

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

In the matter of an application for
mandates in the nature of Writs of
Certiorari and Mandamus under and in
terms of Article 140 of the Constitution.

Dr. Iromi Nisansala Manike Ariyaratne,
52/C, Temple Road,
Kengalla.

C.A. (WRIT) Application

No. 343/2022

PETITIONER

Vs.

1. University of Peradeniya,
Peradeniya.
2. Prof. M. D. Lamawansa,
Vice-Chancellor/Member of the
Council of University of Peradeniya.
3. Prof. W.M.T. Madhujith,
Deputy Vice-Chancellor/Member of the
Council of the University of Peradeniya.
4. Prof. K.A.S.S. Kodithuwakku,
Dean/Faculty of Agriculture/
Member of the Council of the University
of Peradeniya.
5. Prof. M.D.M.L.D.K. Yatawara,
Dean/Faculty of Allied Health
Sciences/Member of the Council of the
University of Peradeniya.
6. Dr.E.M.P.C.S. Ekanayeka,
Dean/Faculty of Arts/Member of the
Council of the University of
Peradeniya.
7. Prof. Manjula Attygalla,

- Dean/Faculty of Dental Science/
Member of the Council of the
University of Peradeniya.
8. Dr. P.U.I. Dissanayake,
Dean/Faculty of Engineering/Member
of the Council of the University of
Peradeniya.
9. Prof. E.M.A.S.B. Ekanayake,
Dean/Faculty of Management/Member
of the Council, University of
Peradeniya.
10. Prof. M.V.G. Pinto,
Dean/Faculty of Medicine/Member of
the Council, University of Peradeniya.
11. Prof. Sanath Rajapakse,
Dean/Faculty of Science/Member of
the Council of the University of
Peradeniya.
12. Prof. P.G.A. Pushpakumara,
Dean/Faculty of Veterinary Medicine
and Animal Science/
Member of the Council of the
University
of Peradeniya.
13. Prof. C. Wickramagamage,
Senate Representative to the
Council/Department of
English/Faculty of Arts/Member of
the University of Peradeniya.
14. Mr. B.M.H.S.K. Banneheka,
Senate Representative to the
Council/Department of Basic
Science/Faculty of Dental
Sciences/Member of the Council of
the University of Peradeniya.
15. Mr. Samantha Ratwatte PC,
Member of the Council of the
University of Peradeniya.
16. Mr. G.S.J. Dissanayake,
Member of the Council of the
University of Peradeniya.

17. Most. Ven. Niyangoda Wijithasiri,
Member of the Council of the
University of Peradeniya.
18. Mr. Nihal Rupasinghe,
Member of the Council of the
University of Peradeniya.
19. Prof. K. Gunawardana,
Member of the Council of the
University of Peradeniya.
20. Mr. U.C. Kirindigoda,
Member of the Council of the
University of Peradeniya.
21. Mr. Prasanna Goonathileke,
Member of the Council of the
University of Peradeniya.
22. Dr. Siril Wijesundara,
Member of the Council of the
University of Peradeniya.
23. Mr. Mahendra Wijepala,
Member of the Council of the
University of Peradeniya.
24. Mr. Saliya Dharmawardhane,
Member of the Council of the
University of Peradeniya.
25. Mr. J.C. Warnakula,
Member of the Council of the
University of Peradeniya.
26. Dr. Sardha Hemapriya,
Member of the Council of the
University of Peradeniya.
27. Prof. A. N. de S. Amaratunga,
Chairman,
University Grants Commission,
No. 20, Ward Place,
Colombo 07.
and also a Member of the Council of
the University of Peradeniya.
28. Mr. M. G. J. Dharmasiiri,
Registrar (Act)/Ex-Officio Secretary of
the Council of the University of

Peradeniya.

C/o. The Registrar,
University of Peradeniya,
Peradeniya.

29. Prof. G.D.R.U.U. Abeyrathne,
Member, Selection Committee for the
Post of Senior Lecturer, Grade III,
Head of the Department of Political
Science,
Faculty of Arts, University of
Peradeniya,
University of Peradeniya,
Peradeniya.

30. Ven. Prof. Kotapitiye Rahula,
Member, Selection Committee for the
Post of Senior Lecturer Grade I/II,
Head of the Department of Pali and
Buddhist Studies, University of
Peradeniya.

31. Ven. Prof. Muwaetagama
Gnanananda, Senate Nominee,
Member, Selection Committee for the
Post of Senior Lecturer, Grade I/II,
Professor, Department of Pali and
Buddhist Studies, University of
Peradeniya.

32. Ven. Dr. Divulapelesse Wimalananda
Sirisumana Vivekaramaya,
Welikanda,
Balakaduwa,
Alawathugoda.

33. Dr. H.M. Samarasinghe,
No.25/1,
Bandaranayaka Mawatha,
Polgahawela.

RESPONDENT

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Sanjeewa Jayawardena, PC, with Ms. Ranmalee Meepagala for the Petitioner.

Shehan Soyza, SSC for the 1st to 5th, 7th to 28th and 30th Respondents.

Suren Gnanaraj with Ms. Sakuni Weeraratne instructed by S.W. Amila Kumara for the 29th Respondent.

Nilshantha Sirimanne with Deshara Goonetilleke for the 31st Respondent.

Manohara De Silva, PC, with Hirosha Munasinghe instructed by Ms. Anusha Perusinghe for the 32nd and 33rd Respondents.

Written Submissions: By the Petitioner filed on 23/07/2026.

By the Respondents 1st to 5th 7th, 8th to 28th and 30th filed on 08/07/2026.

By the 29th Respondent filed on 10/07/2026.

Post-hearing written submissions filed by the 31st Respondent on 13/07/2026.

Argued On : 16/03/2026, 07/05/2026, 15/05/2026, 22/06/2026 and 25/06/2026.

Judgement On : 07/08/2026.

Dr. Sumudu Premachandra J.

1] The Petitioner, a Senior Lecturer Grade II at the Postgraduate Institute of Pali and Buddhist Studies (University of Kelaniya), invoked the Writ Jurisdiction of the court challenging the selection process for the post of Senior Lecturer Grade I/II in the Department of Pali and Buddhist Studies at the University of Peradeniya (1st Respondent, established under the Universities Act No. 16 of 1978).

