

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

In the matter of an application for mandate in the nature of Writs of Certiorari under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No.120/2021

Dr. Jayapalan Jeyaruban
54/5, Music Lane,
Thamaraikkeney,
Batticaloa.

PETITIONER

Vs.

1. University Grants Commission
2. Prof. Sampath Amarathunge
Chairman
3. Prof. (Mrs) Janitha Liyanage
4. Prof. A.K.W. Jayawardane
5. Prof. Vasanthi Arasaratnam
6. Prof. Kollupitiye Mahinda Sangarakitha Thero
7. Prof. Premakumara de Silva
8. Mr. Palitha Kumarasinghe, PC
9. Dr. Priyantha Premakumara
All of
No. 20, Ward Place,
Colombo 07.
10. Eastern University, Sri Lanka,
11. Prof. F.C. Ragal
Vice-Chancellor
12. Prof. V. Kanagasingham
13. Dr. (Mrs) Anjela Arulpragasam Anthony
14. Prof. P. Peratheepan
15. Mr. M. Ravi
16. Mrs. V.R. Ragel
17. Dr. J. Kennedy
18. Dr. K. Premakumar
19. Mr. S. Thedchanamoorthy
20. Mrs. K. Shanthrakumar
21. Prof. M. Selvarajah

22. Prof. Riyas sulaima Lebbe
 23. Dr. S.M. Hussain
 24. Dr. H.R. Thambawita
 25. Dr. Gunasinham Sukunan
 26. Mr. Seenithamby Mohanarajah
 27. Mr. S. Thilagarajah
 28. Mr. S. Shanmugam
 29. Mr. P. Premanath
 30. Mr. T. Sivanathan
 31. Mr. A.L. Joufer Sedique
 32. Mr. Nadaraja Sivalingam
 33. Ms. S.J.M.S. Samarakoon
 34. Mr. A. Pahirathan
- 10th to 34th of
Eastern University, Sri Lanka,
Vantharumoolai, Chenkalady,

RESPONDENTS

Before: Mayadunne Corea, J.
Mahen Gopallawa, J.

Counsel: K. G. Jinasena with U. Kariyawasam instructed by D. K. Vikum Jayanath for the
Petitioner.

Pulina Jayasuriya, State Counsel, for the Respondents.

Argued on: 18.02.2026

Written Submissions: Petitioner on 17.03.2026.

Decided on: 22.05.2026

Mahen Gopallawa, J.

Introduction

In the instant application, the Petitioner has impugned the decision of the Council of the Eastern University (10th Respondent) to change the effective date of his promotion to the post of Senior Lecturer (Grade II) in Surgery from 02.05.2012 to 02.05.2017 (P16) and the consequent decision

to deduct a sum of Rs. 2,803,141.63 from the Petitioner's monthly salary (P20) in order to recover overpayments made during such period. The Petitioner has also impugned the "order" made by the Secretary of the University Grants Commission (9th Respondent) (P19).

The Petitioner has sought the following substantive reliefs in the prayer to the petition;

- b) Grant and issue a mandate in the nature of Writ of Certiorari quashing the order (P19) made by the 9th Respondent, the Secretary of the 1st Respondent UGC;*
- c) Grant and issue a mandate in the nature of Writ of Certiorari to quash the decision (P16) made by the Council of the 10th Respondent University at its 289th Meeting held on 21st July 2018 to change the effective date of the Letter of promotion issued to the Petitioner from 2nd May 2012 to 2nd May 2017;*
- d) Grant and issue a mandate in the nature of Writ of Certiorari to quash the decision (P20) made by the Council of the 10th Respondent University at its 308th Meeting held on 26th September 2020 to deduct a sum of Rs. 2,803,141.63 from the Petitioner's monthly salary.*

The 1st to 9th Respondents and 10th to 34th Respondents representing the University Grants Commission (UGC) and the Eastern University of Sri Lanka (EUSL) respectively have filed statements of objections on 24.01.2022 objecting to the grant of the aforesaid reliefs, and, accordingly, the application was taken up for argument. The parties were also granted an opportunity to file post-hearing written submissions.

