

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 Writs in *Certiorari*, Prohibition and *Mandamus* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

N.W.A. Renuka Wasanthi Nanayakkara,
No. 23, Galawala Road, Mirihana,
Nugegoda.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/395/2024

1. University of Sri Jayawardanepura.
2. Senior Prof. Pathmalal M. Manage,
Vice-Chancellor.
3. Prof. Shirantha Heenkenda,
Dean, Faculty of Humanities and Social Sciences.
4. Prof. Upul Subasinghe,
Dean, Faculty of Applied Sciences.
5. Dr. Dushan Jayawickrama,
Dean, Faculty of Management Studies and Commerce.
6. Prof. Manori Gamage,
Dean, Faculty of Medical Sciences.
7. Prof. Rasika Perera,
Dean, Faculty of Graduate Studies.
8. Prof. Prasad M. Jayaweera,
Dean, Faculty of Computing.
9. Senior Prof. Pradeep Jayaweera,
Dean, Faculty of Urban and Aquatic Bioresources.

10. Senior Prof. Surangi G. Yasawardene,
Dean, Faculty of Dental Sciences.
11. Prof. D.I. Uluwaduge,
Dean, Faculty of Allied Health Sciences.
12. Dr. Nishan Dharmaweera,
Dean, Faculty of Engineering.
13. Prof. Renuka Nilmini,
Dean, Faculty of Technology.
14. Senior Prof. M.T. Samarakoon,
Senate Nominee.
15. Prof. S.T.W.S. Yapa,
Senate Nominee.
16. Dr. Kirinde Assaji Thero,
17. Dr. Balangoda Sobhitha Thero,
18. Dr. A.M. Mubarak,
19. Dr. Ravi Liyanage,
20. Athula Pathinayake,
21. H.C.D.L. Silva,
22. Roland Munasinghe,
23. Sujeewa Rajapakshe,
24. Pradeep Yasarathne,
25. Lumbini Dharshana Senanayake,
26. Sajeewa Medawatte,
27. A.A. Ariyaratne,
28. Aruna Gunarathne,
29. Emeritus Prof. Rathnayaka
Kaluarachchige Ariyaratne,
UCG Appointed Council Members.
30. Mr. A.B. Weliwita,
Registrar and Secretary to the Council.
31. Prof. W.A.S. Wijekoon,
Head of Department,
Department of Sociology.
32. Ms. M.W.M. Shyamali,
33. Ms. I.P.N.P. Menike,
34. Ms. R.A.R. Karunarathne,
35. Mr. W.T.D. Wijethunga,

The 1st to 35th Respondents of University of Sri Jayawardanepura, Gangodawila, Nugegoda.

36. University Grant Commission,
No. 70, Ward Place, Colombo 7.

37. Human Rights Commission of Sri Lanka,
No. 14, R.A. De Mel Mawatha, Colombo 4.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Vishva Vimukthi instructed by Sajuni Seneviratne for the Petitioner.
Abigail Jayakody, for the Respondents.

Supported on: 24.06.2025

Decided on: 25.07.2025

Mayadunne Corea J

The Petitioner in this Application, *inter alia*, sought the following reliefs:

- “(c) *Issue a mandate in the nature of a Writ of Mandamus compelling the 1st to 31st and 36th Respondents to implement the recommendations of the 37th Respondent in terms of Section 15(7) of the Human Rights Commission Act read with Article 12 of the Constitution contained in P6*
- (d) *Issue a mandate in the nature of a Writ of Mandamus compelling the 1st to 31st and 36th Respondents to award marks which the Petitioner is entitled to in terms of the Commission Circulars bearing number 721 dated 21st November 1997*
- (e) *Issue a mandate in the nature of a Writ of Mandamus compelling the 1st to 31st Respondents to appoint the Petitioner to the post of Lecturer (Probationary) of the Department of Sociology of the Faculty of Social Sciences and Humanities, of the 1st Respondent University*
- (f) *Issue a mandate in the nature of a Writ of Certiorari quashing the selection made by the 1st to 31st Respondents to appoint the 32nd to 35th Respondents to the post of Lecturer (Probationary) of the Department of Sociology of the Faculty of Social Sciences and Humanities, of the 1st Respondent University which contained in P7(C)*
- (g) *Issue a mandate in the nature of a Writ of Prohibition prohibiting the 32nd to 35th Respondents from discharging duties as Lecturer (Probationary) of the Department of Sociology of the Faculty of Social Sciences and Humanities, of the 1st Respondent University*
- (h) *In an alternative, issue a mandate in the nature of a Writ of Mandamus compelling the 37th Respondents to take steps in terms of Section 15(8) of the Human Rights Commission of Sri Lanka Act to make a full report on the facts to the President and cause a copy of such report to be placed before Parliament”*

The facts of the case briefly are as follows. The 1st Respondent had called for applications for the posts of Lecturer (Probationary), Lecturer (Unconfirmed) and Senior Lecturer Grade II in Sociology, and the Petitioner submitted her applications. However, it is alleged that the Petitioner was not shortlisted for the interview due to an objection posed by the

14th Respondent. The Petitioner states that the 2nd Respondent and the then Vice Chancellor informed her that the interview would be conducted to recruit candidates predetermined and preferred by the 14th Respondent.

