

**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.*

**CA (Writ) App. No. 761/2023**

Abdul Gani Ahamed Fasin,  
No. 25, Sharif Hajjar Street,  
Addalaichennai.

**PETITIONER**

**Vs.**

1. South Eastern University of Sri Lanka,  
University Park,  
Oluvil
2. Prof. A. Rameez,  
The Vice Chancellor,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
3. Prof. S.A. Ariyadurai,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
4. Dr. A. Iqbal,  
Council Member,

South Eastern University of Sri Lanka,  
University Park,  
Oluvil

5. Eng. T. Sivasubramaniam,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
6. Mr. Perinpam Premnath,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
7. Mr. A.L. Joufer Sadique,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
8. Dr. U.L.M. Ismail,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
9. Mr. Osman Kasim,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
10. Prof. Upali S. Amerasinghe,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
11. Prof. M.I.M. Hilal,  
Council Member,

South Eastern University of Sri Lanka,  
University Park,  
Olivil

12. Prof. S. Sabraz Nawas,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

13. Dr. S. Safeen M.G.H.,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

14. Dr. M.H. Haroon,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

15. Mr. M.H.M. Munas,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

16. Prof. M.A.L.A. Haleem,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

17. Dr. U.L. Abdul Majeed,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

18. Prof. (Ms) Hema M.K.K. Pathirana,  
Council Member,

South Eastern University of Sri Lanka,  
University Park,  
Olivil

19. Prof. Colin N. Peiris,  
Council Member,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

20. M.I. Nawfer,  
Acting Registrar,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

21. Senior Assistant Registrar –  
Academic Establishment,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

22. University Grants Commission of Sri  
Lanka,  
No. 20, Ward Place,  
Colombo

23. Dr. Abdul Cader Mohamed Hanas,  
Senior Lecturer Grade I in Economics  
and Statistics,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

24. Mr. Atham Ibbet Iyooob,  
Lecturer (Unconfirmed) in Geography,  
South Eastern University of Sri Lanka,  
University Park,  
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25. Mr. Majeed Abdul Rasak,  
Lecturer (Unconfirmed) in Tamil,

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University Park,  
Oluvil

26. Ms. Mohamed Nazeer Nuska Banu,  
Lecturer (Probationary) in Geography,  
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University Park,  
Oluvil

27. Ms. Mohamed Hassari Fathima  
Nuskiya,  
Lecturer (Probationary) in Geography,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil

28. Mrs. Zainulabdeen Hoorul Firthouz,  
Lecturer (Probationary) in TESL,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil

29. Mrs. Mohamed Ijlal Ilfa,  
Lecturer (Probationary) in TESL,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil

30. Ms. Muhammadu Ibrahim Nasrin,  
Lecturer (Probationary) in Islamic  
Thought & Civilization,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil

31. Ms. Muhammathu Mubarak Siyana,  
Lecturer (Probationary) in Islamic Law  
and Legislation,  
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University Park,  
Oluvil

32. Mrs. Mohamed Razak Fathima Ara,  
Lecturer (Probationary) in Islamic  
Thought & Civilization,  
South Eastern University of Sri Lanka,  
University Park,  
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33. Mrs. Mohamed Shareefdeen Fathima  
Nisfa,  
Lecturer (Probationary) in Islamic Law  
and Legislation,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil
34. Mr. Mahrool Farwis,  
Lecturer (Unconfirmed) in  
Accountancy,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil
35. Mr. Meerakkuddy Siraji,  
Lecturer (Unconfirmed) in Finance,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil
36. Mrs. Abdul Rasheed Fathima Thafani,  
Lecturer (Unconfirmed) in Finance,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil
37. Mrs. Mohamed Buhary Fathima  
Sanjeetha,  
Lecturer (Probationary) in MIT,  
South Eastern University of Sri Lanka,  
University Park,  
Olivil

38. Mrs. Mohamed Iqbal Fathima Nihla,  
Lecturer (Probationary) in MIT,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
39. Mrs. Mohamed Nisper Fathima Fajila,  
Lecturer (Probationary) in Computer  
Science,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
40. Mr. Nakur Thamby Mohamed Sajith,  
Lecturer (Probationary) in Computer  
Science,  
South Eastern University of Sri Lanka,  
University Park,  
Oluvil
41. The Secretary to the Treasury,  
Ministry of Finance, Economic  
Stabilization and National Policies,  
The Secretariat,  
Colombo 01
42. The Minister of Higher Education,  
Ministry of Higher Education,  
No. 18, Ward Place,  
Colombo 07
43. Honourable Attorney General,  
Attorney General's Department,  
Colombo 12

**RESPONDENTS**

**Before:** S. U. B. Karalliyadde, J

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

**Counsel:**

E. Thambiah with Neshanee De Soysa for the Petitioner.

Sumathi Dharmawardhana, Assistant Solicitor General with Dr. Peshan Gunaratne, S.C.  
for 1<sup>st</sup> to 7<sup>th</sup> and 17<sup>th</sup> to 21<sup>st</sup> Respondents.

**Supported on:** 07.08.2025

**Order delivered on:** 08.09.2025

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

## **Order**

### **Introduction**

The Petitioner is an individual and a member of Sri Lankan society who has filed the above-styled action in the interest of the public; therefore, it can be deemed a public interest litigation. It is alleged that the Government, during the economic crisis experienced from 2021 to 2022, issued several circulars prohibiting the recruitment of new cadres to various government departments; this included lecturers for the University of Batticaloa (hereinafter referred as ‘the University’). The Petitioner asserts that despite these circulars issued by the Treasury and the Government, the 2<sup>nd</sup> Respondent, the Vice Chancellor, on behalf of the 1<sup>st</sup> Respondent, the University, recruited several individuals for the position of lecturers at the 1<sup>st</sup> Respondent University, thereby violating



the said circular, which is part of the by-laws of the country. As such, the Petitioner seeks the reliefs as prayed for in the Petition.

However, certain limited objections also have been filed for and on behalf of the Respondents and brought to the notice of the Court. The 2<sup>nd</sup> Respondent has taken the decision long before the issuance of the relevant circulars and even the recruitment process had been initiated prior to the circulars. Therefore, there is no violation of the said rules taken place in the processing of the said application. However, as the appointments have been made, part of the reliefs sought by the Petitioner cannot be maintained; therefore, the application should be dismissed. This was supported on 07.08.2025 and the following arguments were advanced by the counsel of the parties.

### **Arguments**

The thrust of the main contention of the Counsel for the Petitioner is that the 1<sup>st</sup> Respondent has appointed several lecturers as employees thereof in violation of the circular marked as **P1** issued by the Secretary to the Treasury and Minister of Finance. Therefore, such appointments are violative of the said circular, and a *Writ of Certiorari* lies.

However, on the other hand, Mr. Gunaratne, the learned State Counsel for the Respondents, argued that all the appointments were advertised, the applications were received, and thereafter interviews were held, and the appointments were made prior to the issuance of the said circular. Therefore, the Petitioner's argument advanced in support of this application fails. As such, notice given should be refused and application should be *pro-forma* dismissed.

### **Recruitment process was initiated prior to P1**

I consider the documents marked as **P1** to **P7** filed by the Petitioner. In addition to that, I also considered **R1** to **R10** filed along with the objections. The document marked **R1** reflects the

number of students taken in the academic years 2018–2019, 2019–2020, 2020–2021, and 2021–2022. The number of students taken in 2018–2019 was 1,558; in the academic year 2019–2020, 1,991 students; in the academic year 2020–2021, 2,040 students; and in the academic year 2021–2022, 1,873 students were taken in, which is more fully depicted in the table below.

| <b>Academic Year</b> | <b>Student Intake</b> |
|----------------------|-----------------------|
| 2018 - 2019          | 1,558                 |
| 2019 – 2020          | 1,991                 |
| 2020 – 2021          | 2,040                 |
| 2021 - 2022          | 1,873                 |

Table 1<sup>1</sup>

Therefore, there was a consistent number of students taken into the University; there is no diminution or reduction of the student intake number for the consecutive academic years starting from 2018 to 2021.

However, it has transpired that there were vacancies in several departments of the University. Hence, the recruitment of lecturers or members of the academic staff was necessary. As such, the 1<sup>st</sup> Respondent, the University, has obtained permission from the University Grants Commission (herein after referred to as “UGC”), who is the relevant authority to recruit the relevant number of members of the academic staff for each and every department where the vacancies had existed. Accordingly, **R2** has been issued by the UGC to the Vice Chancellor of the University, who is the responsible officer for recruiting the relevant and necessary staff. Accordingly, **R3** has been published calling for applications for the vacancies to be filled in the cadre of the members of the academic staff. Responding to the said advertisement, many applications were received and

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<sup>1</sup> As reflected in **R1** of the Objection.

consequently, they had been called for an interview and been subjected to an evaluation test, marked as **R4**. It is to be noted that there are no allegations against it. Twenty-eight candidates have faced the interview and were examined and tested by the University, with their attendance sheets being annexed to the same document.

Thereafter, those who were selected were given appointments as reflected in **R5** to **R7** of the Objections. The minutes of the meetings of the Council of the University is also annexed to the Objections as **R8**. By the time **R10**, the relevant circular was issued by the UGC restricting the hiring of any new employee, the process of hiring new recruits had already taken place. In the meantime, the University has also informed the UGC about the filling of the vacancies via the letter dated 30.05.2020.

As such, it is my view that the circular marked as **R10 (P1)** has no application to the recruitment process or the appointment of the relevant members of the University academic staff. However, I must further add that the 1<sup>st</sup> Respondent, the University, is solely responsible to conduct academic courses for the enrolled undergraduate students, to enable them to pass their examinations relevant to their degree programs conducted by the different departments of the University. Such a statutory duty derives from the Universities Act No. 16 of 1978 (as amended) (hereinafter referred to as 'the Universities Act'), in terms of which the University was incorporated.

In addition to that, the UGC has permitted the 1<sup>st</sup> Respondent to recruit the relevant academic staff and the number of new recruits, for the purpose of implementing the object for which the University was created by statute. Therefore, the object of the University and the Universities Act by which it was created, should have more authority than a circular issued by a statutorily recognised government officer or the Treasury, marked as **R10** or **P1**. Hence, the said circular is only a by-law, as far as statutory law is concerned.

### **Power to recruit academic staff**

Thus, the University derives its powers from the Universities Act; and in addition to that, it has obtained permission from the UGC to exercise its duty to recruit the relevant and necessary academic staff, long before the relevant circular was issued. For the purpose of further clarity, I wish to mention that the University has been incorporated in terms of Section 21 of the Universities Act. Once the University is established, the powers, duties, and functions of the University are automatically conferred by Sections 28 and 29 of the Universities Act. In terms of Section 29 of the Universities Act, the University has, inter alia, the following powers:

*“29. Subject to the powers, duties and functions of the Commission, a University shall have powers-*

*(e) to grant and confer degrees, diplomas and other academic distinctions to and on persons who have pursued approved courses of study in the University or in any recognized institution and who have passed the examinations of the University prescribed by By-law;*

*(l) to institute Professorships, Associate Professorships, Senior Lectureships or Lectureships, and other posts as may be required for the purposes of the University”*

Therefore, I do not see any merit in the argument advanced for and on behalf of the Petitioner in this case. As such, neither a *Writ of Mandamus*, *Prohibition*, nor *Certiorari* lies against the decision taken by the University.

Additionally, I wish to thank the Petitioner, who as a member of the general public, showed his interest in public welfare and sort to invoke the writ jurisdiction of this Court to obtain certain

relief for and on behalf of the society. Therefore, I decide not to order any costs against the Petitioner. I also wish to thank the learned State Counsel who appeared for the Crown.

### **Conclusion**

For the reasons adumbrated above, I see no merit in this application; accordingly, I refuse formal notice and dismiss the application *in limine*, without any costs.

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

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. Karalliyadde, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**