Factual Background

The Petitioner was serving as an officer in the Sri Lanka Health Service at the time vacancies in the post of Lecturer/Senior Lecturer in Surgery were advertised by the 10th Respondent (EUSL).

Although he had applied for the post of Senior Lecturer (Grade II) (10R6), he had been appointed to the post of Lecturer (Probationary) with effect from 01.11.2011, as evidenced by the letter of appointment dated 31.10.2011 (P4). It is common ground that the reason the Petitioner was not appointed to the post of Senior Lecturer-Grade II was because he neither possessed Board Certification nor six years of teaching experience, as required by the Scheme of Recruitment contained in the UGC Circular No. 721 (P10). Accordingly, on the recommendation of the Selection Committee (1R1/10R8), he had been appointed to the post of Lecturer (Probationary). After obtaining a permanent release from the public service with the approval of the Ministry of Health and the Public Service Commission (P5), he had assumed duties in the post of Lecturer (Probationary) on 02.05.2012 (10R9). It also appears that the Petitioner had been the only applicant to the said post. After assuming duties, the Petitioner had been granted study leave for a period of two years to pursue post-Doctor of Medicine (MD) overseas training and had reported back for duty on 07.04.2015.

It is observed that the Postgraduate Institute of Medicine of the University of Colombo (PGIM) had conferred Board Certification upon the Petitioner as a Specialist in General Surgery with effect from 17.02.2012, as evidenced by the Board Certificate dated 21.03.2015 (P6).

Thereupon, it transpires that the Petitioner had initially sought re-appointment to the post of Senior Lecturer (Grade II) with effect from 02.05.2012 by letter dated 12.10.2015 (P9). The Council of the EUSL at its meeting held on 27.11.2015 had recommended to seek the approval of the UGC to re-appoint the Petitioner as Senior Lecturer (Grade II) with effect from 02.05.2012 (10R10). The Petitioner has subsequently changed his request from one of re-appointment to one of promotion to the post of Senior Lecturer (Grade II) with effect from 02.05.2012 by his letter dated 10.11.2016 (P13).

The UGC had issued Establishments Circular Letter No. 08/2016 (P11) dated 11.10.2016 with effect from 03.10.2016 relating to the determination of the effective date of promotion to the post of Senior Lecturer (Grade II)(Medical/Dental) in receipt of the Board Certification of the PGIM, which, *inter alia*, in paragraph 2(ii) provided as follows;

- (ii) *If a Lecturer (Probationary)/Lecturer or Lecturer (un-confirmed)(Medical/Dental) has obtained the Board Certification of the PGIM, he/she shall be considered for promotion to the post of Senior Lecturer Grade II (Medical/Dental) with effect from the effective date of Board Certification of the PGIM, provided that the other requirements of the Scheme of Recruitment are fulfilled by that date.*

The UGC had informed the EUSL by letter dated 21.12.2016 (1R2/10R11) that it had considered that three academics, including the Petitioner, would be deprived of the benefits conferred by the said Circular (P11) due to its effective date and had decided to consider their date of promotion to the post of Senior Lecturer (Grade II) on par with the effective date of the Board Certification of the PGIM under the said Circular irrespective of its effective date only for the three academics concerned. Accordingly, it was stated that the effective date of promotion of the Petitioner to Senior Lecturer (Grade II) should be 02.05.2012. Accordingly, the Petitioner was promoted to the post of Senior Lecturer (Grade II) with effect from 02.05.2012 by letter issued by the 11th Respondent dated 03.10.2017 (P15/10R12).