2] The Petitioner states that she has exceptional academic credentials, including a First-Class Honours degree, a State Literary Award for PhD research, over 50 published research papers, 3 books, and extensive administrative and thesis supervision experience, making her eminently qualified for the advertised post in Buddhist Studies.

3] The factual matrix demonstrates that Pali Studies and Buddhist Studies are two distinct, non-overlapping disciplines within the Department, with Buddhist Studies accounting for the vast majority of student enrolment (203 out of 263 students in 2020). Following the retirements of two senior lecturers in Buddhist Studies in 2017 and 2019, dedicated cadre vacancies arose exclusively in Buddhist Studies. Despite sequential official advertisements issued in 2019, 2020, and 2021 targeting Buddhist Studies candidates for which the Petitioner applied, the departmental leadership repeatedly stalled and re-advertised the positions, ultimately conflating Pali Studies with Buddhist Studies to alter the requirement criteria.

4] The Petitioner challenges that the decision of the Selection Committee (comprising the 2nd, 16th, 26th, 29th, 30th, and 31st Respondents) to eliminate her and select the less qualified 32nd and 33rd Respondents was *ex facie ultra vires*, arbitrary, capricious, irrational, and tainted by *mala fides*. The selection process directly breached UGC Circulars Nos. 721, 916, and 17/2005, as well as basic Principles of Natural Justice (specifically *Audi Alteram Partem*), proportionality, and administrative fairness. The 1st Respondent implemented an unlawful, altered marking scheme in violation of UGC Circular No. 721 to

deliberately under-mark the Petitioner and facilitate the appointment of favoured candidates.

5] The Petition highlights grave procedural irregularities, including shortlisting a previously rejected candidate (the 33rd Respondent) without mandatory Governing Council approval, and interview harassment by the Head of Department (30th Respondent), who improperly demanded fluency in spoken Pali, a requirement absent from the advertisement. Significantly, two selection committee members (the 29th and 31st Respondents) formally recorded explicit objections against selecting two candidates from the Pali stream, warning that ignoring the urgent departmental need for Buddhist Studies scholars violated UGC guidelines and would unfairly burden the public treasury by forcing the university to hire external visiting lecturers.

6] The Petitioner challenges her non-selection and elimination for the post of Senior Lecturer Grade I in Buddhist Studies at the 1st Respondent University, contending that the decision was arbitrary, capricious, and lacked an intelligible criterion. The recruitment standards for this position are governed by UGC Circular No. 721 (P-11), which outlines academic and experience qualifications, combined with UGC Circular No. 916 (P-12) for evaluating research and publication records. Under Section 15(ix) of the Universities Act No. 07 of 1985, the authority to establish schemes of recruitment rests solely with the UGC; therefore, the Petitioner argues that the 1st Respondent University acted ultra vires by implementing an unauthorized, ad-hoc marking scheme.

7] In view of the above, the Petitioner prays that this Court be pleased to:

- a) Issue Notice hereof on the Respondents;
- b) Call for and grant and issue a mandate in the nature of a Writ of Certiorari, quashing the purported and/or recommendation of the selection committee of the 1st Respondent University, as constituted by the 2nd, 16th, 26th, 29th 30th and 31st Respondents, to disqualify and/or eliminate and/or refuse to consider the Petitioner's candidacy for the post of Senior Lecturer Grade I, Department of Pali and Buddhist Studies;

- c) Call for and issue a mandate in the nature of a Writ of Certiorari, quashing the purported decision of the Council of the 1st Respondent University, to disqualify and/or eliminate and /or refuse to consider the Petitioner's candidacy for the post of Senior Lecturer, Grade I, Department of Pali and Buddhist Studies and/or the purported decision to uphold the adverse decision of the Selection Committee referred to in prayer b) above;
- d) Grant and issue a mandate in the nature of a Writ of Certiorari, quashing the purported decision contained in and/or communicated by the 2nd Respondent, in his letter dated 31/08/2022 produced marked P-25;
- e) Grant and issue a mandate in the nature of Writ of Mandamus, directing the 1st and /or 2nd to 27th Respondents and/or any one of more of the Respondents and/or their servants and agents to forthwith to appoint the Petitioner for the post of Senior Lecturer Grade I, in the Department of Pali and Buddhist Studies, Faculty of Arts of the 1st Respondent University with effect from and to suitably back date the same in order to alleviate the continuing, gross injustice caused to the Petitioner;

OR IN THE ALTERNATIVE

- f) Call for and grant and issue a mandate in the nature of a Writ of Certiorari, quashing the purported and/or recommendation of the selection committee of the 1st Respondent University, as constituted by the 2nd, 16th, 26th, 29th 30th and 31st Respondents, to disqualify and/or eliminate and /or refuse to consider the Petitioner's candidacy for the post of Senior Lecturer Grade II, Department of Pali and Buddhist Studies;
- g) Call for and issue a mandate in the nature of a Writ of Certiorari, quashing the purported decision of the Council of the 1st Respondent University as constituted by the 2nd to the 27th Respondents, to disqualify and/or eliminate and /or refuse to consider the Petitioner's candidacy for the post

of Senior Lecturer, Grade II, Department of Pali and Buddhist Studies and/or the purported decision to uphold the adverse decision of the Selection Committee referred to in prayer f) above;

- h) Grant and issue a mandate in the nature of a Writ of Certiorari calling for and quashing, the Letter of Appointment issued by the 1st Respondent and/or the 2nd Respondent and/or any of the Respondents above named, appointing the 32nd Respondent to the post of Senior Lecturer Grade II, in the Department of Pali and Buddhist Studies of the 1st Respondent University;
- i) Grant and issue a mandate in the nature of a Writ of Certiorari calling for and quashing, the Letter of Appointment issued by the 1st Respondent and/or the 2nd Respondent and/or any of the Respondents above named, appointing the 33rd Respondent to the post of Senior Lecturer Grade II, in the Department of Pali and Buddhist Studies of the 1st Respondent University;
- j) Call and issue a mandate in the nature of a Writ of Certiorari quashing the impugned council's decision / order/recommendation, made by the 2nd to the 27th Respondents, constituting the governing council of the 1st Respondent University, granting approval for the recommendation made by the selecting committee and the appointment of the 32nd and 33rd Respondents, to the post of Senior Lecturer Grade II, in the Department of Pali and Buddhist Studies of the 1st Respondent University and/or approving the said appointment of the said 32nd respondent;
- k) Call and issue a mandate in the nature of a Writ of Certiorari quashing the impugned council's decision / order/recommendation, made by the 2nd to the 27th Respondents, constituting the governing council of the 1st Respondent University, granting approval for the recommendation made by the selecting committee and the appointment of the 32nd and 33rd Respondents, to the post of Senior Lecturer Grade II, in the

