

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 a Writ of
Certiorari and Mandamus under and in
terms of Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

CA (Writ) Application No.145/2026

Dr. Herath Mudiyanseelage Charitha Herath
6A/1D, De Silva Road,
Kalubowila,
Dehiwala.

PETITIONER

Vs.

1. University of Peradeniya
Peradeniya.
2. Vice Chancellor
Chairman of the Council,
University of Peradeniya,
Peradeniya.
3. Deputy Vice-Chancellor
Council Member,
University of Peradeniya,
Peradeniya.
4. Dean, Faculty of Agriculture
Council Member
University of Peradeniya
Peradeniya
5. Dean, Faculty of Allied Health Sciences
Council Member,
University of Peradeniya,
Peradeniya.
6. Dean, Faculty of Arts
Council Member,
University of Peradeniya,
Peradeniya.

7. Dean, Faculty of Dental Sciences
Council Member,
University of Peradeniya,
Peradeniya.
8. Dean, Faculty of Engineering
Council Member,
University of Peradeniya,
Peradeniya.
9. Dean, Faculty of Management
Council Member,
University of Peradeniya,
Peradeniya.
10. Dean, Faculty of Medicine
Council Member,
University of Peradeniya,
Peradeniya.
11. Dean, Faculty of Science
Council Member,
University of Peradeniya,
Peradeniya.
12. Dean, Faculty of Veterinary Medicine and
Animal Science
Council Member,
University of Peradeniya,
Peradeniya.
13. Prof. Pradeepa Bandaranayake
Council Member,
Agricultural Biotechnology Centre,
University of Peradeniya,
Peradeniya.
14. Prof. Kapila Goonasekara
Council Member,
No 430/11,
Sarasavigama Rd,
Mahakanda,
Hindagala.

15. Prof. Oliver Illeperuma
Council Member,
No. 237/6,
Wijaya Mw,
Watapuluwa,
Kandy.
16. Prof. Vasanthi Thevanesam
Council Member,
No.21/1,
Park Avenue,
Dangolla,
Kandy.
17. Prof. S. T. B Amunugama
Council Member,
698/6, Richmond Place,
Mankada Rd,
Kadawatha.
18. Prof. Vijaya Kumar
Council Member,
No 45/8,
University Square,
Dangolla,
Kandy.
19. Dr. Praneeth Wickramarachchi
Council Member,
Access Engineering PLC,
Access Towers,
No 278,
Union Place,
Colombo 02.
20. Mr. H. M. P. Punchi Banda
Council Member,
No 41,
Iththamalliyagoda,
Menikhinna.
21. Mr. Nimal Wickramasinghe
Council Member,
No 1A,
Moragahapitiya Watta,
Balagolla,
Kengalla.

22. Prof. Asoka Pthiratne
Council Member,
University of Peradeniya,
Peradeniya.
23. Mrs. Ranjani Jayakody
Council Member,
University of Peradeniya,
Peradeniya.
24. Ms. Kamani Ranatunga
Council Member,
University of Peradeniya,
Peradeniya.
25. Mr. Tissa G. Marahela
Council Member,
University of Peradeniya,
Peradeniya.
26. Mr. Samantha Upananda
Council Member,
University of Peradeniya,
Peradeniya.
27. Mr. Lal Wijenayake
Council Member,
University of Peradeniya,
Peradeniya.
28. University Grants Commission
No. 20,
Ward Place,
Colombo 07.
29. The Chairman
University Grants Commission,
No. 20,
Ward Place
Colombo 07.
30. Hon. Attorney – General
Attorney – General’s Department,
Hulftsdorp Street,
Colombo 12.

RESPONDENTS

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

Counsel: Dr. Thashira Gunathilake with Ms. Nimni Amanda and Ms. Udani Dissanayake instructed by Ms. Buddhika Alagiyawanna for the Petitioner.

Ms. Navinda Pathirage, State Counsel for the Respondents.

Supported on: 28.04.2026 and 13.05.2026

Decided on: 17.07.2026

Mahen Gopallawa, J.

Introduction

The Petitioner was employed in the Department of Philosophy in the Faculty of Arts of the University of Peradeniya (1st Respondent) and served in the post of Professor of Philosophy at the time of his resignation from service. In the instant application, he has impugned the decision of the 2nd to 27th Respondents not to accept his request for re-employment at the 1st Respondent University.

The substantive reliefs sought by the Petitioner, which are set out in paragraphs (c) and (d) of the prayer to the petition, are as follows;

- (a) Grant and Issue a mandate in the nature of a Writ of Certiorari to quash the decision of the 2nd to 27th Respondents marked **P17** and its communication thereof marked **P16** dated 25.10.2025 and 11.12.2025 respectively, which denied the request for re-employment of the Petitioner marked **P8**.*
- (b) Grant and Issue a mandate in the nature of a Writ of Mandamus directing the 2nd to 27th Respondents of the Council to place the Petitioner in the post of Professor of Philosophy in the Department of Philosophy, Faculty of Arts, of the 1st Respondent University as per the Petitioner's request for re-employment marked **P8**.*

When the application was taken up for support, the learned State Counsel for the Respondents objected to the grant of the aforementioned reliefs sought by the Petitioner. As permitted by Court, the Respondents also tendered the documents marked X1-X6 by way of motion dated 08.05.2026.

Factual Background

Prior to considering the grounds of review, it would be helpful to briefly set out the salient facts of this case, in chronological sequence, as contained in the petition and the documents filed by the Respondents.

The Petitioner had joined the Department of Philosophy in the Faculty of Arts of the 1st Respondent University ("the University") as a Lecturer (Probationary) on 24.02.1996. He had been promoted to the posts of Senior Lecturer Grade II with effect from 13.06.2003 (P1) and Senior Lecturer Grade I with effect from 10.11.2016. (P2). Thereafter, the Petitioner had been promoted to the post of Professor of Philosophy in the said Department with effect from 16.02.2020. (P3).

The Petitioner has been elected as a Member of Parliament through the National List under Article 99A of the Constitution pursuant to the parliamentary election held on 05.08.2020, as reflected in the Extraordinary Gazette Notification No. 2188/2 dated 10.08.2020 (P4). He has stated in the petition that, prior to confirmation of his selection as a Member of Parliament, he resigned from his post in the University with effect from 05.08.2020.¹ The letter of resignation dated 11.08.2020 tendered by the Petitioner was not submitted with the petition but was filed by the Respondent (X1) and its substantive text is reproduced below, in the interests of clarity;

RESIGNATION FROM THE POST OF PROFESSOR OF PHILOSOPHY

This is to inform you that I have been appointed as a Member of Parliament on the National List of the Podujana Peramuna. Accordingly, I am accepting the appointment as a Member of Parliament as a national service.

I wish to tender my resignation from the post of Professor of Philosophy, Department of Philosophy, University of Peradeniya with effect from 05.08.2020 which was the date of the Election. Due to unavailability of time, I request that the requirement of three months' notice prior to resignation be waived in my case.

Though I am resigning from my post of Professor of Philosophy, I wish to be placed on record that I would like to return to the service of the university of Peradeniya on a future occasion when I cease to be a Member of Parliament.

The aforementioned letter of resignation (X1) confirms the fact that the Petitioner had tendered his resignation after the conduct of the election and requested that the resignation take effect from such date of election, namely, 05.08.2020. It is also observed that the said letter does not refer to any specific clause under which the resignation is submitted.

The Petitioner's resignation had been accepted with effect from 05.08.2020 by the University Council at its 497th Council Meeting held on 19.09.2020, as reflected in its decision (P5). The said Council decision also documents that approval had been granted to waive off the requirement of 03 months' notice prior to resignation and not to deduct the Petitioner's salary from the date of nomination to the date of election. The acceptance of the Petitioner's resignation by the University had been communicated to him by the letter dated 28.10.2020 (P6), and, the payment of retiring gratuity too had been approved, as reflected in the letter dated 18.08.2020 (P7).

¹ vide paragraph 5 of the petition

The Petitioner has pleaded that, after serving as a Member of Parliament for approximately 4 years, he had contested the parliamentary election held in 2024 but had been unsuccessful. He had thereafter made a request for re-employment to the University in the post of Professor of Philosophy previously held by him by letter addressed to the 2nd Respondent dated 18.11.2024 (P8). The substantive text of the said letter (P8) provides as follows;

The request for reemployment in the post of Professor of Philosophy

I was informed by your letter dated 17-2-2020 that the University Council approved appointment to the post of Professor of Philosophy with effect from 16-02-2020.

Exercising the political rights as specified in the Article 2. 1 of the Chapter XVI of the Employment Code entitled Political Rights and Exercise of the Right of Association, I rendered my resignation from the above post as I was nominated and elected as the national list member of the Sri Lankan Parliament. With the dissolution of the Parliament by the President of Sri Lanka on September 24, 2024 my term of the membership of the parliament had come to an end. Although I contested in the election held on November 14, I was not elected as a member of the Parliament from the Kurunegala district.

In this context, I have decided to return back to my academic career and to make an appeal on the basis of the Article 2.2 of the same Chapter XVI of the E-code to consider reemployment of me in the post of the Professor of Philosophy. I understand the vacancy that had been created by my resignation has not been filled with a candidate with subject specified knowledge and experience. Although it is not directly related to my academic work, I believe my five-year experience in the supreme and highest law-making institution of the country would be useful for the university in multiple ways.

A copy of the letter of appointment and the relevant articles of the E code are attached herewith for your perusal.

Thank you and look forward to hearing from you.

It is observed that, in the aforementioned letter (P8), the Petitioner has specifically taken up the position that he had tendered his resignation in terms of section 2.1 of Chapter XVI of the Establishments Code of the University Grants Commission and the Higher Educational Institutions/Institutes ("the UGC Establishments Code") and that he has sought re-employment in terms of paragraph 2.2 thereof. Such position will be examined in greater detail elsewhere in this order.

The notations in the letter (P8) indicate that the 6th Respondent, Dean of the Faculty of Arts and the Head of Department, Department of Philosophy, had recommended the Petitioner's request for re-employment.

Thereafter, the 2nd Respondent by his letter dated 26.11.2024 (P9) had sought the advice of the 29th Respondent, the University Grants Commission (UGC) on the applicability of section 2.2 of Chapter XVI of the UGC Establishments Code. The UGC had sought the advice of the

Hon. Attorney General on applicability of the aforementioned sections 2.1, 2.2 and 2.3 of Chapter XVI to an employee who has resigned in order to submit nominations and subsequently elected to Parliament by letter dated 11.02.2025 (P11), and, by letter dated 27.03.2025 (P12), the Hon. Attorney General had advised that there was no legal impediment for the Petitioner to be re-employed in the post provided that the other requirements of section 2.2. and other provisions of the Establishments Code are satisfied.

The UGC had informed the 2nd Respondent by its letter dated 14.05.2025 (P13), that it had no objection to the re-employment of the Petitioner subject to 03 conditions set out therein. Condition (I) *inter alia*, refers to the fact that the Petitioner may seek re-employment if he falls under and satisfies the provisions under the aforementioned section 2.1.

The Petitioner has also tendered a letter dated 20.11.2025 (P15) addressed by the UGC to the 2nd Respondent, in response to an appeal submitted by him, wherein the Commission had informed the 2nd Respondent to proceed with the Petitioner's request for re-employment in accordance with the advice of the Hon. Attorney General.

The documents filed by the Respondents indicate that a Council Paper dated 24.09.2025 (X2) had been submitted regarding the Petitioner's request for re-employment and it was submitted by the learned State Counsel that the practice in the University was that Council Papers were submitted by the Registrar and not directly by the Vice Chancellor. The said Council Paper, whilst setting out the background and the documents submitted by the Petitioner and referring to sections 2.1 and 2.2, under the heading "Recommendation for the Consideration of the Council" has stated as follows; "*The above facts are submitted for the decision of the Council.*" It is observed that the said Council Paper does not refer to whether or not the Vice Chancellor has recommended the Petitioner's request for re-employment.

The Council had considered the Petitioner's request for re-employment at its 564th meeting held on 25.10.2025 and the Council decision thereon has been tendered to this Court marked P17/X3. Referring to section 2.1 and 2.2, the Council had decided as follows;

Considering the above provision, the Council of the opinion that Dr. Herath's resignation does not fall under Section 2.1 and 2.2 of the Chapter XVI of the Establishments Code.

Accordingly, the Council decided not to accept the request made by Dr. Herath for re-employment as he had resigned from his academic position in accordance with Section 1.3.6 of Chapter XVI of the Establishments Code upon being nominated as a member through the National List for the Parliament in the 2020 Parliamentary Election.

The aforementioned decision of the University Council had been communicated to the Petitioner by the 2nd Respondent by letter dated 11.12.2025 (P16) and its substantive text reads as follows;

Request to Re-employment in the Post of Professor of Philosophy

This has reference to your letters dated 18.11.2024 and 26.02.2025 on the above subject.

The Council of this University at its 564th Meeting held on 25.10.2025, extensively discussed the matter and decided not to accept your request for re-employment. The decision was made on the basis that you had resigned from your academic position in accordance with Section 1.3.6 of Chapter XVI of the Establishments Code of University Grants Commission and Higher Educational Institutions upon being nominated as a Member of Parliament through the National List at the 2020 Parliamentary Election.

The Petitioner has impugned the aforementioned decision of the University Council (P17/X3) and the letter by which such decision was communicated (P16) in the instant application.

Grounds of Review and Analysis

As pleaded in paragraphs 3, 21 and 22 of the petition, the learned Counsel for the Petitioner contended that the refusal to accept his request for re-employment was illegal, *ultra vires*, irrational and is in breach of his legitimate expectation. In summary, his position was that the Petitioner had resigned from employment under section 2.1 of Chapter XVI of the UGC Establishments Code and had satisfied the criteria set out in section 2.2 thereof to obtain re-employment. He further submitted that the Council decision (P17/X3) and the letter by which such decision was communicated (P16) was erroneous and *ex facie* illegal as it stated that the Petitioner had resigned under section 1.3.6 of Chapter XVI of the aforementioned Establishments Code, which was not in existence at the time of his resignation.

In response, the learned State Counsel sought to justify the decision of the University Council contending that the Petitioner's request for re-employment could not be accepted since he had not resigned in terms of section 2.1, and, that, in any event, the Petitioner had failed to establish that the criteria for re-employment set out in section 2.2 had not been satisfied. She further submitted that no prejudice had been caused to the Petitioner by the reference to section 1.3.6 in P17/X3 and P16. The learned State Counsel also took up the position that the relief sought by the Petitioner was misconceived in as much as a writ of *Mandamus* did not lie in the exercise of power under section 2.2.

I intend to examine the aforementioned positions taken up by the parties in greater detail in relation to the factual background and the applicable legal provisions.

A. Resignation of the Petitioner

A convenient starting point would be to examine the circumstances relating to the Petitioner's resignation. Although the letter of resignation (X1) does not refer to the provision under which the Petitioner has tendered his resignation, he has specifically stated in his letter seeking re-

employment (P8) that he tendered his resignation *“exercising the political rights as specified in the Article 2. 1 of the Chapter XVI of the Employment Code entitled Political Rights and Exercise of the Right of Association.”* Both learned Counsel agreed that such reference made in the letter (P8) is to section 2.1 of Chapter XVI of the UGC Establishments Code.

Thus, it would be necessary to examine the provisions of section 2.1 of Chapter XVI of the UGC Establishments Code. In this regard, both learned Counsel clarified that the UGC Establishments Code presently in effect and under which the Petitioner has submitted his request for re-employment had been introduced with effect from 03.10.2023 and that the resignation of the Petitioner had occurred in 2020 under the provisions of the earlier UGC Establishments Code. They further clarified that in the previous UGC Establishments Code, provisions relating to “Political Rights to Persons Employed in the Higher Educational Institutions” titled “resignation prior to candidature” were contained in Chapter XVII and section 2.1 thereof provided as follows;²

2: Persons not qualified to seek election to Parliament

2:1 If a person employed in the Commission or any Higher Educational Institution not qualified to seek election to Parliament in terms of Article 91 (1) (d) (viii) of the Constitution intends to stand for such election and desires to make preparations for furthering his own candidature or for testing his chances at such election or intends to hand in his nomination papers for such election he should first resign his post in the Commission or the Higher Educational Institution in accordance with para 4 of Chapter V before he takes any such action or sanctions any such action to be taken on his behalf.

For completeness and purposes of comparison, the text of section 2.1 of Chapter XVI of the present UGC Establishments relating to “Political Rights and Exercise of the Right of Association” also titled “resignation prior to candidature” is reproduced below;³

2. Persons not qualified to seek election to office of the President, Parliament, Provincial Councils or Local Authorities

2.1 If a person employed in the Commission or any Higher Educational Institution/ Institute, not qualified to seek election to the office of President, Parliament, Provincial Councils or Local Authorities (refer sub-paragraph 1.2.3 and notes thereto in this Chapter), intends to stand for such election and desires to make preparations for furthering his own candidature or for testing his chances at such election or intends to hand in his nomination papers for such election he should first resign from his post in the Commission or the Higher Educational Institution/ Institute in accordance with paragraph 4 of Chapter V before he takes or sanctions any such action to be taken on his behalf.

Such a person shall settle all the dues for the institution to which he is attached prior to his resignation and if he is in an obligatory period of bonded agreement, actions should be taken to pay the bonded value and get him released from the bond.

² vide X5

³ vide X6

It is observed that, whilst the scope of section 2.1 in the current UGC Establishments Code has been extended to presidential, provincial council and local authority elections apart from parliamentary elections, the provisions in the previous and current sections remain substantially the same. The primary requirement imposed by such section, as indicated by the headnote, is that the resignation must be prior to the conduct of the election, and, the latest point at which the resignation may be made thereunder is immediately prior to the time of handing over of nomination papers. Thus, it would appear that the said section contemplates signature prior to the declaration of candidature, which occurs when nomination papers are handed over.

In relation to the submission of the National List by political parties, Article 99A of the Constitution, *inter alia*, in its second paragraph provides as follows;

99A.

.....

Every recognized political party or independent group contesting a General Election shall submit to the Commissioner of Elections within the nomination period specified for such election a list of persons qualified to be elected as Members of Parliament, from which it may nominate persons to fill the seats, if any, which such party or group will be entitled to, on such apportionment. The Commissioner of Elections shall cause every list submitted to him under this Article to be published forthwith in the Gazette and in one Sinhala, Tamil and English newspaper upon the expiry of the nomination period.

Thus, it is evident that the submission of the list of persons named in the National List too has to be done during the nomination period of a parliamentary election.

It is not in dispute that, in the instant case, the Petitioner had tendered his resignation after the date of the election and requested that the resignation take effect from the date of the election. Such facts are *ex facie* evident from the letter of resignation (X3) itself and the Petitioner's resignation too had been accepted by the University upon such basis, as evident from the Council decision (P5) and the letter communicating same (P6). Thus, it is evident that the Petitioner's resignation has not taken place prior to the election and prior to the declaration of candidature.

It is also significant that the said section 2.1 does not draw any distinction between candidates who stand for election at the electoral district level and candidates who are nominated from the National List. Thus, the most logical and reasonable inference to be drawn is that its provisions are intended to apply in equal measure to both categories of candidates.

In such circumstances, it is apparent that, as determined by the University Council and as submitted by the learned State Counsel, the Petitioner's resignation does not meet the conditions set out in section 2.1.

In response, the learned Counsel for the Petitioner submitted that the University Council had nevertheless accepted the Petitioner's resignation, waiving off the requirement of prior notice any salary deductions, as reflected in the Council decision (P5). As such, he submitted that it is manifestly unjust for the University to take up a contrary position belatedly at this stage.

However, to my mind the issue that has to be determined by this Court in these proceedings is whether or not the position taken by the University is either illegal, irrational or unreasonable. In this context, considering whether the resignation has been made within the time frame contemplated in the section, i.e. prior to the declaration of candidature, as the University appears to have done, cannot be considered as being illegal or irrational or unreasonable.

Further, I wish to observe that the issue in dispute is not the validity of the Petitioner's resignation but rather whether it fell within the ambit of section 2.1 or not. In this regard, although the Council has accepted the Petitioner's resignation, the effective date from which such resignation was accepted, namely, 05.08.2020, clearly places it outside the time frame contemplated in section 2.1. Such fact reinforces the position that the Petitioner's resignation fell outside the ambit of section 2.1.

B. Request for Re-Employment

In the letter (P8), the Petitioner has specifically stated that he was seeking re-employment in terms of section 2.2 of Chapter XVI of the UGC Establishments Code. The texts of section 2.2 (Re-employment) and section 2.3 (Sanction for re-employment) have remained substantially unchanged through the revision of the Establishments Code in 2023 and read as follows;⁴

2:2 Such a person may later seek re-employment in the Commission or in the Higher Educational Institution if he so desires, and the Commission or Higher Educational Institution may re-employ him outside the scheme of recruitment if the vacancy created by his resignation still remains unfilled and the Chairman of the Commission in the case of persons from the Commission or the Vice-Chancellor of the University in the case of persons from a University or a Campus or an Institute affiliated or attached thereto, or the a Director in the case of a University College agree to such re-employment.

2:3 Where it is agreed to re-employ the person seeking re-employment under para 2:2 above the prior sanction of the Commission in the case of persons from the Commission or the sanction of the respective Governing bodies of the Higher Educational Institution in the case of persons from those Institutions should be obtained.

In the legal opinion of the Hon. Attorney General (P12) and the letter of the UGC (P13) and the Council Paper (X2), several conditions to be satisfied by a person seeking re-employment at a University under section 2.2 have been identified as follows;

- (a) The applicant should have resigned under section 2.1;
- (b) The vacancy created by the applicant's resignation should remain unfilled;
- (c) The Vice Chancellor of the University should agree to re-employ the applicant; and

⁴ vide X5 and X6

(d) If the Vice Chancellor agrees to re-employ the applicant, prior sanction of the Council of the University should be obtained in terms of section 2.3.

I now intend to examine whether such conditions have been fulfilled or not in respect of the Petitioner's request for re-employment.

(a) Resignation under section 2.1

The use of the words "such a person" at the commencement of section 2.2 makes it evident, as correctly pointed out by the learned State Counsel, that only a person who has resigned under section 2.1 is entitled to seek re-employment in terms of section 2.2. This position was not contested by the learned Counsel for the Petitioner. In fact, it is observed that, in his request letter for re-employment (P8), the Petitioner has specifically taken up the position that he had resigned from service under section 2.1 (referred to as Article 2.1). However, as discussed in the preceding section of this judgment, it is apparent that the Petitioner's resignation does not meet the conditions set out in section 2.1.

(b) Unfilled vacancy

It is a specific requirement that for a request for re-employment under section 2.2 to be considered the vacancy created by the resignation of the applicant should remain unfilled. It is not in dispute that such requirement has been fulfilled in the instant case, as the University by its response dated 13.02.2026 (P19(b)) to an application under the Right to Information Act, No. 12 of 2016 (P18(a)) has confirmed that the post of Professor of Philosophy of the Faculty of Arts currently remains vacant. The learned State Counsel for the Respondents too confirmed such position.

(c) Agreement of the Vice Chancellor of the University

The agreement of the Vice Chancellor to re-employ the applicant is another specific requirement under section 2.2. It is observed that, although the 2nd Respondent Vice Chancellor had proceeded to process the Petitioner's request for re-employment and sought the approval of the University Council, the documents tendered to this Court do not indicate that he has "agreed" to the re-employment of the Petitioner. Although the 2nd Respondent had sought advice from the UGC and placed the matter for the consideration of the University Council, neither the letter whereby such advice was sought (P9) nor the Council Paper (X2) indicate that the Vice Chancellor expressed his agreement to the request for re-employment. Such position was confirmed by the learned State Counsel, upon inquiry by Court.

In response, the learned Counsel for the Petitioner submitted that the 2nd Respondent could not have proceeded to obtain the sanction of the Council under section 2.3 if he had not agreed to re-employ the Petitioner, and, that the "agreement" of the Vice Chancellor should be inferred from his conduct. Considering the fact that section 2.2 does not specify the manner in which the "agreement" should be expressed by the Vice Chancellor, I am inclined to accept the submission made by the learned Counsel for the Petitioner on this issue. Such a conclusion is supported by the fact the 2nd Respondent had sought and obtained the recommendations of the Dean of the Faculty of Arts and the Head of Department for the

Petitioner's re-employment, as reflected in the notations made in the Petitioner's request letter (P8).

(d) Prior sanction of the University Council

As reflected in its decision (P17/X3), it is evident that the University Council has not granted its sanction to re-employ the Petitioner. As set out in the factual narrative above, the reasons for such decision have also been set out in P17. Such Council decision has been made available to the Petitioner in response to an application made under the Right to Information Act (vide P18(a) and P19(b)).

The aforementioned examination discloses that, since the Petitioner has been unable to establish that he had resigned under section 2.1, which is an essential pre-condition to seek re-employment, the requirements of section 2.2 have not been met. Further, it is evident that the University Council has not granted its prior sanction for the Petitioner's re-employment under section 2.3.

C. Validity of the Council Decision (P17/X3) and the Communication of the Decision (P16)

The learned Counsel for the Petitioner also sought to impugn the decision of the University Council (P17/X3) and the letter communicating same (P16) on the ground that reference has been made therein to the fact that the Petitioner had resigned under section 1.3.6 of Chapter XVI of the aforementioned Establishments Code, which was not in existence at the time of his resignation.

It is not in dispute that the aforementioned section 1.3.6 of Chapter XVI was introduced by the UGC Establishments Code enacted in 2023. The text of the said clause provides as follows;

1.3.6 Nomination through National List:

If a name of a person is included in the National List, he should inform in writing to the Chairman of the Commission/ Principal Executive Officer of the Higher Educational Institution/ Institute within a day after accepting the list by the Commissioner of Elections. If he is nominated as a member of the Parliament he will be required to resign from his position in the Commission/ Higher Educational Institution/ Institute from the date of such nomination.

The learned State Counsel for the Respondents conceded that section 1.3.6 was not in existence at the time of the Petitioner's resignation from service and to such extent the reference to the same in P17/X3 and P16 was erroneous. She further clarified that, since the Petitioner's request for re-employment had been submitted in terms of the provisions of Chapter XVI of the UGC Establishments Code introduced in 2023, reference had been made to section 1.3.6 to describe the manner of the Petitioner's resignation in terms of the currently existing provisions.

She also pointed out that reference had been made in paragraph 3 of the Council Paper (X2) to the fact that the Petitioner had resigned in accordance with section 1.3.3, which was in existence under the previous UGC Establishments Code. The said section 1.3.3 (Resignation if elected to Parliament) provided as follows;

1:3:3 If he is elected a member of Parliament, he will be required to resign his position in the Higher Educational Institution from the date of such election.

The response of the learned Counsel for the Petitioner was that the aforementioned provision was not applicable to the Petitioner since he fell into a category of “persons not qualified to seek election to Parliament” in view of Article 91(1)(d)(viii) of the Constitution, in respect of whom specific provisions for resignation were made in section 2.1. In view of such position, I do not consider it necessary to consider the said issue any further.

The learned State Counsel submitted that no prejudice had been caused to the Petitioner by such reference to section 1.3.6, since such reference did not detract from the position that the Petitioner’s resignation did not fall under section 2.1 and 2.2. She submitted that the fact that the Council was of the view that the Petitioner’s resignation does not fall under section 2.1 and 2.2 is clearly and specifically recorded in the Council decision (P17/X3) and such fact was the reason for the Council not to accept the Petitioner’s request for re-employment. Considering my findings in relation to sections 2.1 and 2.2 above, I am inclined to accept the position taken up by the learned State Counsel.

If an analogy may be drawn, in **JMC Jayasekara Management Centre (Pvt) Limited v. Commissioner General of Inland Revenue**,⁵ which was an appeal arising out of a certificate of tax in default filed in the District Court seeking recovery under section 43(1) of the Value Added Tax Act, No. 14 of 2002 (as amended), a Divisional Bench of the Supreme Court, *inter alia*, observed that, while the VAT Act does not empower the District Court to recover tax in default as a fine under section 43(1), it does empower the District Court to recover the tax in default through the seizure and sale of the defaulter’s property by issuing a writ of execution under section 42(6) of the VAT Act and therefore the appellant tax payer was not absolved from the payment of the tax in default. The Court, citing local and Indian authorities, observed as follows (per Samayawardhena, J.):

As stated in Devi Prasad Khandelwal & Sons Ltd. v. Union of India, AIR 1969 Bom 163 at 173:

It is a well-settled principle of interpretation that as long as an authority has the power to do a thing, it does not matter if he purports to do it by reference to a wrong provision of law. The order made can always be justified by reference to the correct provision of law empowering the authority making the order to make such order.

Solicitor-General v. Perera (1914) 17 NLR 413 was a criminal case filed under the Excise Ordinance where the licence to sell liquor was cancelled for failure to make some

⁵ SC Appeal No. 05/2021, SC Minutes 05.03.2025

payment due. The Government Agent cancelled the licence under section 26(1)(a) of the Ordinance when the correct section was section 26(1)(b). When the conviction for selling liquor without a licence was challenged in appeal on this basis, Walter Pereira J. rejected that argument stating at page 416:

[T]he fact that sub-section (a) of section 26 was cited did not render the cancellation of the license any the less effectual. The Government Agent was not bound to cite any section at all.

In Peiris v. The Commissioner of Inland Revenue (1963) 65 NLR 457 it was held that a certificate issued to the Magistrate in recovery proceedings under section 80(1) of the Income Tax Ordinance was not invalidated by the mistake of the Assistant Commissioner of Inland Revenue where he had purported to act under section 64(2)(b) although the correct procedure would have been under section 65. Sansoni J. (as he then was) stated at page 458:

It is well-settled that an exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory. This principle has been applied even to cases where a Statute which confers no power has been quoted as authority for a particular act, and there was in force another Statute which conferred that power.

This principle has consistently been adopted by our Courts including in Leechman & Co. Ltd. v. Rangalla Consolidated Ltd [1981] 2 Sri LR 373 at 379-380, Kumaranatunga v. Samarasinghe [1983] 2 Sri LR 63 at 73-74, Jayawardane v. Ranaweera [2004] 3 Sri LR 37 at 41, Jayathilaka v. People's Bank (SC/APPEAL/92/2011, SC Minutes of 02.04.2014) and Gifuulanka Motors (Pvt) Limited v. Commissioner General of Inland Revenue (SC/HCCA/LA/51/2017, SC Minutes of 27.07.2021).

In light of the foregoing, the Additional District Judge could assume jurisdiction under Section 42(6) of the VAT Act to recover the tax specified in the certificate of tax in default through the seizure and sale of the defaulter's property.

I have been guided by the reasoning in the aforementioned authorities in arriving at my decision to accept the position taken up by the Respondents that no prejudice has been caused to the Petitioner by the reference to section 1.3.6 in the decision of the University Council (P17/X3) and the letter communicating the same (P16).

D. Maintainability of the Reliefs

The learned State Counsel for the Respondents further raised the objection to the writ of *Mandamus* sought by the Petitioner. She pointed out that the use of the words “*and the Commission or Higher Educational Institution/Institute may re-employ*” in section 2.2 of Chapter XVI of the UGC Establishments Code clearly indicated that the University was vested with the discretion to either re-employ or not to re-employ the Petitioner. In such

circumstances, the learned State Counsel contended that there was no public duty owed to the Petitioner by the Respondents to re-employ him in terms of section 2.2.

The principal conditions to be satisfied by an applicant for the issuance of a writ of *Mandamus* have been very helpfully identified by the Supreme Court in ***Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt) Ltd***⁶ in the following terms (per J.A.N. De Silva, J. (as he then was) held as follows;

There is rich and profuse case law on mandamus on the conditions to be satisfied by the applicant. Some of the conditions precedent to the issue of mandamus appear to be:

(a) The applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought (R. v Barnstaple Justices).⁷ The foundation of mandamus is the existence of a legal right (Napier Ex parte).⁸

(b) The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.

(c) The legal right to compel must reside in the Applicant himself (R. v Lewisham Union).⁹

(d) The application must be made in good faith and not for an indirect purpose.

(e) The application must be preceded by a distinct demand for the performance of the duty.

(f) The person or body to whom the writ is directed must be subject to the jurisdiction of the Court issuing the writ.

(g) The Court will as a general rule and in the exercise of its discretion refuse writ of Mandamus when there is another special remedy available which is not less convenient, beneficial and effective.

(h) The conduct of the Applicant may disentitle him to the remedy.

(i) It would not be issued if the writ would be futile in its result.

(j) Writ will not be issued where the Respondent has no power to perform the act sought to be mandated.

It is observed that the existence in the applicant of a legal right to the performance of a legal duty by the parties against whom the *mandamus* is sought is the first condition required to

⁶ [2005] 1 Sri L.R 89 at 93.

⁷ (1937) 54 TLR 36

⁸ 1852 18 QB 692 at 695

⁹ (1897)1 QBD 498

be satisfied, as per the above formulation by the Supreme Court. In the instant case, the Respondents have denied the existence of such a legal right accruing to the Petitioner and a legal duty owed by the Respondents.

The issue of 'duty or discretion' has been addressed by Dr. Sunil F. A. Coorey in his leading work *Principles of Administrative Law in Sri Lanka*¹⁰ in the following manner;

(a) Duty or Discretion?

Where a power is conferred by law, to exercise it in a given factual situation, it may be either a duty, or else only a privilege (discretion), conferred by law on the repository of such power. It is only if there is a duty to exercise it in a given situation that mandamus lies to compel its exercise in that situation. If there is only a privilege (discretion) either to exercise it or not, mandamus does not lie to compel its exercise. In case of a privilege (discretion) to exercise or not to exercise the power in question, mandamus still does not lie even if the repository of the power (being a statutory body, by a validly passed resolution) had already decided to exercise it.¹¹

Such issue has also been considered by a Divisional Bench of this Court in **Ven. K. Wacheeswara Thero and others v. Dharmasena Dissanayake, Chairman, Public Service Commission and others**¹² and the Court has opined as follows (per Rajakaruna, J.);

It is observed that in order to issue a writ of Mandamus, the court must be satisfied of the existence of a public duty owed and an existing legal right in the petitioner to have it performed. Therefore, it will not be available conditionally or for the performance of merely moral duties. The court must take cognizance of the distinction of a duty and a privilege or discretion as a Mandamus exists only where a duty lies. A duty and privilege found in a statute may be distinguished to a large extent by examining the language of the statute.¹³

I intend to be guided by the aforementioned authorities in determining the objection raised by the Respondents in the instant case. I observe that section 2.2 in very clear and unambiguous terms vests discretionary power upon the Respondents to either re-employ or not to re-employ an applicant who had previously resigned from service under section 2.1, and, further sets out conditions to be satisfied in the event the Respondents decide to consider the request for re-employment made by an applicant. I am unable to identify the existence of a public duty owed to the Petitioner by the Respondents and a legal right accruing to the Petitioner to have such public duty performed in the aforementioned situation. Thus, I uphold the objection raised by the learned State Counsel for the Respondent that the application for a writ of *Mandamus* in these proceedings is misconceived in law.

¹⁰ Sunil F. A. Coorey, *Principles of Administrative Law in Sri Lanka* Vol 2 (4th ed, 2020) 987

¹¹ **Perera v Chairman, Urban Council, Dehiwela-Mount Lavinia** (1960) 62 NLR 383

¹² CA (Writ) Application No. 45/2019, decided on 30.03.2023

¹³ Ibid, at p 13 of the judgment

Conclusion and Orders of Court

For the aforementioned reasons, I am of the view that the Petitioner's resignation did not fall within the ambit of section 2.1 of Chapter XVI of the UGC Establishments Code, and, as such, the Petitioner is not entitled to seek re-employment in the 1st Respondent University in terms of section 2.2 thereof. In such circumstances, I hold that the Petitioner has failed to establish a *prima facie* case warranting the issuance of notice. As determined by me above, the Petitioner's application for a writ of *Mandamus* in these proceedings is also misconceived in law. Therefore, I decline to issue formal notice and proceed to dismiss the instant application. The parties will bear their own costs.

Application is dismissed.

Judge of the Court of Appeal

Mayadunne Corea, J.

I agree.

Judge of the Court of Appeal