However, the aforementioned paragraph 2(ii) of the Circular (P11) was rescinded by the UGC by the UGC Establishments Circular Letter No. 08/2016(i)(P12). Accordingly, the Commission had directed the EUSL to withdraw the treatment of effective date of promotion of the Petitioner to the post of Senior Lecturer (Grade II) as 02.05.2012 and to adjust the date of promotion "in terms of the existing provisions in that regard." The UGC has referred to the rationale for such decision and the action taken on such matter in respect of the Petitioner in paragraphs 9 (i) to (m) of its statement of objections as follows;

- i) *The 1st respondent thereafter received several other requests from time to time from different Higher Educational Institutes to extend the application of Establishment Circular*

8/2016 prior to the effective date of such Circular based on the letter issued to the 10th Respondent dated 21.12.2016 (1R2) and the 1st Respondent having realized that allowing such requests would lead to limitless requests from Higher Educational Institutes with respect of very early years as well, for which a time barrier cannot be imposed, recommended the Commission to withdraw the decision reached by the Commission at its 954th meeting and further to revoke Establishment Circular 8/2016 with immediate effect.

A certified copy of such request made by the University of Jaffna dated 13.01.2017, the Memorandum of the Management Committee meeting of the 1st Respondent bearing No. 265/13, the decision by the 1st Respondent at its 973rd meeting under item 973.5.1K and item No. 973.5.1(l) are respectively marked and annexed as **1R3, 1R4, 1R5 and 1R6** in proof of above, and are pleaded as part and parcel hereof.

- i) The said decision of the 1st Respondent taken at its 973rd meeting which directed the 10th Respondent to adjust the date of promotion of the Petitioner in terms of the existing provisions in the Scheme of Recruitment has been sent to the 10th Respondent by letter dated, 22.11.2017 (P19) by the Secretary to the Commission. The Respondents specifically state that the 9th Respondent has not made any decision in P9 [sic] as alleged by the Petitioner, but simply communicated the decision of the 1st Respondent taken at 973rd meeting (1R6) to the 10th Respondent.
- j) P19 did not amount to a 'nullification' or 'withdrawal' of the appointment/promotion granted to the Petitioner, but instead it withdrew the effective date of promotion and adjusted it to a date to be in line with the terms of the existing provisions of the Scheme of Recruitment.
- k) Accordingly, all decisions pertaining to backdating the date of promotion taken at its 954th meeting have [sic] withdrawn by the 1st Respondent subsequently at its 973rd meeting;
- l) As such, directions have been issued to the respective Higher Educational Institutes to adjust the date of promotion of the said three academics to be in line with the terms of the existing provisions of the Scheme of Recruitment and rectify the irregularity caused by its previous decision taken at 954th meeting;

Certified copy of the letter dated, 22.11.2017 issued by the 1st Respondent in respect of two other academics attached to the University of Jaffna, is marked and annexed as **1R7** in proof of above, and the said document is pleaded as part and parcel hereof.

- m) The Respondents categorically state that the said decision to retract its original decision has been equally applied to all those persons in whose favour such decisions were taken earlier and that the Petitioner was not an exception;...

It transpires that the EUSL had sought a clarification on the aforementioned decision of the UGC from the Hon. Attorney General and had been advised to comply with the said decision by the letter dated 19.11.2018 (P18). The Petitioner had appealed against the decision to adjust the effective date of his promotion by letter dated 20.02.2019 (P17) but no relief had been granted.

Thereafter, the EUSL has sought advice from the UGC regarding the overpaid salary to the Petitioner during the period 02.05.2012 to 01.05.2017 (1R9/10R13) and had been directed by the UGC to recover the overpaid salary from the Petitioner in monthly installments under one of the three options specified in Financial Regulation 119 (Surcharges) (1R10/10R14). Accordingly, the EUSL had proceeded to inform the decision to recover the overpaid salary amounting to Rs. 2,803,141.63 for the period 02.05.2012 to 31.10.2020 and requested the settlement of such amount in monthly installments under one of the three options specified in Financial Regulation 119 of the Financial Regulations (P20). Details of the salary adjustment had also been informed to the Petitioner (P21).

The Petitioner has instituted the instant application on 03.03.2021 impugning the aforementioned decisions to adjust the effective date of his promotion to the post of Senior Lecturer (Grade II) and to recover the overpayment of salary made to him.