Department of Pali and Buddhist Studies of the 1st Respondent University and/or approving the said appointment of the said 33rd respondent;

- l) Issue a mandate in the nature of Writ of Mandamus, directing the 1st and /or 2nd to 27th Respondents and/or any one of more of the Respondents and/or their servants and agents to duly appoint the Petitioner for a post of Senior Lecturer Grade II, in the Department of Pali and Buddhist Studies, Faculty of Arts of the 1st Respondent University with effect from and to suitably back date the same in order to alleviate the continuing, gross injustice caused to the petitioner;
- m) Very strictly, without any form or manner of prejudice, to any one or more of the aforesaid reliefs, call for applications afresh, for/to the post of Senior Lecturer Grade I, Department of Pali and Buddhist Studies, in the 1st Respondent University and to thereafter, expeditiously conduct an interview process, after accepting the candidacy and eligibility of the petitioner for appointment to the said post;
- n) Issue an interim order, until the final determination of this Application, suspending the decision / order/recommendation, made by the 2nd, 16th, 28th, 30th, and 31st Respondents, constituting the selecting committee, recommending the appointment of the 32nd and 33rd Respondents, to the post of Senior Lecturer Grade II, in the Department of Pali and Buddhist Studies of the 1st Respondent University;
- o) Issue an interim order, until the final determination of this Application, suspending the decision / order/recommendation, made by the 2nd to the 27th Respondents, constituting the council of the 1st Respondent University, upholding the decision of the selecting committee, recommending the appointment of the 32nd and 33rd Respondents, to the post of Senior Lecturer Grade II, in the Department of Pali and Buddhist Studies of the 1st Respondent University;

- p) Issue an interim order, until the final determination of this Application, suspending the letter of appointment of the 32nd and the 33rd Respondents to the post of Senior Lecturer Grade II, in the Department of Pali and Buddhist Studies of the 1st Respondent University;
- q) Call for and examine the Record and make order in terms of Article 140 directing the 1st 2nd and/or 28th Respondents and/or any one or more of the Respondents and/or their servants, agents to produce in Your Lordships' Court;
- i. The Mark Sheet containing the marks obtains by the Petitioner at the Interview pertaining to the post of Senior Lecturer Grade I, Department of Pali and Buddhist Studies:
 - ii. The Mark Sheet containing the marks obtains by all the candidates at the Interview pertaining to the post of Senior Lecturer Grade II, Department of Pali and Buddhist Studies:
 - iii. Individual Mark Sheets of each member of the selection committee containing the marks obtains by the Petitioner at the Interview pertaining to the post of Senior Lecturer Grade I and Grade II, Department of Pali and Buddhist Studies:
 - iv. Approved marking scheme adopted by the council of the 1st Respondent for the selection of a suitable candidate for the post of Senior Lecturer Grade I/II, Department of Pali and Buddhist Studies:
 - v. Supplementary Agenda – 519th meeting of the council of the 1st Respondent, held on 27/08/2022:
 - vi. Council Paper dated 19/08/2022 titled Amendment-Minute No 515.17.2, shortlisting of applications, Department of Pali and Buddhist Studies, Faculty of Arts together with the annexures:
 - vii. Council Paper dated 24/08/2022 titled Recruitment of Advertised Post of Lecturer (Probationary)/Lecturer (Unconfirmed)/Senior Lecturer Grade I/II, Department of Pali and Buddhist Studies:
 - viii. Letter dated 12/08/2022, written by 29th Respondent, Acting Dean/Faculty of Arts, addressed to the 2nd Respondent titled “Objections

to the Selection of Candidates to be Recruited to the post of Senior Lecturer (Grade II) in the Department of Pali and Buddhist Studies:

- ix. Letter dated 24/08/2022, written by 30th Respondent, addressed to the 2nd Respondent titled “Observations on the Interview held on 12/08/2022 at 9.00. a.m. in the Senate Room to fill the vacant cadre positions in the Department of Pali and Buddhist Studies, Faculty of Arts, University of Peradeniya:
 - x. Letter dated 18/08/2022, written by the 31st Respondent, addressed to the Council of the 1st Respondent University titled “Regarding the Interview held on 12/08/2022 for recruitment to the posts of Senior Lecturer GI/GII and Lecturer (probationary) in the Department of Pali and Buddhist Studies: xi. The application of the Petitioner submitted to the 1st Respondent University:
 - xi. Any and all circulars and/or documents containing the administrative practice/policy of the UGC with regard to the post of Senior Lecturer Grade I/II:
 - xii. All the subsequent council minutes pertaining to the recruitment of advertised post of Lecturer (Probationary)/Lecturer (unconfirmed)/ Senior Lecturer Grade I/II, Department of Pali and Buddhist Studies, Faculty of Arts:
- r) Award substantial costs to the Petitioner; and
- s) Grant the Petitioner such other and further reliefs as to Your Lordships' Court shall seem meet.

8] On 08/11/2022, the 1st and 2nd Respondents were directed to maintain the status quo by the Court. The 1st to 28th and 30th Respondents filed objections stating that, after initial delays due to the COVID-19 pandemic and technical revisions under University Grants Commission (UGC) circulars, two vacant lecturer positions covering both Pali and Buddhist streams were advertised in 2021. A total of 34 applications were evaluated, resulting in 24 candidates being

shortlisted across Probationary Lecturer, Senior Lecturer Grade I, and Senior Lecturer Grade II categories.

9] The Respondents maintain that the selection process followed long-established, standard university marking schemes used across faculties since 2007, rather than a system tailored specifically for this instance. Upon evaluation, the Petitioner failed to meet the minimum cut-off mark for the Senior Lecturer Grade I Post. For the Senior Lecturer Grade II positions, a lack of unanimity among selection committee members led to the matter being tabled at the 519th University Council meeting on August 23/08/2022. After thorough deliberation, the Council appointed the two candidates who scored the highest overall marks—the 32nd and 33rd Respondents.

