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

S. M. U. T. S. Subasinghe,
A2A, Staff Quarters,
Upper Hanthana,
University of Peradeniya,
Peradeniya.
Petitioner

CASE NO: CA/WRIT/376/2017

Vs.

1. University of Peradeniya,
   Peradeniya.
2. Prof. Upul B. Dissanayake,
   Vice Chancellor,
   University of Peradeniya,
   Peradeniya.
3. U.D. Dodanwala,
   Registrar,
   University of Peradeniya
   Peradeniya.
4. University Grants Commission,
   Ward Place,
   Colombo 7.

5. Palitha Fernando, P.C.,
   Chairman,
6. Neville Abeyratne, P.C.,
   Member,
7. Dr. Neela Gunasekara,
   Member,
   5th-7th Respondents all of
   The University Services Appeals Board,
   No. 94/10, Ananda Rajakaruna Mawatha,
   Colombo 8.
8. M. B. Sirisena,
   Inquiry Officer,
   No. 1/1, Kambiyawatta,
   Gelioya.
9. Prof. R. L. Wijeyaweera,
   Deputy Vice Chancellor,

9A. Prof. S. H. P. Parakrama Karunaratne,
   Deputy Vice Chancellor,

10. Prof. D. K. N. G. Pushpakumara,
    Dean, Faculty of Agriculture,
11. Prof. D. B. Mahinda Wickramarathne,
    Dean, Faculty of Allied Health Sciences,
12. Dr. O. G. Dayaratna Banda,
    Dean, Faculty of Arts,

13. Prof. W. M. Tilaratne,
Dean, Faculty of Dental Sciences,
14. Prof. Leelananda Rajapaksha,
Dean, Faculty of Engineering,
15. Dr. M. Alfred,
Acting Dean, Faculty of
Management,
16. Prof. V. S. Weerasinghe,
Dean, Faculty of Medicine,
17. Prof. S. R. Kodituwakku,
Dean, Faculty of Science,
18. Prof. H. B. S. Ariyaratne,
Dean, Faculty of Veterinary
Medicine and Animal Science,
19. Prof. Anoma Abeyratne,
Senate Nominee, Faculty of Arts,
20. Prof. K. Samarasinghe,
Senate Nominee, Faculty of
Agriculture,
20A. Prof. N. A. A. S. P. Nissanka,
Senate Nominee,
21. Prof. K. N. O. Dharmadasa,
Member,
22. Prof. P. B. Meegaskumbura,
Member,
23. Dr. Ranil Abeysinghe,
Member,
24. Mr. Lal Wijenayake,
Member,

24A. Prof. C. M. Maddumabandara,
Member,

25. Dr. V. Nandakumar,
Member,

25A. Prof. I. M. K. Liyanage,
Member,

26. Mr. G. S. J. Dissanayake,
Member,

27. Dr. Mohamed Thaha Ziyad Mohamed,
Member,

28. E. M. Palitha Elkaduwa,
Member,

29. K. D. Gayathri M. Abeygunasekara,
Member,

30. Dr. Selvy Thiruchandran,
Member,

31. B. W. N. Balasooriya,
Member,

31A. Maneesha Seneviratne,
Member,

32. U. W. Attanayake,
Member,

32A. Rawana Wijeratne,
Member,

33. Upul Kumarapperuma,
Member,

9th-33rd Respondents all of

The Council,
University of Peradeniya,
Peradeniya.
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Shantha Jayawardena with Chamara Nanayakkarawasam for the Petitioner.

Maithree Amarasinghe, S.C., for the Respondents.

Argued on: 24.02.2020

Decided on: 20.05.2020

Mahinda Samayawardhena, J.