The minimum qualification required for the said post was an Honours Degree in Sociology with a 1st class or 2nd upper and experience. According to the Petitioner she had obtained an Honours Degree with a 1st class and a Masters Degree in Sociology and Anthropology with at least 11 years of experience. Therefore, the Petitioner made a complaint to the 37th Respondent and sent a letter to the Chairman of the University Grant Commission (hereinafter referred to as 'UGC'). The Chairman and Vice Chairman of the 37th Respondent directed the 2nd Respondent to call the Petitioner for the interview in terms of the UGC Circular No. 721 dated 21.11.1997. The Petitioner and few others were thereafter called for an interview on 26.11.2021 but it is alleged that the panel had made derogatory remarks about the Petitioner and her qualifications, and awarded low marks. Further, following an inquiry, the 37th Respondent observed that the interview panel was biased towards the selected candidates (32nd to 35th Respondents) and made a recommendation marked as P6. However, the said recommendation was not implemented.

The Petitioner's contention

The Petitioner challenges the acts of the Respondents on the following grounds:

- The Respondents acted in violation of the Petitioner's legitimate expectations.
- The Respondents are under a duty to implement the recommendation of the 37th Respondent marked as P6.
- The Respondents' acts are contrary to the Commission Circular No. 721 dated 21.11.1997.
- The Respondents' acts are contrary to the Human Rights Commission of Sri Lanka Act.
- The selection process is vitiated by procedural impropriety, bias, wrongful, unlawful, illegal, capricious and arbitrary actions of the Respondents

The Respondents' objections

The Respondents raised the following objections:

- The Petitioner has not come to Court with clean hands.
- Suppression and misrepresentation of material facts.
- The Petitioner has not obtained the qualifications that she has pleaded and stated in the application.
- The Petitioner in any event lacks the qualifications.
- The reliefs are already granted.

This Court will consider the Petitioner's contentions and the objections raised by the Respondents.

Analysis

The submissions of the learned Counsel for the Petitioner are two-fold. His main ground of argument is that the selection process is vitiated by procedural impropriety, bias, wrongful, unlawful, illegal, capricious and arbitrary actions of the Respondents. The learned Counsel's second contention is that after his complaint to the Human Rights Commission (hereinafter referred to as 'HRC'), the HRC had issued its directive P6 and he alleges that the Respondents have failed to implement the same. Accordingly, he seeks for a Writ of *Mandamus* for the implementation of the said recommendations.

The Petitioner's application

It is the contention of the Petitioner that the Petitioner had submitted an application for the post of Senior Lecturer (Grade II), Lecturer (Probationary) Faculty of Humanities and Social Sciences, Department of Sociology. The said application had been submitted pursuant to a paper notice marked as P1 which also stipulates the qualifications the applicants should possess. The said notice states as follows:

“POST OF SENIOR LECTURER (GRADE I)/ SENIOR LECTURER (GRADE II)/
LECTURER (PROBATIONARY)

Department of Sociology

Qualifications:

Honours Degree in Sociology with a first or second class upper division and with experience and courses included in their degree in any of the field of Social Work, Community Participation, Law, Criminology, Anthropology, Social Statistics, GIS, SSP, Political Science and Urban Planning”

The Petitioner has marked her application submitted to the Respondents as a part of Annexure X. The Respondents have marked the said application as a part of Annexure 3 with their motion dated 05.11.2024. The P1 paper notice calling for applications is dated 30.08.2020. The Petitioner submits that she was not called for an interview. However, the Court observes that as per the document marked P1, the closing date of the applications or the probable date for interviews are not clear. The Petitioner on her own has made inquiries and is alleged to have found out that the 1st Respondent had shortlisted several applicants for the interview excluding her. This allegation was denied by the Respondents. Thus, making it a disputed fact. However, the Petitioner had sent four letters of demand to four officers and the Petitioner alleges that thereafter she had been called for the interview. It appears that the Petitioner’s interview has been held on 26.11.2021. However, it was the contention of the Respondents that the interviews on that day were held for all applicants.

The interview panel

The Petitioner complains that when she went for the interview, the interview panel had consisted of four members against whom she had sent the letters of demand, demanding her being called for an interview. It was her contention that as a result of the said panel being constituted the Respondent University had acted with procedural impropriety and bias towards her. In refuting the said allegation, it was the contention of the Respondents that the said four officers who sat at the interview panel were the designated officers as per the selection process according to the positions held by them. Hence, it is the contention of the Respondent that there was no way to change the composition of the interview panel without violating the said procedure. This position was not denied by the Petitioner. Thus, the Petitioner’s contention that the interview panel was biased because of the interviewers

cannot be accepted. And also, in view of the above I am not inclined to accept the argument that the appointment of the panel created a procedural impropriety.

Marks awarded at the interview

The Petitioners next argued that the marks given to her, at the interview had been extremely low compared to the other applicants. The Petitioner submits that the basic requirement to apply is to possess an Honors Degree in Sociology with a 1st class or 2nd upper division and experience, which she claims she possesses and attached as proof the certificate in the brief. The Petitioner has also tendered a copy of her degree which had been awarded on 12.06.2022. Further, she argues that she was awarded a 1st class. This position was not disputed by the Respondents. Hence, it appears that the Petitioner possessed the necessary qualifications to apply for the post as per the paper notice.

The interview

The Petitioner submits that at the interview she had been harassed and laughed at by the interviewers, which the Respondents have vehemently denied. Hence, without any independent material, this Court is not inclined to consider the disputed fact. Be that as it may, the interview results were tendered to Court marked as P7(c). As per P7(c), the Petitioner has scored an aggregate of '41' marks while several other applicants scored higher marks than her, namely aggregates of '78', '75', '70' and '61'. It was her contention that she had not been awarded marks as per the marking scheme. However, as per the marking scheme which is also available at P7(c), the Court observes that she has been awarded '30' marks out of a maximum of '40' marks for her academic qualifications. It is pertinent to observe that, '30' marks are the maximum that can be given for a 1st class, which she possesses. The Petitioner then contends that 10 additional marks for academic qualifications should have been given to her as she possessed a Masters Degree. Hence, the Petitioner argues that the marks given to her are erroneous. This Court will comment on this shortly. The Petitioner had been awarded '4' marks for her work experience, '4' marks for research and publication, a '0' mark for additional qualifications, and '3' marks for performance at the interview. This Court observes that the marks awarded for the performance of the interview can only be decided by the interview panel. With a total of '41' marks, the Petitioner had been placed as number 13 in the ranks.

Being aggrieved by this marking she has lodged a complaint to the HRC on the same basis. The HRC, after inquiry had made its recommendations marked as P6. In that the Respondents had subsequently submitted a probable mark sheet that the Petitioner could have been awarded If she possessed the Masters qualification by adding 10 more marks for academic qualifications and 6 more marks for research and publication, and elevating her to the rank of 7. After considering this, the HRC had recommended that her application and the applications of the other four applicants who had scored above her be reviewed and the vacancies be filled(P6). This is the recommendation the Petitioner seeks to enforce by a Writ of *Mandamus*.

In her application, the Petitioner had submitted that she possessed a MA in Sociology and Anthropology. On this basis she contended that an additional 10 marks should have been given to her. Acting on the said submission the HRC had come to its recommendations.

Misrepresentation and suppression of facts

The Respondents contended that though the Petitioner claims to have a MA in Sociology and Anthropology and sought 10 more marks to be added under the academic qualification columns she does not possess such qualification. A subsequent query to the relevant department that had awarded her the Masters Degree had officially informed that she in fact does not possess such a qualification. The Respondents by their motion dated 05.11.2024 had tendered several documents to this Court and one of the letters is a letter by the Postgraduate Institute of the Faculty of Graduate Studies of the University of Sri Jayawardenapura dated 08.03.2021 with the caption ‘Masters Degree of the Petitioner’. It was the contention of the Respondents that the Masters Degree comprises of two components namely the written exam and the submission of the thesis. It was their contention that if the student had failed one of the components, a Masters Degree is not awarded.

The said letter informs that the Petitioner had sat for the Masters exam and passed the examination. However, on her request, without completing the thesis, she had been upgraded to a MPhil programme However, she had not completed the same and hence, the University has informed that she had not obtained her Masters nor has she obtained a MPhil. The learned Counsel for the Petitioner conceded to this fact. Further, as she has not completed her thesis for the Masters, she has not completed the Masters programme. Thereby, she has not obtained a Masters qualification. Hence, the Respondents established

before Court that the Petitioner was not entitled to the additional '10' marks for academic qualifications, thus, making her aggregate '47' marks, whereby, the four selected candidates had scored much higher. Thereby, they contended that the Petitioner fell short of the required marks and was not eligible to be selected.

It is observed that the Petitioner in the application submitted to the University had specifically mentioned under the higher education qualification that she possessed a Masters Degree. Thus, in my view this establishes the Respondents' contention that the Petitioner has misrepresented facts in her Application.

It is also observed by the Court that in her application tendered for the post the applicants are required to make a declaration to the accuracy of the facts tendered and signed the application. It is also observed that the applicants are warned of the consequences of submitting false or inaccurate information. As per the declaration in the application form before placing her signature the Petitioner has declared that the contents of the application to be true and had accepted her knowledge that any inaccurate information or untruth would disqualify her from the post she has applied for. The said declaration states as follows:

"I hereby declare that the particulars furnished by me in this application are true and accurate. I am also aware that if any particulars contained herein are found to be false or incorrect I am liable to be disqualified if the inaccuracy is discovered before the selection and dismissal without any compensation if the inaccuracy is discovered after the appointment."

It is observed that below the said declaration the Petitioner had place her signature. At the time of the application, she had the knowledge that she did not possess the qualifications that she had entered as to have possessed and by placing her signature she knew that the said untruth could cause her to be disqualified. Further this Court observes that even in her application to the HRC the Petitioner had maintained that she had possessed the Masters qualification and had contended that therefore she should have more marks under the heading educational qualifications in the marking scheme. This submission has been noted and the plain reading of the HRC recommendations demonstrate that when the HRC gave the decision at P6 they had taken this educational qualification too into consideration. Hence, it is observed that the Petitioner has misrepresented facts to the HRC and on the said basis had obtained the recommendation at P6. The learned State Counsel in her submissions quite correctly stated that when this untruth was discovered, she automatically gets disqualified and hence this Application has to fail.

It is also pertinent to note that the Petitioner in paragraph 11 and 26, has specifically pleaded that she possess a Masters Degree and specially in paragraph 26, states that she had taken two years to complete the Masters Degree. As per the submissions of the learned Counsel for the Petitioner herself and the documents submitted to this Court by the Respondents it is abundantly clear that this pleading is erroneous and a misrepresentation of true facts and the Petitioner has not come before Courts with clean hands. It is trite law that a party who invokes Writ jurisdiction should comply with the principles of *uberrima fides* and any failure disentitles the Petitioner from the relief pleaded.

The Court of Appeal in ***Blanca Diamonds (Pvt) Ltd. Vs. Wilfred Van Els (1997) 1 SLR 360, 362-3*** held that:

"In filing the present application for discretionary relief in the Court of Appeal Registry, the petitioner company was under a duty to disclose (uberrima fides) all material facts to this Court for the purpose of this Court arriving at a correct adjudication of the issues arising upon this application. In the decision in Alponso Appuhamy v Hettiarachchi⁽¹⁴⁾ Justice Pathirana, in an erudite judgement, considered the landmark decisions on this province in English Law, and cited the decisions which laid down the principle when that a party is seeking discretionary relief from the Court upon an application for a writ of certiorari, he enters into a contractual obligation with the Court when he files an application in the registry and in terms of that contractual obligation he is required to disclose uberrima fides and disclose all material facts fully and frankly to this Court".

As per the said decided cases our Courts have consistently held that misrepresentation by the Petitioner and not coming with truth or failure to come with clean hands is not entertained by the Courts when discretionary remedies are sought. In my view, this alone is sufficient to disentitle the Petitioner from the reliefs sought.

The second recommendation by the HRC

The Respondents also have submitted by way of a motion a second letter the HRC had issued. This letter had originated subsequent to the Respondents informing the HRC about the misrepresentation of her qualifications. The Respondents submitted, pursuant to this letter, the HRC has once again called the parties and, as per the letter dated 28.03.2025 had

refrained from making any recommendations. However, as this letter had originated subsequent to the filing of this Application, the Court will not make any comment on the said letter.

Conclusion

The Court has considered the extensive submissions made by all parties and has considered the documents tendered to Court. After considering the material tendered to this Court and for the aforesaid reasons, in my view the Petitioner has failed to establish a *prima facie* case for the consideration of this Court, further by misrepresenting facts the Petitioner has disentitled herself from obtaining any relief from this Court. Accordingly, this Court refuses to grant formal notice and proceeds to dismiss this Application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal