage, including members of the interview panel being biased in their favour.

7. The evaluations consist of varying forms of interviews and practical tests. In general, such evaluations should be left to the respective experts and the academic authorities' discretion, unless there is material to establish an apparent discrimination or favouritism or bias that is evident. As far as the complaints of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> petitioners are concerned, apart from the mere general allegations and assertions, there is nothing tangible or specific to establish that they were singled out and treated unfairly or targeted and singled out in any form to be prejudiced. As opposed to that, there is material to establish that the 3<sup>rd</sup> petitioner was referred to in a telephone conversation between the 9<sup>th</sup> respondent and the 35<sup>th</sup> respondent. The details and transcript has been made available and elicited during the internal inquiry conducted in this regard. The transcript is tendered by P-28(b). The relevant portions of the said conversation are as follows:

“අපේල (9<sup>th</sup> respondent): ...තව එකක් ඉඹු එකක් එන්න නියමිතයි. දැන් ඒ කියන්නෙ මේ විශ්වවිද්‍යාලයට බඳවා ගන්න කට්ටිය. පුද්ගලික පන්ති කරනවද කියලා කේස් එකක් එන්න නියමිතයි. හරිද?

...

ඔයාගේ එක කොහොමද රෙජිස්ටර් කරලා තියෙන්නෙ?

නිරෝෂා (35<sup>th</sup> respondent): කලායතනයක් විදිහට සර්

අපේල: ...මේ දැන් ප්‍රශ්නයක් ඇවිල්ලා තියෙනවා මොකද කලා ආයතන වල උගන්වන ගුරුවරු මෙහෙ උගන්වලා ඇතුලෙන් උගන්වනවා. ඒගොල්ලො ඇතුලට ළමයි ගන්නවා. ඒ නිසා ඉන්ටර් වීචි එකෙන්ම ඒ ගැන අහනවා කියලා.”

“අපේල: මං එහෙම ෆ්ලේවර් කරන්නේ නැහැ. මටත් ඔයාට හම්බෙනකන් මට විශ්වාස කරන්න බැහැ.

...

නමුත් ඔයාට එතෙක්ට ගිහිල්ලා හොඳට කම්පිටින්න එකක් දෙන්න පුළුවන් මට්ටමට ඔයාව ඩිවලස් කරන එක තමයි මගෙ ට්‍රයි එක. ඉතින් මම දන්නේ නැහැ අන්තිම ඩිසිෂන් එක මොකක් වෙයිද කියලා. දැන් මම ෆයිනල් පැනල් එකෙන් නැහැ මම.

...

නමුත් ට්‍රයි එකක් දෙන්න මම බලන්නේ. මං කැමති නැත්තේ පන්චි වගේ පෞර්ෂයක් නැති... එහෙට මෙහෙට වැනෙන මනුස්සයෙක්ව මෙතෙක් එනවට. මොකද අපිට ඊට වඩා පෞර්ෂයක් තියෙන ගැණියෙක් වුනත් ඊට වඩා පෞර්ෂයක් තියෙන කෙනෙක් ඔයා. ප්‍රතිපත්ති තියෙන.

...

ඔයාට තමයි මට සර් ඉවර වෙලත් කිව්ව ඉසුරුව නැතුව නිරෝෂව ගන්න තිබ්බිබනම් හොඳයි වගේ එකකුත් කිව්වා... ඒ අනුව තමයි මම ජප් කරන්නේ ඔයාට එන්න පුළුවන් කියන එක. ඒක නිසා. එහෙම උනොත් තව ටිකක් ට්‍රයි එකක් ගත්තොත් ඔයාට සමහරවිට ලකුණු ගන්න පුළුවන් වෙයි.”

“නිරෝෂා: සර් මම අර ප්‍රසන්ටේෂන් එක වුට්ටක් හදාගන්න මට සර් වුට්ටක් උදව් කරනව නේද? ඒක කොහොමද කරන්න ඕනෙ

අසේල: ඔව් දැන්ම වැඩ පටන් ගන්න දැන්. දැන් ඉතින් අද විස්සනෙ. විසි එකනෙ. තව සතියනෙ...

...

මං දැන් සලුදට ඔරිස් යනවා සර්. ඊට පස්සේ අගහරුවාදට කොහොමත් මං මේ බැහැරක් එන්න හදන්නේ කැමිපස් එකට සර් ව හම්බ වෙන්නත් එක්ක. අගහරුවාද වගෙ සර්

...

අසේල: කැමිපස් එකේදී හම්බවෙන්න... කැමිපස් එකේදී හම්බ හම්බවෙන්න බෑ... පන්චිත් කැරකෙනවා... ගයාන් රුජපෙගොඩත් කැරකෙනවා. මම ගයාන්ටත් මම උදව් කරනවා. නමුත් ගයාන්ටත් මං ඔයා ගැන කියන්නේ නැහැ.”

“නිරෝෂා: අගහරුවාදට මං එහෙනම් සර් එනව සර් වුට්ටක්

අසේල: දැන්ම ඉතින් කරන දේවල් කරගන්න. අනෙක් එක තමයි මම ඔයාට එව්වෙ ලකුණු ෂීට් එකක්.

නිරෝෂා: ඔව්

අසේල: ඒකෙ විදිහට තියෙන එදාට ඕන සහතිකයි, ඔය තියෙන ටික අරන් එන්න.

නිරෝෂා: මං පෝර්ට්ලොලියෝ එක හදල තියෙන්නෙ. ඒකෙත් අඩුපාඩු තියෙනවනම් ඒක ආයිත් බයිත්ඩ් එකකට ඕන නිසා සර් මට බලල කියන්න.

අසේල: හා හා ඒකත් අරං එන්න.”

- 8. It is admitted that this matter has been looked into administratively on a disciplinary basis, and a sanction in the form of a warning has been meted out to the 9<sup>th</sup> respondent. As I see, the relevancy of this does not end there. The 9<sup>th</sup> respondent is clearly part and parcel of the academic staff and a member of the interview panel, who at some point was actively involved in the evaluation and selection of the prospective candidates to fill the impugned vacancies. The 9<sup>th</sup> respondent has stepped in and participated in some form in place of another member

of the interview panel who was not available due to an illness. The 9<sup>th</sup> respondent was in the panel which conducted the Practical Test of the 3<sup>rd</sup> petitioner. The 35<sup>th</sup> respondent is a successful applicant, who was appointed.

9. The sum total of the above is that, admittedly, there has been a clear discussion between the 9<sup>th</sup> respondent and the 35<sup>th</sup> respondent directly in respect of and in relation to the interviews, the parameters and the scheme in varying degrees. The 35<sup>th</sup> respondent has without doubt gained certain information and an undue advantage at the interview and selection process. On a perusal of the marks allocated to the 35<sup>th</sup> respondent as appearing in R-6, it is apparent that the 35<sup>th</sup> respondent has been awarded 7.5 marks for creative work, and 6 marks for awards and scholarships, 7.2 marks for teaching ability, and 17.3 marks for the Practical Test. The total marks obtained by the 35<sup>th</sup> respondent at the Practical Test and interview is 64.3, and it was the recommendation of the Selection Committee that the 35<sup>th</sup> respondent be appointed as Lecturer (Probationary) to the Department of Theatre, Ballet, and Modern Dance, Faculty of Dance and Drama. The 3<sup>rd</sup> petitioner, who was referred to in the abovementioned telephone conversation between the 9<sup>th</sup> respondent and the 35<sup>th</sup> respondent, received a total mark of 51.5.
10. On a comparative analysis of the general marks obtained by the candidates, I find that the allegation that a higher degree of marks was awarded to the petitioner is well-founded. This fact is evident on the face of it. When one considers this in conjunction with the contents of the telephone conversation and the matters discussed therein, to my mind, there is a necessary inference that obtaining high marks was, more probable than not, due to the advantage the 35<sup>th</sup> respondent gained due to the information and “support” she received. Secondly, there is a strong inference that the 9<sup>th</sup> respondent may have influenced the other panellists. Correspondingly, the 3<sup>rd</sup> petitioner had not fared as half as

well in the aforesaid marks comparatively. This clearly corresponds with the telephone conversation where the 9<sup>th</sup> respondent did convey to the 35<sup>th</sup> respondent a desire and intent that the 3<sup>rd</sup> petitioner should not be permitted to succeed.

11. However, as far as the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> petitioners are concerned, I do not find any material of such a nature in their favour. Further, as intimated in the written submissions and brought to the notice of this Court by the respondents through motion dated 15.07.2025, the intervening circumstances due to the lapse of time appear to be as follows:

- a. The 1<sup>st</sup> petitioner has, in the interim, has responded to an advertisement dated 07.06.2023 for the subject of Acting and Performance Theory, but had not been successful in acquiring the required cut-off mark at the interview;
- b. The 2<sup>nd</sup> petitioner has, while this application was pending, applied to an advertisement dated 13.08.2023 for the subject of Playwriting and Directing in the Department of Theatre, Ballet and Modern Dancing. However, due to multiple extraneous reasons, the recruitment process had come to a halt. It is submitted that the re-advertisement allowing for those who applied for the 2023 advertisement (such as the 2<sup>nd</sup> petitioner) to reapply will take place in due course; and
- c. The 4<sup>th</sup> petitioner was appointed as a Lecturer (Unconfirmed) for the Department of Kandyan Dancing with effect from 23.12.2021 (*vide* letter of appointment R-1).

In these circumstances and in the absence of any positive material alleging bias, victimisation, or discrimination, this Court is not in a position to consider the relief prayed for by the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> petitioners directing that they be appointed for the relevant positions.

12. Considering the technical and specialised nature of academic evaluations, Courts must seldom intervene in matters and decisions involving such evaluation of qualitative issues of an academic nature. In this regard, I find the following dicta of Sedley, L.J., in **Clark vs. University of Lincolnshire and Humberside** (2000) 1 WLR 1988, cited in Wade & Forsyth's Administrative Law (11<sup>th</sup> Ed. at page 537), relevant:

*“The courts will, in any case, be reluctant to enter into ‘issues of academic or pastoral judgement which the University was equipped to consider in breadth and in depth but on which any judgment of the Courts would be jejune and inappropriate. That undoubtedly included such questions as what mark or class a student ought to be awarded or whether an aegrotat was justified.”*

13. The above was followed in the case of **Abeyundara Mudiyansele Sarath Weera Bandara vs. University of Colombo** (CA Writ Application No. 844/2010, decided on 08.06.2018), where A. H. M. D. Nawaz, J., with P. P. Surasena, J. (P/CA) (as his Lordship then was), agreeing, held that,

*“The consistent judicial opinion, therefore, is that in matters which lie within the jurisdiction of the educational institutions and their authorities, **the Court has to be slow and circumspect before interfering with any decision taken by them in connection therewith. Unless a decision is demonstrably illegal, arbitrary and unconscionable, their province and authority should not be encroached upon.** This is mainly because of want of judicially manageable standards and necessary expertise to assess, scrutinise and judge the merits and/or demerits of such decisions.”* [emphasis added].

However, Dr. Shirani Bandaranayake, J. (as her Ladyship then was), in **Dr. Karunanada vs. Open University of Sri Lanka and Others** (2006) 3 Sri L.R. 225 (decided on 31.05.2006), did clearly opine that,

*“I am not in agreement with the view that **academic decisions are beyond challenge**, there is no necessity for the Courts to unnecessarily intervene in matters ‘purely of academic nature’ since such issues are best dealt with by academics who are fully equipped to consider the questions in hand; however if*

*there are allegations against decisions of academic establishments that fall under the category stipulated in terms of Article 126, **there are no provisions to restrain this Court from examining an alleged violation relating to an infringement or imminent infringement irrespective of the fact that the said violation is in relation to a decision of an academic establishment.***”  
[emphasis added].

The present circumstances pertaining to and concerning the 3<sup>rd</sup> petitioner, as I see, is an instance where the academic judgement and ruling may be subject to scrutiny due to apparent bias, and the Court’s intervention is necessary and warranted.

### **The 3<sup>rd</sup> petitioner.**

14. The 3<sup>rd</sup> petitioner applied for the post of Lecturer (Probationary) in Drama/Oriental Ballet and Modern Dance, indicating a specialisation in Ballet, Traditional Dance and Modern Dance. He took part in the Practical Test held on 03.04.2019 before the relevant panel, where he performed the prescribed items and presented his teaching plan in English. The presentation slides and lesson plan submitted by the 3<sup>rd</sup> petitioner are annexed as P-24(a) and P-24(b). He was thereafter informed to attend for verification of certificates and to obtain the marking scheme on 08.04.2019 (*vide* letter marked P-22).
  
15. On the perusal of the said certificates and material, it is apparent that the 3<sup>rd</sup> petitioner possesses the academic qualifications and teaching experience in the specific fields advertised. The 3<sup>rd</sup> petitioner contends that the marking was not commensurate with the demonstrated qualifications and performance, as supported by the relevant record in P-24(a) and P-24(b), as the marks awarded to him in several categories were lower than those awarded to candidates who did not possess equivalent specialised qualifications or experience in Ballet and Modern Dance. On a comparative consideration of the material tendered to this Court, the said allegation is clearly well-founded.

**The marking scheme.**

16. The petitioners then contend that the marking scheme applied at the 2019 recruitment was not duly or lawfully approved prior to its implementation and that the University sought to regularise the same only subsequent to the challenge being raised in these proceedings. They submit that the scheme deviated from the previously applicable criteria without following proper procedural requirements and that its adoption lacked transparency. The petitioners further assert that the marking criteria were not disclosed to all candidates on an equal footing; according to them, access to the scheme was afforded to certain candidates in advance of the assessments, while others, including the petitioners, only received it after the Practical Test had been completed.
17. It is submitted on behalf of the respondents that the marking scheme used in the 2019 recruitment was validly formulated and approved through the University's internal governance procedures prior to the interview process. They state that the University Council took a decision to revise the existing scheme in December 2018, that a committee was appointed in January 2019 to prepare the revised criteria, and that the scheme was formally approved at the Governing Council Meeting No. 161 on 26.02.2019, before the interviews were conducted in April 2019. According to the respondents, the revised scheme was applied uniformly to all candidates, with a minimum qualifying threshold of 55 marks out of 100, and candidates were duly informed of the applicable criteria with the interview call letter. They further submit that the preparation and use of such marking schemes fall within the authority of the University, without requirement for approval by the University Grants Commission. The respondents therefore contend that the marking process was transparent, merit-based, and compliant with the relevant regulatory framework, and reject the allegation that the scheme was irregularly introduced or unfairly applied.

18. The marking scheme was followed and used during the 2019 recruitment. at that point of time, may not have been formally approved. However, it has been subsequently adopted and approved by the Council. It has been retrospectively legitimised, which, until such time, was utilised. At this juncture, it is not necessary to determine the legality of the same. However, what is relevant and important is the intimation made to the prospective candidates as to the marking scheme that was to be followed. As far as the 3<sup>rd</sup> petitioner is concerned, he has not been informed of or the said marking scheme had not been available to him beforehand. However, it is apparent that the 35<sup>th</sup> respondent was aware of the new marking scheme. This is evident from the contents of the telephone conversation between the 9<sup>th</sup> respondent and the 35<sup>th</sup> respondent.

**The assurance given by the 9<sup>th</sup> respondent.**

19. According to the telephone conversation (of which the transcript is produced marked P-28(b)), the 9<sup>th</sup> respondent states that the 35<sup>th</sup> respondent would be appointed and that the 3<sup>rd</sup> petitioner would not be selected. The said conversation suggests that the outcome concerning the 35<sup>th</sup> respondent and the fate of the 3<sup>rd</sup> petitioner had been contemplated independently of, and prior to, the conclusion of the interviews and the evaluation process. This material indicates a departure from an open, merit-based, and impartial assessment process and supports the contention that the 3<sup>rd</sup> petitioner was not afforded equal and fair consideration in accordance with the criteria set out in the recruitment process but was a victim of a deliberate and pre-planned act of victimisation.

20. However, the respondents submit that the 9<sup>th</sup> respondent was not initially assigned as a member of the interview panel but was included only due to the sudden illness of a subject expert, Dr. Michel Fernando, as evidenced by the affidavit marked R-12. While the petitioners rely on an alleged telephone conversation involving the 9<sup>th</sup> respondent, the

respondents contend that this recording has no material bearing on the selection process, on the basis that the marking scheme and criteria were already communicated to all candidates with the interview call letter (R-13), ensuring that the selection was conducted transparently and in accordance with the prescribed criteria. The respondents further state that, notwithstanding their view that the recording is immaterial to the legality of the recruitment process, and the University conducted an internal inquiry into the matter and imposed a suitable disciplinary sanction on the 9<sup>th</sup> respondent, including the issuance of a warning letter (*vide* documents R-14 and R-15). As stated above, despite taking disciplinary action, the contents of the conversation is relevant to this application to establish the alleged bias.

### **Bias.**

21. De Smith's Judicial Review (8<sup>th</sup> Ed., at page 535) describes 'bias' as follows:

*"Procedural fairness demands... that the decision maker should not be biased or prejudiced in a way that precludes fair and genuine consideration being given to the arguments advanced by the parties. Although perfect objectivity may be an unrealizable objective, the rule against bias thus aims at preventing a hearing from being a sham or a ritual or a mere exercise in 'symbolic reassurance', due to the fact that the decision maker was not in practice persuadable."*

22. The doctrine of rule against bias, or *nemo iudex in causa sua* ("no man is a judge in his own cause"), was explained by Lord Denning, M.R., in the case of **Metropolitan Properties Co. (FGC) Ltd. vs. Lannon**, (1969) 1 QB 577, as follows:

*"I start with the oft-repeated saying of Lord Hewart, Chief Justice, in **Rex v. Sussex Justices** (1924 1 KB 256):*

***"It is not merely of some importance, but is of fundamental importance that justice should not be done, but should manifestly and undoubtedly be seen to be done."***

*In Regina v. Barnsley Licensing Justices* (1960 2 Q.B. 187), Lord Justice Devlin appears to have limited that principle considerably, but I would stand by it. It brings home this point: in considering whether there was ‘real likelihood’ of bias, Court does not look at the mind of the decision-maker himself. The Court looks at the impression which would be given to other people. Even if, he was as impartial as could be, nevertheless, if right-minded persons would think that, in the circumstances, there was a ‘real likelihood’ of bias on his part, then he should not sit. **And if he does sit, his decision cannot stand**” [emphasis added].

23. After much discourse, the position of the test on bias in English administrative law is that determined in the case of **Porter vs. Magill** [2001] UKHL 67, which is whether “*the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias.*” Lord Hope, in **Helow vs. Secretary of State For The Home Department and Another (Scotland)** [2008] UKHL 62, described such a fair-minded and informed observer as follows:

*“She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen into its overall social, political or geographical context. She is fair-minded, so she will appreciate that the context forms an important part of the material which she must consider before passing judgment.”*

24. Applying these principles to the present case, the material placed before this Court includes a recorded telephone conversation involving the 9<sup>th</sup> respondent, who participated in the evaluation process, containing statements suggestive of a predetermined outcome in respect of identified candidates. Although the respondents contend that the recording did not affect the assessment and that disciplinary action was subsequently taken, the test for bias does not hinge upon proof of actual prejudice or improper motive. The question is whether the circumstances disclosed give rise to a real possibility of bias in the mind of a fair-minded and informed observer.

25. For the reasons hereinabove stated, and especially having regard to the contents of the recording, participation of the 9<sup>th</sup> respondent in the interviews and evaluative process, marks allocated, and relevant legal principles, this Court is satisfied that there has been positive and unlawful bias that benefitted the 35<sup>th</sup> respondent and similarly, there was a real likelihood of bias to the detriment of the 3<sup>rd</sup> petitioner. Accordingly, the selection and the appointment of the 35<sup>th</sup> respondent as well as the non-selection and non-appointment of the 3<sup>rd</sup> petitioner are both unlawful; therefore, they cannot stand and are liable to be quashed.

### **Conclusion.**

26. In the above circumstances, the petitioners have satisfied this Court that the petitioners are entitled to the substantive relief as prayed for by prayers (*dd*) and (*g*) and other consequential remedies as prayed for by prayers (*o*), (*v*), and (*k*) of the petition.

27. Accordingly, this Court hereby grants the following relief:

- a. a writ of *certiorari*, quashing the selection and the appointment of the 35<sup>th</sup> respondent to the post of Lecturer (Probationary), and any other decision incidental thereto as prayed for by prayer (*g*). For avoidance of doubt, it is specifically directed that the quashing of the appointment shall be deemed to be with effect from the date of this judgement, and the 35<sup>th</sup> respondent shall be entitled to retain whatever salaries, emoluments, and pay which the 35<sup>th</sup> respondent has in fact worked for and earned;
- b. a writ of *mandamus*, directing the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup>, 46<sup>th</sup>, and 47<sup>th</sup> respondents, or the current office-holders of thereof, to appoint the 3<sup>rd</sup> petitioner to the post of Lecturer (Probationary) at the 1<sup>st</sup> respondent University, as per the advertisement P-9, from the relevant date applicable thereto, as prayed for by prayer (*dd*). However, the 3<sup>rd</sup> petitioner shall not be entitled to any pay or allowances, and any other payment for such

period, until the date of the actual commencement of employment in such post, upon this judgement; and

- c. relief sought by prayers (o), (v), and (k), being of a consequential nature, are also hereby granted as prayed for.

28. Subject to the aforesaid relief, I hold that the petitioners have failed to provide sufficient material to satisfy this Court that the petitioners are entitled to the relief sought by the other prayers. Accordingly, the other relief, other than the relief prayed for by (g), (dd), (o), (v), and (k), are hereby refused and not granted.

29. Accordingly, this application is partially allowed to that extent. However, I make no order as to costs.

Application is partially allowed, to that extent.

**JUDGE OF THE COURT OF APPEAL**