The Petitioner filed this application seeking to quash by way of a writ of certiorari: (a) the order of the University Services Appeals Board (hereinafter "Appeal Board") dated 15.08.2017 marked P25/R24; (b) the undated disciplinary order of the University Council marked P14; (c) any punishment imposed on the Petitioner upon the order of the Appeal Board. The Petitioner also seeks a writ of mandamus directing the Vice Chancellor, the University Grants Commission and the University Council (a) to consider him for promotion to Senior Lecturer Grade I with effect from 27.04.2007; and (b) to restore his deferred salary increments and grant him arrears of salary.

The facts which led to the filing of this application can be best understood by paragraph 4 of the statement of objections of the Respondents dated 31.05.2019. It gives the events in chronological order.

The Petitioner is a Senior Lecturer Grade II of the University of Peradeniya. He lectured, set the question paper, prepared the marking scheme, and examined the answer scripts of the Corporate Governance subject of the post-graduate diploma course for the year 2008/2009, offered by the University's Department of Management Studies. After the examination, the marks were released: out of 39 students, 12 failed the said subject. The Head of the Department together with the Course Coordinator instructed the Petitioner to re-examine the answer scripts of those who had failed and to add marks in order to increase the pass rate. Further to this, two more candidates passed. Thus, out of 39 candidates, 29 passed.

There were complaints against the Petitioner, which were reported by the Dean to the Vice Chancellor. *Vide* R4 and R5.

The Departmental Higher Degrees Committee by R6 decided to send the answer scripts of the Corporate Governance subject marked by the Petitioner for a second marking to an examiner outside the University of Peradeniya. Dr. Samanthi Senaratne of the University of Sri Jayewardenepura was nominated for this purpose.

However, Dr. Senaratne returned the answer scripts without making them, along with an adverse report against the Petitioner marked R10. The reasons given by her are as follows:

> *The above course question paper was sent to me for second marking together with the marking scheme.*
>
> *While performing the second marking, I found discrepancies among questions and answers suggested for marking.*
>
> *Almost all the questions are vague and answers suggested were very specific.*
>
> *Since the questions are very vague or general questions, specific answers cannot be expected. For example, the students were asked to discuss the following:*
>
> *"Corporate governance is a broader concept." Discuss. But in the marking scheme, students were expected to write six definitions of the corporate governance and marks were given only for definitions.*
>
> *Owing to the above mentioned reasons, the answers written by the students deviated from the suggested answers in the marking scheme.*
>
> *Due to the above mentioned reasons, I regret to inform that I am unable to proceed with the second marking.*

Taking the contents of R10 into serious consideration, the Faculty Higher Degrees Committee by R11 "appointed [a five-member] committee of examiners to examine the answer scripts."

Although this five-member committee was appointed to "re-scrutinize the relevant answer scripts"[1] or "to examine the

[1] *Vide* paragraph 4(xii) of the statement of objections of the Respondents.

answer scripts",[2] what they admittedly did, as seen from R13, was standardisation of the marks. This was unequivocally admitted by learned State Counsel for the Respondents at the argument. The five-member committee did not re-examine or re-scrutinise the answer scripts. They merely added marks to increase the pass rate. This was done in an *ad hoc* manner without any rational basis. This approach is against the decision of the Faculty Higher Degrees Committee in R11, which was to have the answer scripts re-examined. At the end of the day, after standardisation of the marks, 37 out of 39 candidates passed.

Thereafter, the Dean by R14 wrote to the Vice Chancellor setting out the antecedents in relation to the marking of the answer scripts and highlighting that the Vice Chancellor could take disciplinary action against the Petitioner, if so desired. The relevant portion of R14 reads as follows:

> *However, the members of the Higher Degrees Committee feel that though the irregularities marking of the examination of the relevant course have been corrected, it may be necessary to inquire into the conduct and teaching of the relevant lecturer with a view to taking disciplinary action, if warranted. Such a course of action is however outside the purview of the Higher Degrees Committee, and as such I leave it to you.*

The Vice Chancellor placed this issue before the University Council and the Council decided to hold a preliminary

---

[2] *Vide* R11.

investigation. After the preliminary investigation, two charge sheets were served on the Petitioner. One was in relation to the correction of answer scripts (R17), and the other in relation to examination fraud (R17A). After an inquiry, the Petitioner was exonerated from the fraud charges in R17A. Of the exam related charges in R17, he was found guilty on Counts (a), (b) and (c); also (f) and (g), which are consequential charges arising out of (a)-(c). Charges (a)-(c) are as follows:

> (අ) පේරාදෙණිය විශ්වවිද්‍යාලය විසින් පවත්වනට යෙදුනු කළමණාකරණය පිළිබඳ පශ්චාත් උපාධි ඩිප්ලෝමා 2008/2009 පාඨමාලාවේ සමායතන යහපාලනය (Corporate Governance MGT 512) විෂයයට අදාල විභාග උත්තර පත්‍ර සමීක්ෂණය පිලිබඳ කටයුතු විධිමත්ව ඉටු කිරීම පැහැර හැරීමෙන් ඔබ විසින් විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාවේ හා උසස් අධ්‍යාපන ආයතන සඳහා වූ ආයතන සංග්‍රහයේ XXII වන පරිච්ඡේදයේ 2.2.1 උප වගන්තිය යටතේ ගැනෙන වරදක් සිදු කරමින් බලවත් විෂමාචාරයක නිරතවීම.
>
> (ආ) ඉහත චෝදනා අංක (අ) හි සඳහන් උත්තර පත්‍ර සමීක්ෂණයේදී ඔබගේ නොසැලකිළිමත් භාවය හේතුවෙන් සමායතන යහපාලනය (Corporate Governance MGT 512) විෂයයට අදාළ ප්‍රශ්න පත්‍රයට පෙනී සිටි විභාගාපේක්ෂකයන් දහහත් දෙනෙකු හෝ ඊට ආසන්න සංඛ්‍යාවක් එම සාමාන්‍ය ප්‍රශ්න පත්‍රයෙන් අසමත් බවට සලකා සාවද්‍ය ලෙස කටයුතු කිරීමෙන් සත්‍ය කරුණු යටපත් කිරීම මගින් ඔබ විසින් විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාවේ හා උසස් අධ්‍යාපන ආයතන සඳහා වූ ආයතන සංග්‍රහයේ XXII වන පරිච්ඡේදයේ 2.2.3 උප වගන්තිය යටතේ ගැනෙන වරදක් සිදු කරමින් බලවත් විෂමාචාරයක නිරතවීම.
>
> (ඇ) ඉහත චෝදනා අංක (අ) හි සඳහන් උත්තර පත්‍ර සමීක්ෂණයේ දී උත්තර පත්‍ර කිහිපයක් සඳහා පමණක් විශේෂ ලකුණු 10 සිට 13 දක්වා වූ

> ප්‍රමාණයක් බැගින් අතිරේකව එකතු කිරීමේ වංකභාවය මගින් ඔබ විසින් විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාවේ හා උසස් අධ්‍යාපන ආයතන සඳහා වූ ආයතන සංග්‍රහයේ XXII වන පරිච්ඡේදයේ 2.2.4 උප වගන්තිය යටතේ ගැනෙන වරදක් සිදු කරමින් බලවත් විෂමාචාරයක නිරතවීම.

Purely upon the findings of the disciplinary inquiry, the University Council imposed punishment based on "negligence" on the part of the Petitioner. *Vide* R20 and R21. The punishment was deferment of promotion for four years and reduction in seniority by four years.

In my view, count (a) is unspecific and obscure, and thereby difficult to defend against, which is unfair by the Petitioner. The allegation is that the Petitioner failed to properly perform his duties in relation to examining the answer scripts of the Corporate Governance subject.

Count (b) alleges that due to the Petitioner's negligence, approximately 17 candidates were falsely considered as having failed the Corporate Governance paper, and that the Petitioner wrongfully suppressed facts in this regard.

When the findings of the Preliminary Inquiry were placed before the University Council, one member of the Council, as seen from R20, expressed his concerns as to the guilt of the Petitioner regarding count (b). This portion reads as follows:

> *Meanwhile, drawing the attention of the Council in particular to Charge (ආ), a member queried as to whether the charge had been proven beyond doubt, highlighting certain doubtful areas. A member however pointed out that*

> *it would not be appropriate to challenge the findings at this stage since a preliminary inquiry has already been held into the matter, and therefore, the task of the Council is to take a decision based on the findings of the formal inquiry. Adding further, he said that the accused is at liberty to appeal if he has facts to prove his innocence.*

Count (c) pertains to unscrupulously adding marks to certain answer scripts.

Counts (b) and (c) are serious charges which have criminal elements embedded in them requiring a high degree of proof.

In the facts and circumstances of this case, it is not an easy task to prove these charges.

Being a strict marker does not mean the examiner is dishonest. If that were true, the same argument can be brought against examiners who are prepared to give marks lavishly to increase the pass rate. It is naive to think that the examiners who passed 37 out of 39 students acted *bona fide*, whereas the examiner who passed 29 out of 39 students acted *mala fide*. I have already explained how the 37 students were passed by the five-member committee.

The University Council did not make any independent assessment of the findings of the Preliminary Inquiry. Instead, based on the said findings, the Council imposed punishment on the ground of "negligence".

The relevant portion of R20 reads as follows:

The Council observed that "Negligence" warrants imposing one or more of the major punishments defined in Section 4.2 of Chapter XXII of the Establishments Code of the UGC and HEIs, as listed on page C-05.

Accordingly, after some deliberation the Council decided to impose the following punishments to the accused officer, based on the punishments depicted in the EB Code.

a) *Deferment of promotion for a period of 04 years [Vide Punishment 3]*

b) *Reduction in seniority by 04 years [Vide Punishment 4]*

I fail to understand how punishment was imposed on the ground of "negligence".

The Petitioner appealed to the University Appeal Board against this punishment, as he is entitled to do in terms of section 86 of the Universities Act, No. 16 of 1978, as amended.

The Appeal Board by R24 dismissed the Petitioner's appeal but set aside the punishment, directing the University Council to impose punishment in respect of each count on which the Petitioner was found guilty.

Whilst this case was pending, the Council slightly reduced the Petitioner's punishment by R26.

I will start with the Appeal Board decision R24.

The Appeal Board did not consider the merits of the Petitioner's appeal made against the decision of the University Council, and dismissed the appeal by making a brief order stating that the Council followed the proper procedure in meting out the punishment to the Petitioner and therefore the Appeal Board had no jurisdiction to go into the merits of the appeal. The Appeal Board did not even consider the charges for which the Petitioner was found guilty.

The relevant part of the Appeal Board decision dated 15.08.2017 P25/R24 reads as follows:

> *This Board is of the view that the inquiry procedure followed by the Council is correct and the correctness of the findings of the inquiring officer is not a matter this Board is competent to decide upon. If the inquiry procedure is correct and a legitimate punishment has been imposed, there cannot be any intervention by this Board.*

Learned Counsel for the Petitioner vehemently submits that the Appeal Board has manifestly acted as a body of judicial review and not as an appellate body and, on this ground alone, the decision of the Appeal Board should be quashed by certiorari.

There is a great force in this argument. The approach adopted by the Appeal Board is the approach adopted by this Court in exercising jurisdiction under judicial review.

Unlike in judicial review, on appeal the appellate body shall decide the appeal on merits unless the appeal can be decided on any other ground, be it legal or procedural.

Wade in his treatise *Administrative Law* (11th edition) states:

> *The system of judicial review is radically different from the system of appeals. When hearing an appeal the court is concerned with the merits of a decision: is it correct? When subjecting some administrative act or order to judicial review, the court is concerned with its legality: is it within the limits of the powers granted? On an appeal the question is 'right or wrong?' On review the question is 'lawful or unlawful?'*

In *Public Interest Law Foundation v. Central Environmental Authority [2001] 3 Sri LR 330* at 334, Gunawardena, J. states:

> *There is a distinction between appeal and review. If one appeals against a decision, one is claiming that the decision is wrong and that appellate authority or court should change the decision. The Court of Appeal, if it is persuaded by the merits of the case (appeal), may allow the appeal and thereby substitute its view for that of the Court or tribunal of first instance. Under judicial review procedure, the Court of Appeal is not concerned with the merits of the case, that is, whether the decision was right or wrong, but whether the decision is lawful or not.*

There cannot be any dispute that the University Appeal Board is an appellate body and certainly not a body of Judicial Review.

In order to emphasise that the approach of the Appeal Board in the instant matter is fundamentally flawed, learned Counsel for the Petitioner drew the attention of the Court to Section 18 of

the University Services Appeals Board Ordinance[3] (made in terms of section 88 of the Universities Act), which states: "*the Appeal Board may in the interest of justice permit [even] oral evidence to be led at such hearing.*"

Learned State Counsel, if I understand correctly, does not say that the approach of the Appeal Board, as reflected in the above quoted portion, is correct. However, learned Counsel endeavours to justify the Appeal Board decision by stating that the parameters of the appeal before the Appeal Board were demarcated by the Petitioner himself, as reflected in R23, and the Appeal Board addressed only those issues identified by the Petitioner and, therefore, it cannot now lie in the mouth of the Petitioner to complain that the Appeal Board did not consider his appeal on merits. What State Counsel attempts to say here is that the Petitioner raised only procedural defects and did not canvass the Appeal on merits. I am unable to agree with this submission.

Perusal of R23 reveals that after the Attorney-at-Law for the Petitioner made brief submissions, the Appeal Board (not the Petitioner) identified "03 major issues" and so recorded the same. This does not exclude "minor issues". There was a Petition of Appeal which preceded the hearing of the appeal. Therefore, the submission that the Petitioner decided the scope of the appeal is incorrect.

In any event, the three major issues identified are not purely procedural issues. For instance, the third issue is not purely

[3] This is gazetted in Gazette No.679/12 dated 11.09.1991.

procedural. It involves a decision on questions of fact, i.e. whether re-marking was done "by competent examiners appointed by the Senate." This has been answered in the affirmative by the Appeal Board in R24. This finding, as I will demonstrate later, is incorrect. I highlight only one matter here. But I need not even go that far. The whole process, in my view, is fundamentally flawed from the very outset.

The gravamen of the argument of the Petitioner in different fora—before the Disciplinary Inquiry, University Services Appeals Board, and this Court—is that the issue here is in relation to academic matters and, therefore, it is wrong on the part of the Dean to have referred it straight to the University Council bypassing the Senate, the latter having authority on academic matters. In terms of section 44 of the Universities Act, the Council "*shall be the executive body and governing authority of the University*"; in terms of section 46 "*University shall have a Senate which shall be the academic authority of the University*." This is undisputed. The Appeal Board accepts this in the impugned order. In the impugned order, the Appeal Board *inter alia* states as follows: "*This Board is not inclined to agree with the Appellant that a disciplinary inquiry of an examiner is an academic matter that has to be referred to the Senate for approval. Matters pertaining to curriculum, examinations and the approval of results of examinations would be academic matters that need the approval of the Senate. However a disciplinary inquiry in respect of the conduct of an examiner, in our view, does not fall into that category*".

The Appeal Board has considered the decision of the University Council to punish the Petitioner as a disciplinary matter. Learned State Counsel also vigorously submits that the Council is the disciplinary authority of the Petitioner and therefore the Council correctly imposed punishment based on the findings of the preliminary inquiry. This is a superficial approach to the issue.

How did this become a disciplinary matter? On what basis? This I have already narrated. If I may repeat, by R6, the Departmental Higher Degrees Committee decided to send the answer scripts for a second marking to an examiner outside the University of Peradeniya and selected Dr. Samanthi Senaratne of the University of Sri Jayewardenepura for this purpose. By R10, Dr. Senaratne returned the answer scripts with an adverse report. Based on the said findings, a five-member committee was appointed to examine the answer scripts, but, instead of re-examining the answer scripts, the committee standardised the marks and passed all but two candidates. It is in this context that the Dean, by R14, informed the Vice Chancellor to take "disciplinary action, if warranted."

Counsel for the Petitioner submits that once results are released with the approval of the Senate, the Faculty Higher Degrees Committee cannot decide to appoint examiners to re-examine the answer scripts without the approval of the Senate.

In reply, State Counsel submits that the initial results were released subject to the approval of the Senate, and the Senate only approved the standardised results. This submission is

incorrect. At page 3 of the written submissions of the Respondents, the Respondents state:

> *The Faculty HDC unanimously decided to standardize the marks after taking into consideration of the above observations. Accordingly, the FHDC appointed a subcommittee to re-scrutinize the papers among the members already approved by the Senate.* (emphasis mine)

By R14 dated 15.07.2010, the Dean has *inter alia* informed the Vice Chancellor as follows:

> *The committee submitted their evaluation with a report which is annexed. According to their evaluation, out of 12 students failed under first marking, 10 have obtained pass marks. These results were taken up and approved at an examiners board meeting held on 24th June 2010 and results were released.* (emphasis mine)

The evaluation report referred to here is the standardised results sheet, which was signed by the members of the five-member committee on 24.06.2010. According to the paragraph quoted above, the standardised results had been approved at the examiners' board meeting held on 24.06.2010 and the results were released thereafter. There was no Senate approval. R14 is dated 15.07.2010.

State Counsel, referring to the Regulations made by the Senate and approved by the University Council under section 136 read with section 24 of the Universities Act (marked X1 in P24A), submits that as this is a post graduate diploma course, the

Faculty Higher Degrees Committee can appoint examiners for re-correction, and hence the course of action adopted is correct. I am unable to agree.

Under "Part V-Examinations" of the said Regulations, 5.1 states that "*Examiners for all postgraduate examinations will be recommended by the Departmental HDC through the Faculty HDC to the Faculty Board and shall be approved by the Senate*."

It is the position of the Respondents in paragraph 11 of their statement of objections that the Senate approved examiners for the relevant year (2008/2009), as evidenced by R28, and two members of the five-member panel of examiners were selected from the said list approved by the Senate.

However, firstly, there is no indication in R28 that the examiners stated therein were approved by the Senate. R28 only goes to prove that eight names were approved by the Faculty Board, not by the Senate. The Faculty Board or Departmental Higher Degrees Committee or Faculty Higher Degrees Committee cannot appoint examiners; that shall be done by the Senate on the recommendation of the Faculty Board and said Higher Degrees Committees. *Vide*, *inter alia*, section 48(3) of the Universities Act.

I will assume for the time being that the eight names in R28 were approved by the Senate. But what about the original second examiner who played the pivotal role in this whole exercise—Dr. Samanthi Senaratne of the University of Sri Jayewardenepura? Dr. Senaratne was undoubtedly appointed by the Faculty Higher Degrees Committee without the approval of the Senate. She technically re-examined the answer scripts

but did not send the revised marks due to reasons given in writing. That was the starting point of this episode. The appointment of Dr. Senaratne by the Departmental Higher Degrees Committee is *ultra vires*.

The Respondents state that the names of the five-member committee appointed by the Faculty Higher Degrees Committee to re-examine the answer scripts were taken from R28, which they say has been approved by the Senate. However, even assuming that R28 contains a list of examiners approved by the Senate, only two of the five-member committee are included in R28. Learned State Counsel admits it. This means, the majority of the said committee did not comprise examiners approved by the Senate. Then, the decision taken by the five-member committee to scrutinise/re-examine/standardise the answer scripts/marks is *ultra vires*.

It is on these findings arrived at without jurisdiction that the Dean reported to the Vice Chancellor that disciplinary action against the Petitioner could be considered.

The Appeal Board did not look at the issue from the proper perspective. The Appeal Board considered the appeal at a superficial level and dismissed it paying scant attention to its merits. The approach adopted is also wrong. I need not give so many reasons to quash the punishment of the Council and the decision of the Appeal Board.

If the first decision of the Departmental Higher Degrees Committee and Faculty Higher Degrees Committee to appoint examiners is *ultra vires*, it is a nullity for all intents and

purposes. There are no degrees of nullity. Everything that flows from a decision which is a nullity also automatically becomes a nullity without further ado, although Courts tend to make formal orders quashing such subsequent decisions, rather superfluously. Follow-up actions on void decisions can be ignored with impunity.

Lord Denning in *Macfoy v. United Africa Co. Ltd. [1961] 3 ALL ER 1169* at 1172 states:

> *If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void. Without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.*

This passage was referred to with approval by G.P.S. de Silva J. (later C.J.) in *Rajakulendran v. Wijesundera [1982] 1 Sri Kantha LR 164* at 168-169, Sharvananda J. (later C.J.) in *Sirisena v. Kobbekaduwa, Minister of Agriculture and Lands (1978) 80 NLR 1* at 182, and Sripavan J. (later C.J.) in *Leelawathie v. Commissioner of National Housing [2004] 3 Sri LR 175* at 178.

Sharvananda J. (later C.J.) in *Sirisena v. Kobbekaduwa, Minister of Agriculture and Lands* (*supra*) at 182 quotes the following portion of Hailsham (4th Edition) Vol. I, paragraph 27:

> *No legally recognised rights found on the assumption of its validity should accrue to any person even before the act is declared to be invalid or set aside in a Court of Law.*

This principle was applied by the Supreme Court in the more recent case of *Padmal Ariyasiri Mendis v. Vijith Abraham de Silva [2016] BLR 69* at 73 where it was held:

> *The deed No. 1551 is void ab initio and therefore the title does not pass from the plaintiff to any other person. Therefore deed which was executed thereafter, i.e. deed No. 976 is also void ab initio.*

Wade supports this position in *Administrative Law* (9th Edition) at page 280:

> *Where some act or order is invalid or void, the consequences are followed out logically: consequential acts are also invalid.*

It is also noteworthy that an act can be challenged on the basis of nullity, either directly or indirectly.

In *Rajakulendran v. Wijesundera* (*supra*) the University Services Appeals Board came to the conclusion that the Petitioner in that case should have been promoted as a Senior Lecturer according to a Circular. However, the University Council did not carry out the order of the Appeal Board. The Petitioner sought to compel the Council by way of mandamus to carry out the Appeal Board decision. It was shown before this Court that the Appeal Board decision was void, as the Appeal Board did not have the authority to make such a decision. This line of argument was

objected to on behalf of the Petitioner on the basis that the Appeal Board decision cannot be so challenged collaterally. This Court refused to accept the objection and cited Wade and De Smith to fortify its position.

According to Wade, *Administrative Law* (11th Edition) at page 235, an act can be challenged on the basis of nullity, either directly or indirectly, i.e. collaterally.

> *The validity of the act or order may be challenged directly, as in proceedings for certiorari to quash it or for a declaration that it is unlawful. But it may also be challenged collaterally, as for example by way of defence to a criminal charge, or by way of defence to a demand for some payment.*

De Smith's *Judicial Review of Administrative Action* (4th edition by Professor Evans), at page 152 states:

> *Void acts and decisions are indeed usually destitute of legal effect; they can be ignored with impunity; their validity can be attacked, if necessary, in collateral (or indirect) proceedings; they confer no legal rights on anybody.*

I grant the petitioner all the reliefs prayed for in paragraphs (b)-(h) of the prayer to the petition.

The 1st Respondent shall pay a sum of Rs. 100,000/= as costs to the Petitioner.

Judge of the Court of Appeal