10] The Respondents note that the Petitioner actively participated in the selection process without raising concerns, challenging the marking criteria only after being informed of her non-selection. They affirm that the interview panel allocated adequate time to examine the documents, that marks were averaged transparently in accordance with standard procedures, and that all candidates were evaluated fairly and without prejudice.

11] The Respondents state that while the Petitioner met the basic educational and experience requirements, further evaluation via a selection committee interview was necessary to assess subject knowledge, personality, and communication skills, resulting in the Petitioner receiving total scores ranging between 20 and 32 from the five panel members. The Respondents further state that the Petitioner is not entitled to legal relief, asserting that the application misrepresents material facts, involves disputed facts, is legally untenable, and lacks merit. Consequently, the Respondents request that the Court dismiss the application with costs.

12] The Respondent stressed that selection was made on research publications, work experience, awards, and interview performance. The Petitioner failed to meet the required cut-off mark for the Senior Lecturer Grade I post, making her ineligible for appointment. Meanwhile, the 32nd and 33rd Respondents earned

the highest aggregate scores for the Senior Lecturer Grade II posts. Due to a lack of unanimous consensus among selection committee members, the results were submitted to the University Council during its 519th meeting on 23/08/2022, where the Council formally deliberated and approved the selection of the two highest-ranked candidates.

13] The Vice Chancellor of the 1st Respondent denies that any harassment occurred during the interviews and rejects allegations of bias against the 30th Respondent (Head of Department), noting past professional support shown to the Petitioner. He states that the recruitment process complied with UGC guidelines and that the selected candidates are fully qualified to teach across both Pali and Buddhist Studies streams.

14] The 1st to 28th and 30th Respondents assert that the Petition is needlessly prolix, that the Petitioner acted with a lack of utmost good faith (*uberrimae fides*), and that material facts were suppressed or misrepresented to the court. These Respondents draw that while the Petitioner was shortlisted for both Senior Lecturer Grade I and Grade II positions, she failed to obtain the necessary cut-off mark for Senior Lecturer Grade I. For the Senior Lecturer Grade II position, candidates were evaluated across academic qualifications, research publications, experience, awards, and interview performance, resulting in the 32nd and 33rd Respondents securing the highest marks. Following deliberation on dissenting feedback within the selection panel, the 519th University Council formally approved the appointment of the two top-ranked candidates.

15] The Respondents point out that, for the Senior Lecturer I post, the Petitioner scored 119.33 out of 185, failing to reach the mandatory 120-mark threshold required for qualification. For the Senior Lecturer II position, although the Petitioner received maximum marks for her educational qualifications, teaching experience, and publications, the Selection Committee did not reach a unanimous decision; the candidates' interview scores were submitted to the University Council, which appointed the 32nd and 33rd Respondents as the candidates who achieved the highest interview marks.

16] In the meantime, the 29th Respondent, as a member of the selection committee for Senior Lecturer positions in the Department of Pali and Buddhist Studies, objected to the majority's recommendation to select two candidates specialising solely in Pali Studies. He argues that Pali Studies and Buddhist Studies are distinct academic disciplines and that failing to recruit a Buddhist Studies specialist, especially with an existing staff member retiring within six months, would disrupt the department's degree program and force the university to incur unnecessary costs on visiting lecturers.

17] Prof. Abeyrathne, 29th Respondent, formally reported his concerns to the Vice Chancellor on 12/08/2022, highlighting procedural irregularities and potential vested interests, such as candidates being shortlisted and interviewed despite bypassing proper application channels. To resolve the issue, he recommended appointing the top-scoring candidate in Pali Studies while reserving the second position for a Buddhist Studies specialist, which would have given the Petitioner a fair chance of selection. He affirms that the Petitioner's performance was evaluated fairly under the approved marking scheme and maintains his right to submit further objections if required.

18] The 31st Respondent, Ven. Prof. Muwaetagama Gnanananda, a Selection Committee member and Professor at the University of Peradeniya, objected to the committee majority's recommendation of the 32nd and 33rd respondents for a Senior Lecturer Grade I/II position in Pali and Buddhist Studies following interviews on 12/08/2022. Formally submitting his objections to the University Council on 18/08/2022, he stated that the majority failed to properly assess the Petitioner and ignored the department's specific need for a candidate in Buddhist Studies, which is a distinct field from the Pali background of the selected applicants. To support his objection, he noted that under his official evaluation, he scored the Petitioner highest (124 for Grade I, 114 for Grade II) compared to the 32nd respondent (123 marks) and the 33rd respondent (111 marks).

19] The 32nd and 33rd Respondents clarify that advertisement R2 solicited general applications for both Pali and Buddhist Studies, governed by UGC Circular No. 721 and Establishment Circular No. 17/2005, which stipulate merit-based selection determined by interview marks. While the Petitioner admitted an inability to teach Pali grammatical components, Pali is an essential, foundational component of Buddhist Studies under the Sri Lanka Qualifications Framework (SLQF - Vide 32R310), which classifies a Diploma in Pali as a lower qualification compared to special degrees held by the selected candidates.

20] They say that the selection committee awarded the highest marks to the 32nd Respondent and 33rd Respondent, justifying their appointments over the lower-ranked Petitioner. The 32nd Respondent holds a BA (Hons.) First Class in Pali (32R3), an M.Phil. upgraded to a PhD at the University of Peradeniya (32R8, 32R9, 32R304), an Honorary Doctorate (32R11), and serves as a Senior Lecturer Grade II (32R52). The academic record includes 7 books, 21 abstracts, and 66 journal articles (32R1A, 32R33–32R51), as well as major honours such as the Prof. D.J. Kalupahana Scholarship (32R12). Similarly, the 33rd Respondent holds a BA (Hons.) First Class in Pali (33R3C), a PhD completed in four years (P10 comparison), a Diploma in Buddhist Studies (32R2C), the Buddhist Literary Award 2016 (33R4), 34 published abstracts/presentations (33R8–33R41), and extensive supervisory and institutional experience (33R45, 33R89A).

21] The above Respondents submit that the Petitioner has breached the duty of *uberrima fides* (utmost good faith) by making material contradictions and false representations to the Court. Specifically, the Petitioner falsely claimed the selected Respondents could not fulfil departmental requirements despite their existing Senior Lecturer positions (32R52), distorted the nature of academic awards (32R22, 32R23), and misleadingly asserted that the Postgraduate Institute of Pali and Buddhist Studies (PGIBS) at the University of Kelaniya is the sole postgraduate institute in the field suppressing the fact that the Buddhist and Pali University of Sri Lanka also confers M.Phil. and PhD degrees (32R309). Because selection was conducted lawfully based on merit and

interview performance, the Respondents pray that the Court dismiss and reject the Petitioner's application with costs.

22] However, the journal entry on 15/05/2026 shows that since the 33rd Respondent has been selected for a post in another University, he is no longer interested in the post in issue, and only the 32nd Respondent pursues this application.

23] Since the 33rd Respondent is no longer interested in the impugned appointment, during court proceedings, the Court directed that communication be made via the Hon. Attorney General on 15/05/2026 to the University Council to consider whether the Petitioner, who was ranked third in the selection process, can be appointed to the post instead.

24] After considering the available vacancies in the Department of Pali and Buddhist Studies and seeking formal approval from the Department of Management Services (DMS), the University Council resolved at its 575th meeting to appoint both the Petitioner and the 32nd Respondent (Ven. Dr. Divulapelesse Wimalananda) to the post of Senior Lecturer Grade II, subject to DMS approval. The Deputy Registrar of Academic Establishments was directed to obtain the necessary approval at the earliest so that appointment letters could be issued without delay. However, the Respondents have filed a motion dated 03/07/2026 before this Court, confirming this stance, though they stated that no outcome or decision has been made appointing the 32 Respondents and the Petitioner to the pertinent posts and that the Petitioner has not been informed of this to date. Thus, we consider the merit of the application.

25] It is seen by CA 1B (Annexure II) that the Petitioner was the sole applicant shortlisted for the Grade I position who possessed specialised qualifications in Buddhist Studies and the required 12 years of service experience under UGC Circular 721. Despite established departmental requirements since 2019, reaffirmed by written objections from both the Acting Dean of Arts (29th Respondent) and the Chair Professor of the Department (31st Respondent) emphasizing the urgent need for a Buddhist Studies specialist due to impending

faculty retirements, the University selected less qualified candidates (32nd and 33rd Respondents) specialized solely in Pali Studies. Bypassing this departmental requirement forced the institution to rely on costly visiting lecturers, creating an avoidable strain on public funds.

26] I now see a few previous judicial interventions based on established administrative and constitutional jurisprudence.

27] In **Perera and Nine Others v Monetary Board of the Central Bank of Sri Lanka and Twenty-Two Others** [1994]1 SLR 152; at page 166] His Lordship Amerasinghe, J expressed the views when applying transparency in the selection process as:

*“Transparency in recruitment proceedings would go a long way in achieving public expectations of equal treatment. **The selection of a person must be viewed as a serious matter requiring a thoroughgoing consideration of the need for the services of an officer, and a clear formulation of both the basic qualities and qualifications necessary to perform the services, and the way in which such qualities and qualifications are to be established.** In order to ensure that justice is done and seen to be done, it is at least desirable that cadres, the criteria for selection, the method of selection and the eventual basis for selection – for instance by the publication of marks obtained – be made known to those concerned. Ideally, the whole process from the determination of the cadre to selection must be easily recognized and seen through, if not obvious. A selection process veiled in secrecy and not openly avowed and expressed is at least open to the suspicion of the existence of something evil or wrong. It is of a questionable character.”* [Emphasis is added]

28] In **Dr. Kaunanada Vs. Open University of Sri Lanka and Others** [2006] 3 SLR 225, Her Ladyship Shirani Bandaranayake J observes the procedural fairness in the selection process as follows:

*"Procedural fairness, in my view, cannot be regarded as a matter which is unimportant. **Procedural safeguards should be the cornerstones of individual liberty and their right to equality**. Referring to the importance of procedural fairness, Justice Frankfurter in *McNabb v. United States* stated that the history of liberty has largely been the history of the observance of procedural safeguards. A decade later, considering an issue on the same lines, Justice Jackson in *Shaughnessy v. United States* stated that "Procedural fairness and regularity are of the indispensable essence of liberty. Several substantive laws can be endured if they are fairly and impartially applied." [Emphasis is added]*

29] The procedural fairness entangles with legitimate expectations when one can believe that, according to the required selection process, if it has been equally and fairly applied, he or she can be selected for the relevant post or position.

30] In **Ginigathgala Mohandiramlage Nimalsiri Vs. Colonel P.P.J. Fernando and others** (SC/FR/256/2010), His Lordship Justice Priyantha Jayawardena views legitimate expectation as follows:

"The doctrine of legitimate expectation applies to situations to protect legitimate expectation arises from establishing an expectation believing an undertaking or promise given by a public official or establishing an expectation taking into consideration of established practices of an authority. However, the said criteria should not be considered as an exhaustive list as the doctrine of legitimate expectation has a potential to develop further. Legitimate expectation can be either based on procedural propriety or on substantive protection. Procedural expectations are protected by requiring that the promised procedure be followed save in very exceptional circumstances, for instance: where national security warrants a departure from the expected procedure. However, in such instances the decision-maker must take into account all relevant considerations."

31] Further, in **Rev. Saliya Ashokapura Nanda vs University of Kelaniya**, CA (Writ) Application No. 593/2021, Decided on: 07/08/2024, His Lordship

MOHAMMED LAFFAR, J. considered the misinterpretation of the marking and under-marking for over-qualification as:

“The university’s failure to recognize that in this instance, the more qualified candidate was indeed the most suitable, is another critical point. The marking scheme would have favoured the Petitioner due to his higher qualification (should the respondents have granted any marks due), which aligns with the requirements and enhances the department’s academic standards. By misinterpreting the criteria and failing to value the Petitioner’s higher qualification appropriately, the university has missed the opportunity to select the most competent candidate for the position...”

This Court is of the view that in any instance, being overqualified cannot be deemed a criterion for disqualification in the absence of a specific rule or criteria to that effect. Being more qualified inherently indicates a greater capacity and ability to teach and deliver to students more effectively.”