Grounds of Review and Analysis

As reflected in the pleadings, the Petitioner has impugned the following two decisions made by the Respondents;

- a. The decision to adjust the effective date of his promotion to the post of Senior Lecturer (Grade II) from 02.05.2012 to 02.05.2017; and
- b. The decision to recover the overpayment of salary made to the Petitioner during the aforementioned period.

However, it was submitted by learned Counsel at the argument and stated in the written submissions that, although the Petitioner does not intend to challenge the adjustment of the effective date of his promotion, the recovery of the salary overpayment was incorrect and wrongful and had been made upon an irrational decision made subsequently.¹

Nevertheless, since the recovery of the salary overpayment is entirely based on the adjustment of the effective date of promotion, it would be necessary for this Court to consider the legality of or otherwise of both such actions.

¹ vide paragraph 6(iii) of the Petitioner's written submissions

A. Adjustment of the Effective Date of the Petitioner's Promotion to the post of Senior Lecturer (Grade II)

As indicated in factual narrative above, it is common ground that there were two reasons why the Petitioner could not be directly recruited to the post of Senior Lecturer (Grade II); one being that he had not obtained PGIM Board Certification at the time of application and the other being the lack of six years' teaching experience, as required by the Scheme of Recruitment set out for post no. 4: Senior Lecturer, Gr II (Medical/Dental) b-03 (by open advertisement) in the UGC Circular No. 721 (P10).

It is also common ground between the parties that the Petitioner was entitled to be promoted to the post of Senior Lecturer (Grade II) with effect from 02.05.2017 in terms of the following eligibility criteria for promotion for post no. 5: Senior Lecturer, Gr II (Medical/Dental) B-03 (by normal promotion) of the aforementioned Circular (P10);

Qualifications

A Lecturer may be considered for promotion if he/she possesses the qualifications as specified below:-

1. (i) A relevant postgraduate degree of two academic years duration if it is full-time or three years duration if it is part-time with a research component by way of thesis/dissertation MD/MS and Board Certification by the Postgraduate Institute of Medicine where required or its equivalent or a Doctoral degree;

OR

(ii) Candidates recruited with a pass in MBBS/BDS and postgraduate qualifications, that is under (3) of the qualifications for Lecturer (Probationary) (See Post 1 in this document) may be considered for promotion if he/she has evaluated research completed after recruitment in conformity with current guidelines. (See note below)

OR

(iii) Such professional qualifications as may be approved by the University Grants Commission upon the recommendation of the Higher Educational Institution concerned.

AND

2. At least five (05) years experience as Lecturer (Probationary) and Lecturer (including the time devoted to acquire the postgraduate qualifications specified at (1) above).

Note: The current guideline for 1 (ii) above is a minimum total of 15 marks for research, creative works and dissemination of knowledge. The Marking Scheme for this purpose is Sections 2 and 3.1 of the Marking Scheme for posts of Associate Professor/Professor.

It is observed that 02.05.2017 has been reckoned as the effective date of the promotion since that is the date upon which the Petitioner had completed five years' teaching experience as required under clause 2 of the aforementioned Scheme of Recruitment.

Hence, the issue in dispute between the parties is confined to the Petitioner's entitlement to be promoted to the post of Senior Lecturer (Grade II) with effect from 02.05.2012. It is not in dispute that such entitlement is derived from paragraph 2(ii) of the UGC Establishments Circular Letter No. 08/2016 (P11). It transpires from the letter addressed by the UGC to the EUSL dated 21.12.2016 (1R2/10R11), that "a special exception" had been made by the UGC in the case of three academics concerned, including the Petitioner, in disregarding the effective date of the said Circular, which was 03.10.2016, and conferring the benefits thereunder upon the said academics on a basis "personal to them."² The said letter, *inter alia*, records the fact that, the said academics would have been deprived of the benefits conferred by the Circular (P11) due to its effective date, and, that the UGC had decided to consider their date of promotion to the post of Senior Lecturer (Grade II) on par with the effective date of the PGIM Board Certification irrespective of its effective date only for the three academics concerned.

The position taken up by the Petitioner is that the decision to promote the Petitioner with effect from 02.05.2012 was a correct decision and justified in the light of the recommendation made by the Dean of the Faculty of Healthcare Sciences (13th Respondent) in the letter dated 21.11.2016 (P14). In the said letter, the Dean had stated that the Petitioner and Dr. M. Umakanthan mentioned therein are "qualified to be promoted," and also refers to the fact that "*the Faculty is unable to utilize the said lecturers to their maximum potential and have to look elsewhere for senior level services such as Examiner, Head, Chairman of Board of Study etc. due to the under-recognition of their status in the EUSL.*"

The readjustment of the effective date of the Petitioner's promotion to the post of Senior Lecturer (Grade II) has been occasioned by the rescission of paragraph 2(ii) of the Circular (P11) by the UGC by the UGC Establishments Circular Letter No. 08/2016(i)(P12). The rationale in arriving at such decision and the consequent action has been set out in detail by the UGC in paragraphs 9(i) to (m) of its statement of objections, which has been reproduced in the factual narrative above. For ease of reference, the rationale for such decision, which is set out in paragraph 9(i) is reproduced below;

- i) *The 1st respondent thereafter received several other requests from time to time from different Higher Educational Institutes to extend the application of Establishment Circular 8/2016 prior to the effective date of such Circular based on the letter issued to the 10th Respondent dated 21.12.2016 (1R2) and the 1st Respondent having realized that allowing such requests would lead to limitless requests from Higher Educational Institutes with respect of very early years as well, for which a time barrier cannot be imposed, recommended the Commission to withdraw the decision reached by the Commission at*

² vide paragraph 9 of the statement of objections of the 1st to 9th Respondents

its 954th meeting and further to revoke Establishment Circular 8/2016 with immediate effect.

It appears from the foregoing that the extension of the concessions granted under Circular 8/2016 (P11) to the Petitioners disregarding the effective date of such Circular had set a precedent which had created problems in managing the implementation of such Circular, and, as such, the UGC had decided to rescind paragraph 2(ii) of the said Circular. Such decision to rescind the said clause can be considered as a policy decision taken to resolve an administrative problem. The Respondents have submitted that such decision had been uniformly applied and such position has not been challenged by the Petitioner.

Regarding the nature of the Petitioner's entitlement, it is observed that the Petitioner would not have ordinarily been entitled to benefit under the provisions of paragraph 2 (ii) of the Circular (P11) as of right, if the effective date of such Circular was strictly observed. Thus, the antedating the Petitioner's effective date of promotion to 02.05.2012 has to be characterized as a concession or privilege accorded to him by the Respondents. Accordingly, the subsequent decision to cancel such antedating and to readjust the effective date of the Petitioner's promotion would constitute a withdrawal of such concession or privilege. Viewed from such perspective, it would appear that the Petitioner has no claimable right or legitimate expectation to be promoted to the post of Senior Lecturer (Grade II) with effect from 02.05.2012.

The Respondents have also taken up the position that the decision to antedate the Petitioner's promotion to 02.05.2012 had caused an "irregularity" vis-à-vis the Scheme of Recruitment in respect of promotion to the post of Senior Lecturer (Grade II). In terms of clause 2 of the said Scheme of Recruitment, at least five years' experience as Lecturer (Probationary) and Lecturer (including the time devoted to acquire the postgraduate qualifications specified in clause 1 thereof was required to be eligible for promotion. The Petitioner had completed five years' teaching experience, as required, only 02.05.2017. Although paragraph 2(ii) of the Circular (P11) made specific reference to the fact that the treatment of effective date of the PGIM Board Certification as the effective date of promotion was conditional upon fulfilment of "*the other requirements of the Scheme of Recruitment*" by such date, it has been acknowledged by the Respondents that the requirement to complete five years' teaching experience had not been considered in deciding to treat the effective date of the Petitioner as 02.05.2012. Reference had been made to such error in the legal advice tendered by the Hon. Attorney General (P18). The Respondents contend that they have sought to rectify the "irregularity" caused by promoting the Petitioner to the post of Senior Lecturer (Grade II) with effect from 02.05.2012 when he was eligible to be promoted to the said post only with effect from 02.05.2017 in terms of the provisions of the Scheme of Recruitment.³

In response, the Petitioner sought to rely on paragraph 5 of the UGC Circular 996 dated 09.10.2012 (P14A) to count his experience gained at the Department of Health in computing the

³ vide paragraph 13 of the statement of objections of the 1st to 9th Respondents and paragraph 14 of the statement of objections of the 10th to 34th Respondents

teaching experience required for promotion. The said paragraph 5 of Circular (P14A) provided as follows;

05. A confirmed Lecturer may be considered for promotion to Senior Lecturer Grade II as specified in the Scheme of Recruitment under Post No. 05 of Commission Circular No. 721 having considered the experience gained as Lecturer and Medical Officer/Dental Surgeon at the Department of Health and the time devoted to acquire a Master's or Doctoral Degree, in the case of Lecturer (Non-Medical/Dental), as provided in the Scheme of Recruitment under post No. 07 having considered the experience gained as Lecturer and the time devoted to acquire a Master's or Doctoral Degree.

However, it is observed that paragraph 7 of the said Circular specifically provided that the Circular will be effective from 01.10.2012, which is a date after the effective date of the Petitioner's promotion, namely, 02.05.2012. Furthermore, the UGC has pointed out that the Circular (P14A) applies only for a Lecturer (Unconfirmed) and as such does not apply to the Petitioner, who was appointed as a Lecturer (Probationary).⁴ I am inclined to accept such position taken up by the Respondents considering the specific reference to "*may be considered for appointment of Lecturer (but Unconfirmed)*" in Special Note 1 thereof, from which the rest of the entitlements set out therein flow.

The Petitioner has further contended that the readjustment of the effective date of his promotion is unreasonable, arbitrary and illegal as no legal provisions can be made to operate with retrospective effect.⁵

However, I am of the view that initial decision made to promote the Petitioner to the post of Senior Lecturer (Grade II) with effect from 02.05.2012 was contrary to the Scheme of Recruitment, and, as such erroneous. Thus, the subsequent decision taken to rectify such error by rescinding paragraph 2(ii) of Circular (P11) and readjusting the effective date of the Petitioner's promotion to 02.05.2017 to align with the provisions of the Scheme of Recruitment cannot be considered as being illegal, arbitrary or unreasonable, even though such decisions may have caused hardship or inconvenience to the Petitioner.

The requirement for appointing authorities in public institutions to comply with its own schemes of recruitment have also been emphasized by our Superior Courts. In ***K.W.S.P. Jayawadhana and others v Gotabhaya Jayaratne and others***,⁶ the Supreme Court, referring to prior authorities, observed as follows (per Prasanna Jayawardena J);

In the light of what I have set out, it is very clear that the Public Service Commission and the Ministry of Education are bound to make appointments to Class III of the SLEAS only in terms of and within the scheme set out in the Service Minute marked "P2", which has

⁴ vide paragraph 13(a) of the statement of objections of the 1st to 9th Respondents

⁵ vide paragraph 22 of the petition and paragraph 2(xvii)(c) of the Petitioner's written submissions

⁶ SCFR Application 338/2012, SC Minutes 07.09.2018

been issued by the Public Service Commission. Appointments made in violation of the scheme set out in “P2” are liable to be struck down by this Court if they are shown to be discriminatory or arbitrary or otherwise in violation of Article 12 (1) of the Constitution. Thus, in JAYAWICKREMA vs. LAKSHMAN [1998 2 SLR 235] which dealt with a comparable situation where this Court considered whether the Post Graduate Institute of Medicine was bound to act within the terms of the regulations it had made, Fernando J observed [at p.249], *“It is true that regulations can be amended. But even the authority which made the regulations is bound by them, unless and until they are duly amended; and disregarding its own regulations is not a method by which the authority can amend them.”* In DE SILVA vs. PERIS [SC FR 219/98 SCM 22nd July 1999], which was a case where, in contrast, the Post Graduate Institute of Medicine followed its own regulations and the petitioner complained that doing so caused injustice to her, Amerasinghe J cited Fernando J’s aforesaid statement with approval. His Lordship went on to say *“Perhaps, as the Board of Study has recommended and resolved, the criteria ought to be amended; that is something the Board may do. However, for the time being, the Board is governed by the rules and regulations as they are. I am of the view that the Board of the PGIM was not acting mala fide, but was applying the prescribed criteria as it was entitled to do and indeed obliged to do.”* The principle referred to by Fernando J and Amerasinghe J applies here.⁷

I am of the view that the aforementioned principle is equally applicable to situations where decisions of public institutions are impugned on the grounds of illegality, irrationality or unreasonableness invoking writ jurisdiction.

I am also not persuaded by the Petitioner’s contention that the decision contained in the letter dated, 22.11.2017 (P19) had been made by the Secretary to the UGC (9th Respondent) without lawful authority. As submitted by the Respondent and clearly evident from the perusal of the contents of the said letter, the 9th Respondent has not sought to make any independent decision therein, as alleged by the Petitioner, but merely communicated the decision of the Commission taken at 973rd meeting (1R6) to the EUSL.

B. Recovery of the Overpayment of Salary made to the Petitioner

As set out in the factual narrative above, upon readjustment of the effective date of the Petitioner’s promotion to the post of Senior Lecturer (Grade II) from 02.05.2012 to 01.05.2017 and as directed by the UGC, the EUSL had taken action to recover the overpaid salary from the Petitioner during such period. By the undated letter under reference no. EUSL/E/Pf/A/L/473 (P20), which the Petitioner has admitted receipt on 03.12.2020, the EUSL had informed him of the decision to recover the overpaid salary amounting to Rs. 2,803,141.63 for the period 02.05.2012 to 31.10.2020 and requested the settlement of such amount in monthly installments

⁷ Ibid, at p 15

under one of the three options specified in Financial Regulation 119 of the Financial Regulations (1992). It is observed that such method of recovery had been prescribed by the UGC.

Regulation 119 (F.R. 119) of the Financial Regulations provides as follows;

F.R.119 Surcharges (1) When it has been decided to recover a sum of money from any person under the provisions of any Regulations, rule or contract, it should, if the manner of recovery is not specifically provided for, be normally recovered in one lump sum, from any payment due to him or from any other source.

Every effort should be made to recover the sum as early as possible.

(2) In the case of a Government employee, the Head of Department may effect such recovery from his salary, allowance or other dues, in one lump sum; but inappropriate circumstances where there is no fraud or negligence involved, and the surcharge is not due to shortage of cash, stamps, tickets, stores, etc., for the custody of which the officer concerned is directly responsible, recovery in monthly installments may be authorized as follows:-

(a) not exceeding 12 installments – by the Head of the Department

(b) not exceeding 60 installments – by the Secretary to the Ministry/Chief Accounting Officer

(c) exceeding 60 installments – by the Treasury (Department of State Accounts)

In these instances, it must be ensured that recovery does not extend beyond the optional date of retirement of the officer concerned.

If the employee concerned leaves Government service, action should be taken to cause recovery from any monies payable to him (including pension, gratuities, etc.) or from any other source.

(3) It should be clearly understood that a surcharge against a Government employee is not a punishment imposed on him. It is either a recovery of an amount overpaid to him, or a recoupment of any loss caused to government for which he is held responsible.

Note:- In the above Regulation, the term “loss” is not restricted to a loss in terms of F.R.102.

In justification of the aforementioned recovery proceedings, the Respondents have contended that the Petitioner is bound to return to the employer any overpayment that has occurred due to an inadvertence or irregularity.⁸ They have further contended that, if the Petitioner was to be allowed to retain the undue salary for the period 02.05.2012 to 31.10.2020, not only would he

⁸ vide paragraphs 10(p) and (q) of the statement of objections of the 1st to 9th Respondents and paragraph 14(y) of the statement of objections of the 10th to 34th Respondents

be unjustly enriched but would also be treated differently from other similarly circumstanced persons who had been directed to repay the overpayment made.⁹

In response, the Petitioner has argued that he is not responsible for the loss that had been caused to the Government, and, that the decision contained in the letters (P20 and P21) are arbitrary, illegal and have not emanated from the proper legal authority.¹⁰ He has further contended that the payment made to him was duly authorized and legal and was not an overpayment, as contemplated in F.R. 119(3).¹¹

I wish to make the following observations on the respective positions taken up by the parties. In the first instance, it is observed that, as the Petitioner was not entitled to be promoted to the post of Senior Lecturer (Grade II) with effect from 02.05.2012 and was only entitled to be so promoted with effect from 02.05.2017, he was not entitled to be remunerated with the salary payable to a Senior Lecturer (Grade II) with effect from 02.05.2012. During such period, the legal entitlement of the Petitioner was to be remunerated with the salary payable to a Lecturer, as detailed in the document (P21). Thus, I am of the view that the payment received by the Petitioner over and above the salary due to him as a Lecturer during the relevant period constitutes an “overpayment.”

Secondly, since “recovery of an amount overpaid” to a person is specifically referred to in F.R. 119(3) as one of the instances on which a surcharge can be imposed, the Respondents are entitled to have recourse to the provisions of F.R. 119 to recover the overpayment made to the Petitioner.

Thirdly, although the Petitioner has alleged that the letters (P20) and (P21), by which the decision to recover the overpayment made to the Petitioner and the details of same have been conveyed to him, have not “emanated from the proper legal authority,” it is observed that the letter (P20) makes specific reference to the fact that the direction by the UGC to recover the overpayment from the Petitioner has been adopted by the Council of the EUSL. The Council is the executive body and governing authority of a university in terms of section 44(1) of the Universities Act No.16 of 1978 (as amended). As reflected in the letter of appointment (P4) and letter of promotion (P15) issued to the Petitioner, the EUSL is the employer of the Petitioner, on whose behalf the appointment has been made by the Council in terms of section 45(2)(xii) of the Universities Act. Thus, the Petitioner’s contention that the decision to recover the overpayment has not “emanated from the proper legal authority” is devoid of merit.

Fourthly, it is observed that F.R. 119(3) makes specific reference to the fact that a surcharge against an officer is not a punishment imposed against him/her. It is further observed that an option had been given to the Petitioner to make the repayment selecting one of the three installment plans set out in F.R. 119(2). Thus, considering the fact that an overpayment has been

⁹ vide paragraph 14(x)

¹⁰ vide paragraph 11 of the Petitioner’s counter-affidavit

¹¹ Ibid

made to the Petitioner is established, the procedure to recover same by way of a surcharge under F.R. 119, cannot be considered as being illegal or unreasonable, as contended by the Petitioner.

I am further conscious of the fact that the resultant position, if the decision to recover the overpayment made to the Petitioner is quashed by this Court, is that the Petitioner would be unjustly enriched, as contended by the Respondents. Since remuneration of staff of universities are paid from public funds, such unjust enrichment would be at the expense of the general public.

Upon consideration of the above matters, I am of the view that an overpayment has been made to the Petitioner and that the Respondents are entitled to recover same, as per the letter (P20), in accordance with the law and such decision cannot be considered as being arbitrary or unreasonable.

Conclusions and Orders of Court

For the reasons set out above, I hold that the readjustment of the effective date of the Petitioner's promotion to the post of Senior Lecturer (Grade II) from 02.05.2012 to 02.05.2017 and the decision to recover the overpayment of salary consequent to such readjustment have been made by the Respondents in accordance with the law. Accordingly, I proceed to dismiss the Petitioner's application. The parties will bear their own costs.

Application dismissed.

Judge of the Court of Appeal

Mayadunne Corea J.

I agree.

Judge of the Court of Appeal