32] In **K.W.S.P Jayawardhana v Gotabhaya Jayaratne** (SC (FR) Application No. 338/2012; SC Minutes of 07/09/2018), where His Lordship Prasanna Jayawardena, PC, J observed that;

*“... it is hardly necessary to emphasize that, the efficiency and integrity of the public administration system of a country is dependent on the quality of the officers who serve that system. **Therefore, it is important to ensure that the recruitment of such officers is made in the best possible manner. A key to achieving that objective is to ensure that recruitment to the Public Service of a country is effected according to published procedures which incorporate proper selection criteria and due and fair process.**”* [Emphasis is added]

33] In **W.P.S. Wijeratne v Sri Lanka Ports Authority and Others** [SC (FR) Application No. 256/2017; SC minutes 11/12/2020], His Lordship Kodagoda, PC, J deeply considered the selection process in an interview in line with the principle of equality and held;

*“Particularly in the public sector, it would be necessary to develop, have in place, and enforce schemes of appointment and promotion which are compatible with the concepts of equality, for the purpose of (a) providing an environment in which the objectives of the organization are given effect in an efficient manner, (b) ensuring meritocracy, (c) **preventing arbitrary and unreasonable decision making** and nepotism, (d) preserving effective administration, (e) preventing abuse, (f) preventing corruption, (g) **ensuring transparency**, (h) maintaining the morale of the workforce, and (i) **ensuring that the public has confidence in such public institutions**. Once such schemes are promulgated, it is equally important and necessary to ensure that, they are enforced correctly, comprehensively, uniformly, consistently and objectively. Recruitment and appointment of persons to positions in the public sector cannot be left to be decided according to the whims and fancies of persons in authority.”* [Emphasis is added]

34] His Lordship Mark Fernando, J in **Jayawardena v. Dharani Wijayatilake, Secretary, Ministry of Justice and Constitutional Affairs and Others** [2001] 1 Sri LR 132; at page 143] considered the openness of requirements as;

“Respect for the Rule of Law requires the observance of minimum standards of openness, fairness, and accountability in administration; and this means – in relation to appointments to, and removal from, offices involving powers, functions and duties which are public in nature – that the process of making a decision should not be shrouded in secrecy, and that there should be no obscurity as to what the decision is and who is responsible for making it.”

35] His Lordship the Chief Justice G.P.S. De Silva in **Premachandra v Jayawickreme and Another** [1994] 2 Sri LR 90, clearly held that there is no absolute or unfettered discretion for panellists to choose a favoured candidate, as they must be accountable for public trust as;

“There are no absolute or unfettered discretions in public law; discretions are conferred on public functionaries in trust for the public, to be used for the public good, and the propriety of the exercise of such discretions is to be judged by reference to the purposes for which they were so entrusted.

36] On commenting on the principle of legitimate expectations, in **W. A. J. H. Fonseka and Others v Piyadigama, Chairman, National Police Commission and Others** [SC (FR) Application No. 73/2009; SC minutes of 08/09/2020] where His Lordship Priyantha Jayawardena, PC, J held as follows;

“It is important to keep in mind that when an individual joins the public service, he or she entirely bases his/her life-long expectation in the public service for the betterment of his/her life. Further, given the nature of the public service, it is common for an individual serving in the public sector to expect certain benefits such as security in tenure, advancement in their career and retirement benefits... Further, given the limited opportunities to obtain promotions in the public sector, the delay in giving promotions in due time will demoralize public servants in performing their duties. Thus, the stipulated procedure must be complied with and unwanted delay must be avoided at all times to have an efficient public service”[Emphasis is added]

37] In **Benedict and Others v. Monetary Board of the Central Bank of Sri Lanka and Others** (Pramuka Bank case) [2003] 3 Sri LR 68, page 78., it considered the failure to give reasons as;

“Failure to give adequate reasons therefore amounts to a denial of justice and is itself an error of law. The reasons must not only be intelligible but should deal with the substantial points which have been raised. The courts have treated inadequacy of reasons as an error on the face of record so that inadequately reasoned decision could be quashed, even if the duty to give reasons was not mandatory.”

38] In **KIA Motors (Lanka) Limited vs Consumer Affairs Authority and Others**, CA (Writ) Application NO. 72/2013; CA Minutes of 26/05/2020, has considered the overall quality of decision making as;

“Authorities acting on behalf of the public ought to be accountable for the overall quality of the decision making process. While Courts must be mindful not to substitute its own decision for that of the public authority, this must be balanced with Courts taking an active role in probing the quality of decisions of public authorities, and ensuring that actions of public authorities are properly substantiated, justified, and strike a fair balance between parties.” [Emphasis is added]

39] In **Narangoda and Others v. Kodituwakku, Inspector-General of Police and Others**, [2002] 2 SLR 247, focused on administrative fairness, flawed interview criteria, and lack of authentic records. In that case Assistant Superintendents of Police (ASPs) who missed out on promotions to Superintendent challenged the selection process led by the interview board challenging the authenticity of the interview mark sheet, the selection criteria, the procedure followed in verifying service records and the allocation of marks. They alleged that they were interviewed for three or four minutes each and were asked questions some of which were not strictly relevant to their police work. In that His Lordship Mark Fernando, J. held;

"45 officers were selected in advance for promotion, for good reasons or bad, and at the interviews the allocation of marks was manipulated to give more for the favoured few and less for the others, without disturbing their seniority inter se."

It has been established beyond reasonable doubt that the interview and selection process was a sham - worse than any I have come across. There had been a grave denial of the petitioners' rights to a fair, equal and reasonable selection process."

40] Moreover, in **Perera v Monetary Board of the Central Bank of Sri Lanka**, [1994] 1 Sri L.R. 152, ten bank employees alleged discrimination and violation of their equality rights (Article 12(1)) when other junior or preferred candidates were appointed to Staff-Class Grade 1 positions. His Lordship Amerasinghe J emphasized the need for transparency in recruitment as;

“Transparency in recruitment proceedings would go a long way in achieving public expectations of equal treatment. The selection of a person must be viewed as a serious matter requiring a thoroughgoing consideration of the need for the services of an officer, and a clear formulation of both the basic qualities and qualifications necessary to perform the services, and the way in which such qualities and qualifications are to be established.”

41] In **Ranasinghe Arachchige Nadeesha Seuwandhi Ranasinghe and other vs Ceylon Petroleum Storage Terminals Limited and others**, S.C. (FR) No. 244/2017, Decided on: 18/12/2025, Her Ladyship MENAKA WIJESUNDERA, J. held;

*“The interview board cannot take cover from the fact that the personal performance of each candidate depends on the final marks obtained by each candidate but what **one must be mindful is that when certain marking schemes had been put in place, it must be followed** and then thereafter, each individual performance at the interview, by each candidate, can be added to those that had already been put in place for the academic and educational qualifications.”* [Emphasis is added]

42] Further in **PALIHAWADANA v. ATTORNEY-GENERAL AND TWO OTHERS**, (1978-79-80) 1 SLR 65, His Lordship SHARVANANDA, J. (as he then was) considered discrimination as;

*“Discrimination of persons in one class or similarly circumstanced should be avoided. **The basis of classification must generally be so drawn that those who stand in substantially the same position in respect of the law are treated alike. This right of equality should pervade all spheres of State action, including administrative action of all***

kinds by Government bodies. *But under the guise or pretence of doing what is constitutionally permissible, no colourable expedient which in substance and purpose seeks to effect discrimination can be sanctioned”*
9Emphasis is added]

43] In **Dr. Shiranthi Perera vs Tha University of Colombo and 78 others**, 2005 BLR 60, His Lordship K. SRIPAVAN, J. (As he then was, later became Chief Justice), carefully considered reducing marks on irrelevant consideration which was not legally approved by the appointing authority. In the said case, the Petitioner sat for the MD (Doctor of Medicine) in Ophthalmology Part II examination in October 2004. This examination consisted of eight parts, including multiple-choice questions, written papers, and clinical components. The Petitioner was failed by the Board of Study because she allegedly did not meet a specific requirement in the Clinical Ophthalmology component. The Respondents contended that candidates were required to obtain a minimum of 9 marks from each of the two panels that examined clinical skills, for a total of 18 marks. While the Petitioner obtained a total of more than 60% (the general pass mark), she was failed because she did not meet the specific 9-mark threshold in one panel. The Court found that there was no evidence that the "9 marks per panel" rule had ever been formally approved by the Board of Study or higher university bodies. The only approved marking scheme (from 1998) specified a 60% minimum pass mark for Clinicals, which the Petitioner had exceeded. The evidence revealed that one examiner (the 15th respondent) did not maintain independent notes or give marks independently, which the court noted raised "serious issues of credibility". Furthermore, another examiner (the 66th respondent) had reported "gross irregularities" regarding the examination to the PGIM Director. The court emphasized that statutory power and discretion are not absolute; they must be exercised with transparency, fairness, and accountability. The court held that while academic bodies have discretion, they must operate within legal limits and follow established procedural requirements. The Court allowed the appeal with costs of Rs 25,000/-.

44] In that case His Lordship Justice Sripavan noted as follows;

"The following observations made by Dr. A.R.B. Amerasinghe, J in the case of Perera Vs. Monetary Board of the Central Bank of Sri Lanka (1994)¹ S.L.R. 152 at 165 becomes relevant.

"Decisions must be supported by evidence. For example, if it is said that persons were appointed in terms of a scheme of recruitment, the scheme should be produced If it is said that selections were made on the basis of an examination, the marks earned by each candidate should be produced. If persons were selected on the basis of an interview, there should be evidence of how many marks were earned by each candidate under each criterion of selection, if the marking was on a group basis; or if the marking was on an individual basis, the marks given by each member of the panel to each candidate under each of the selection criteria should be made available." [Emphasis is added]

"The notes prepared by the three examiners in both panels show that in certain instances the marks earned by each candidate were not given on an individual basis by the examiners. (Photocopies of such notes obtained from the originals are in safe custody of the Registrar of this Court.) In this context it is necessary to consider the following remarks made by S N. Silva J. (as he then was) in the case of Nanayakkara Vs The Republic of Sri Lanka (1993)¹ S.L.R. 71 at 85.

"The accused has held high public office and exercised extensive statutory power in conducting public examinations in this country. These examinations have to be conducted fairly and the results declared accurately. Thousands of students who face these public examinations, every year, should have complete confidence in the fairness and accuracy of every process of the examinations." [Emphasis is added]

45] The Court further observed that any "clear departure" from the intended purpose or lines of a statute is legally objectionable. The court held that;

"These requirements are intrinsically of such importance that compliance to the letter is required by various bodies. There is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is objectionable and subject to review by courts." [Emphasis is added]

46] In above case, when considering the powers of the officials it was held that the officials do not have absolute power and must operate within the standards of fairness and accountability.

"When considering the exercise of a statutory power or discretion, certain fundamental principles can never be overlooked by courts. ... Statutory power conferred for public purposes is conferred as it were upon trust and not absolutely. There are no absolute or unfettered discretions in public law; discretions are conferred on public functionaries in trust for the public, to be used for the public good and the propriety of the exercise of such discretions is to be judged by reference to the purposes for which they were so entrusted. ... Thus, respect for the Rule of Law requires the observance of minimum standards of openness, fairness, transparency and accountability; rule of law provides adequate safeguards against abuse of power by the authorities concerned."
[Emphasis is added]

47] In the case in hand, the Court notes that the members of the interview board have not applied minimum standards of openness, fairness, transparency and accountability. It should be noted that the stakeholders are university students and one must understand their responsibility in public functions. Their actions can directly be affected to the student fraternity causing unnecessary costs that incur to the University. In academia, when you climb the hierarchy, you must arrange a second tier to take over duties when you retire. The second tier should be allowed to shine in the academia, in most cases, it was not the case.

48] In view of the above guideline judgements, I now advert to the current matter. CA 1B clearly shows that the Petitioner was the sole candidate for the post of Grade I. However, she has been considered for Post II and placed at rank 3. The 32nd and 33rd Respondents were considered for the requirement. In fact, the 33rd Respondent was a rejected applicant as his application had not been sent through the proper channel. These appointments were strongly objected to for cogent reasons, objected to at the interview board and later clarified specifically by the Acting Dean of the Faculty of Arts regarding vested interests. It is apparent that the selection panel subjected candidates to unequal evaluation standards: the Petitioner was interviewed by a six-member panel while others were evaluated by five (Dr. Sardha Hemeipriya was not available), and the panel arbitrarily awarded two conflicting sets of marks across separate scorecards for the Petitioner based on a single interview performance.

49] It is seen that the selection committee violated University Grants Commission (UGC) Circulars No. 721 and 17/2005, as well as specific departmental recruitment needs. While the departmental requirement explicitly sought candidates specialising in Buddhist Studies, the Petitioner held a First-Class Honours degree and a Master's degree in Buddhist Studies with over 12 years of experience, which attracts the post of Grade 1, and the selected candidates held basic degrees in Pali Studies. Under UGC Circular 721, a candidate with First Class Honours in the relevant subject must be given preference unless explicit written justification and UGC approval are provided. The committee further erred under UGC Circular 17/2005 by failing to evaluate the Petitioner's candidacy for Senior Lecturer Grade II after considering her for Grade I, and by arbitrarily restricting marking criteria for undergraduate awards—a deviation that improperly shortchanged the Petitioner by 0.7 marks below the cut-off. The court notes this was intentionally done to under-mark the Petitioner, and no reasons were given for the said under-marking. It is shown that the field of Buddhist Studies in the 1st Respondent's University is more demanding than Pali Studies. However, despite the objection of the 29th and 30th Respondents who initially made formal objections, the appointments had been made.

50] I am of the view that the non-selection of the Petitioner for the Grade I post is patently ultra vires, tainted by procedural impropriety, and contrary to the doctrine of legitimate expectation. The Petitioner received an average mark of 119.33, leaving her merely 0.7 marks short of the 120-mark cut-off—following an even 3–3 split among selection committee members. This is a clear failure to meet the benchmark, resulting directly from arbitrary under marking under Item 1C of the marking scheme (Awards, Prizes, Scholarships, and Fellowships). Although the official Council-approved marking scheme allows up to 10 marks, under which the Petitioner qualified for 9 marks based on notable distinctions like the National State Literary Award and the Hilda Obeysekara Research Fellowship, the committee gave her a score of 2 marks. In its Statement of Objections, the University attempted to justify this by claiming for the first time that only undergraduate-level awards were considered, thereby breaching the Petitioner’s legitimate expectation that the committee would strictly adhere to the published marking criteria without arbitrary, unannounced variations.

51] I stressed that no due recognitions can be given which was not specifically mentioned in the marking scheme. In fact, the panel board cannot interpret the requirement guidelines in their own way, adding unforeseen reasons which clearly impact the applicants. This is not to be allowed. Irrelevant considerations that were not in the requirements guidelines cannot serve as a valid reason for under marking the Petitioner. Had the interview board considered her academic achievements fairly and reasonably, the Petitioner would have got 0.7 marks for her Post of Grade I, which was unfairly denied at the interview. This arbitrary consideration of the panel board led to this unsavory litigation. The Board cannot act on their whims and fancies as they hold public trust as members. After the appointment, it is the public who pays the salary, and mere selection based on favouritism should be frowned upon at all times; it amounts to corruption and must be severely dealt with by law. In fact, the Respondents, who are responsible, attract heavy costs.

52] I see even under the University’s uncommunicated undergraduate-only restriction, the Petitioner earned three undergraduate awards entitling her to at least 3 marks, which would have elevated her score to 120.33 and above the

selection threshold. Excluding postgraduate awards from consideration is inherently irrational and unreasonable, as UGC Circular 721 expressly mandates postgraduate qualifications for Senior Lecturer posts, thereby rendering the rejection of such distinctions logically untenable. This clearly demonstrates that the selection process was conducted mala fide and biased towards Pali Studies candidates. Thus, I hold that issuing Writs of Certiorari and Mandamus to quash the University's decision on ultra vires is inevitable. I further hold that the selection process was severely tainted by illegality, procedural unfairness, favouritism, and mala fides, violating core principles of administrative justice and public law.

53] My position is cemented that under Section 71(i) of the Universities Act¹, statutory authority over staff recruitment rests strictly with the University Council, leaving the Selection Committee with no legal authority to alter Council-approved marking schemes midway through the process or arbitrarily summon and appoint a previously rejected candidate (the 33rd Respondent) without Council approval. I hold that the Council's decision disqualifying the Petitioner, and the unlawful appointments of the 32nd and 33rd Respondents, are ultra vires and are not tenable.

¹ 71(1) Subject to the provisions of subsection (2), every appointment to the staff of a Higher Educational Institution shall be made by the governing authority of such Institution, in accordance with the schemes of recruitment and the procedures for appointment prescribed by Rules:

Provided however, notwithstanding the provision of section 72, the governing authority of a Higher Educational Institution may, with the approval of the Commission" appoint experienced persons who have already gained distinction in their subjects to the posts of teacher in any such Institution, for such period and on such terms and conditions as may be agreed upon by the governing authority and such teacher." ; and

(2) The Commission shall, in accordance with the schemes of recruitment and the procedures for appointment prescribed by Rules, make the following appointments to the staff of a Higher Educational Institution-

(i) appointment to a post of officer, except where other provision has been specifically made under this Act in respect of that post;

(ii) appointment to a post other than that of teacher, carrying an initial salary of not less than rupees nine thousand per annum or such other higher initial salary as the Commission may from time to time determine by Rules ; and

(iii) appointment to such posts as may be prescribed by Rules, other than posts of teacher, involving the promotion of the appointee from one grade or class of post to another.

54] Therefore, the Petitioner, having submitted an application, was entitled to be appointed to the Post of Senior Lecturer Grade I. Having considered the required marks, it is the view of this Court that the Petitioner had a legal right to be appointed for the Post of Senior Lecturer Grade I, which backdated from the date of this application where legal remedy is sought, and the Respondents were under a legal duty to grant the said appointment, despite X dated, 01/07/2026, which was tendered along with motion dated 03/07/2026. X shows that the Council does want to re advertise (paragraph 10) for the impugned posts, opening “pandora box” again, which is intolerable. It is therefore reiterated that it is within the Jurisdiction of this Court to grant a Writ of Mandamus where the Petitioner has satisfied the criteria set out to this Court.

55] In the above circumstances, this Court Issues Writs of Certiorari and Mandamus quashing the decision of the 1st Respondent to 31st Respondents not to appoint to the post of senior lecturer Grade I and order to appoint the Petitioner to the post senior lecturer Grade I with effect from the date of this application, i.e. 22/09/2022, as prayed for in prayer “e” of the application and a Writ of Certiorari quashing the appointment of 33rd Respondent as prayed for in prayer “i”. The 32nd Respondent has been selected for the post of Senior Lecturer Grade II at the interview, and his appointment will remain intact and will also be backdated to 22/09/2022, the date of this application. Any decision forthcoming on X dated 01/07/2026 should be disregarded, and as of now, this judgement prevails over such a decision. This Court makes no order with regard to costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL