

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

S.C Appeal No.111/2010  
S.C.(Spl)L.A.No.101/2010  
C.A. Writ Application No. 624/2007

*In the matter of an application  
for Special Leave to Appeal to  
the Supreme Court of the  
Democratic Socialist Republic  
of Sri Lanka.*

**DR. DARSHANA  
WICKRAMASINGHE**  
“Lions Paradise”  
Wewala, Hikkaduwa.  
**PETITIONER**

**VS.**

- 01. UNIVERSITY OF RUHUNA**
- 02. PROF. SUSIRITH  
MENDIS**  
Vice Chancellor
- 03. PROF. GAMINI  
SENANAYAKE**  
Deputy Vice Chancellor
- 04. PROF. S.W.  
AMARASINGHE**  
Dean-Humanities &  
Social Sciences
- 05. PROF.MRS. R.T.  
SERASINGHE**  
Dean-Agriculture
- 06. PROF.P.L.  
ARIYANANDA**  
Dean-Medicine
- 07. PROF.R.N. PATHIRANA**  
Dean-Science
- 08. PROF.P.R.T.  
CUMARANATUNGE**  
Dean-Fisheries and  
Marine Sciences and  
Technology
- 09. MRS.H.S.C. PERERA**  
Dean-Management and  
Finance

10. **DR. A.M.N.  
ALAGIYAWANNA**  
Dean-Engineering
11. **PROF.T.R.  
WEERASOORIYA**
12. **PROF.W.D.G.  
DHARMARATHNE**
13. **REV. WALIPITIYE  
RATNASIRI**
14. **MR. M.A. THASIM**
15. **MR. SUNIL  
JAYARATHNE**
16. **MR. RASIK SAROOK**
17. **MR.C. MALIYADDA**
18. **MR. KULATUNGE  
RAJAPAKSE**
19. **MR.CHULA DE SILVA**
20. **MR. RAJA  
HEWABOWALA**
21. **MR.H.G.S.JAYASEKERA**
22. **MR. D.W. PRATHAPASINGHE**
23. **MR.W.K.K. KUMARASIRI**
24. **MR. THILAK  
JAYARATHNE**
25. **MR.O.V.L.P. ANURA**  
Assistant Internal Auditor

All of the University of  
Ruhuna

26. **MR.GODAHEWA**  
Inquiry Officer,  
"Prasad", Talpawila,  
Kakanadura.
27. **PROF.(MRS) MIRANI  
WEERASOORIYA**  
Faculty of Medicine,  
Karapitiya,  
Galle.

**RESPONDENTS**

**AND NOW BETWEEN**

- 01. UNIVERSITY OF RUHUNA**
- 02. PROF. SUSIRITH  
MENDIS**  
Vice Chancellor
- 03. PROF. GAMINI  
SENANAYAKE**  
Deputy Vice Chancellor
- 10. DR. A.M.N.  
ALAGIYAWANNA**  
Dean-Engineering
- 12. PROF.W.D.G.  
DHARMARATHNE**
- 15. MR. SUNIL  
JAYARATHNE**
- 21. MR.H.G.S.JAYASEKERA**
- 25. MR.O.V.L.P. ANURA**  
Assistant Internal Auditor

All of the University of  
Ruhuna

- 27. PROF.(MRS) MIRANI  
WEERASOORIYA**  
Faculty of Medicine,  
Karapitiya,  
Galle.

**RESPONDENTS-  
PETITIONERS**

- 1. PROF.R.M. RANAWEERA  
BANDA**
- 2. PROF.MANGALA SOYZA**
- 3. PROF.T.R.WEERASOORIYA**
- 4. DR.P.A.JAYANTHA**
- 5. .DR.TILAK P.D.GAMAGE**
- 6. M.W. INDRANI**
- 7. PROF.R.N.PATHIRANA**
- 8. REV. MALIMBODA  
GNANALOKA THERO**

9. KAPUGAMA SARANTHISSA  
THERO
10. K.A.J.ABEYGUNAWARDENE
11. BUDDHAPRIYA NIGAMUNI
12. H.G.GUNASOMA
13. CHANDRASIRI  
HEWAKANDAMBI
14. M.G. PUNCHIHEWA

(All of University of Ruhuna)

**ADDED-PETITIONERS**

**VS.**

**DR.DARSHANA  
WICKRAMASINGHE**

“Lion’s Paradise”,  
Wewala,  
Hikkaduwa

**PETITIONER-  
RESPONDENT**

4. **PROF. S.W.AMARASINGHE**  
Dean-Humanities & Social  
Sciences
5. **PROF.MRS.R.T.  
SERASINGHE**  
Dean-Agriculture
6. **PROF.P.L. ARIYANANDA**  
Dean-Medicine
7. **PROF.R.N. PATHIRANA**  
Dean-Science
8. **PROF.P.R.T.  
CUMARANATUNGE**  
Dean- Fisheries and Marine  
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and Finance

11. PROF.T.R.WEERASOORIYA
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20. MR.RAJA HEWABOWALA
22. MR.D.W. PRATHAPASINGHE
23. MR.W.K.K.KUMARASIRI
24. MR.THILAK JAYARATHNE

All of the University of Ruhuna

**26. MR. GODAHEWA**

Inquiry Officer,  
"Prasad", Talpawila,  
Kakanadura.

**RESPONDENTS-**  
**RESPONDENTS**

**BEFORE:** Sisira J. De Abrew, J.  
K.T. Chitrasiri, J.  
Prasanna Jayawardena, PC, J.

**COUNSEL:** Shaheeda Mohamed Barrie, Senior State Counsel, for the  
Respondent-Appellant  
K.G. Jinasena for the Petitioner-Respondent.  
D.K. Dhanapala for the 17<sup>th</sup> and 19<sup>th</sup> Respondents-Respondents.

**ARGUED ON:** 13<sup>th</sup> July 2016

**WRITTEN** By the Petitioner-Respondent on 23<sup>rd</sup> August 2016

**SUBMISSIONS**

**TENDERED ON:** By the Respondent- Appellant on 25<sup>th</sup> October 2016

**DECIDED ON:** 09th December 2016

Prasanna Jayawardena, PC. J

The Petitioner-Respondent was a Lecturer (Probationary) of the Faculty of Medicine of the University of Ruhuna. His services were terminated by the University with effect from 15<sup>th</sup> May 2007.

The Petitioner-Respondent then made an Application to the Court of Appeal praying for Writs of Certiorari quashing the Charge Sheet issued to him by the University and the decision of the Council of the University to terminate his services. The Petition filed by the Petitioner-Respondent in the Court of Appeal named the University of Ruhuna as the 1<sup>st</sup> Respondent and the Vice Chancellor as the 2<sup>nd</sup> Respondent. A total of 27 Respondents were named in the Petition. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the 26<sup>th</sup> Respondent and the 27<sup>th</sup> Respondent in the Court of Appeal, filed their Statements of Objections.

On 05<sup>th</sup> May 2010, the Court of Appeal delivered its Judgment, issuing the Writs of Certiorari sought by the Petitioner-Respondent.

The University of Ruhuna and several of the other Respondents made an application to this Court seeking Special Leave to Appeal from the Judgment of the Court of Appeal. This Court granted Special Leave to Appeal on several Questions of Law, which will be referred to later on in this Judgment.

When this Appeal was argued before us, we heard learned Senior State Counsel appearing for the 1<sup>st</sup> Respondent-Appellant [University of Ruhuna] and the other Respondents-Appellants, learned Counsel appearing for the Petitioner-Respondent and learned Counsel appearing for the 17<sup>th</sup> and 19<sup>th</sup> Respondents-Respondents. The Respondents-Appellants and the Petitioner-Respondent have also filed their written submissions after the Appeal was argued.

I will first set out the facts which are relevant.

The Petitioner-Respondent is an alumnus of the University of Ruhuna, having obtained his MBBS Degree from that University in 2000. He interned at the General Hospital, Kalutara and completed his internship in 2002. On 01<sup>st</sup> April 2002, he was appointed to the post of Lecturer (Probationary) of the University of Ruhuna, which was his *alma mater*.

The Letter of Appointment issued by the University of Ruhuna to the Petitioner-Respondent was marked as “**P4**” with his Petition to the Court of Appeal. “**P4**” is signed by the Vice Chancellor of the University and expressly states that, the appointment is made by the Council of the University of Ruhuna. It is also relevant to note that, “**P4**” specifies that, the appointment is made by the Council “*in terms of the powers vested in it by Section 71 (1) of the Universities Act No. 16 of 1978, as amended by Act No. 7 of 1985 and Act No. 1 of 1995.*”

Next, it should be mentioned that, “P4” goes on to state that, the Petitioner-Respondent’s appointment was subject to a period of probation of three years – *ie:* up to 31<sup>st</sup> March 2005 – unless the appointment was confirmed earlier than that. Further, “P4” specifies that, the University had the right to terminate the Petitioner-Respondent’s services at any time prior to that without the University having to assign any reason for doing so.

The Petitioner-Respondent was attached to the Department of Parasitology of the Faculty of Medicine of the University. The 27<sup>th</sup> Respondent-Appellant, who was the Professor of Parasitology, was the Head of the Department. The Petitioner-Respondent worked under the directions of the 27<sup>th</sup> Respondent-Appellant.

At that time, the Department of Parasitology was engaged in several projects to research the incidence of Filariasis in the Southern Province. These projects were funded by research grants received from the Government and local and foreign donors. The 27<sup>th</sup> Respondent-Appellant headed the team of researchers engaged in these projects. The Petitioner-Respondent was one of the members of the team.

The day to day work on the research projects required that, members of the research team had to obtain cash advances from the Bursar of the University, from time to time, to meet expenses incurred in carrying out research work, especially field work. Naturally, the monies obtained on such cash advances had to be promptly accounted for by the submission of bills to establish the legitimate expenses on which the monies were spent and, further, any unused monies had to be returned without delay.

While working as a Lecturer (Probationary), the Petitioner-Respondent registered as a Ph.D. student at the University of Ruhuna and also sought to obtain a Diploma in Microbiology from the Post Graduate Institute of Medicine.

In September 2004, the Petitioner-Respondent was awarded a Presidential Scholarship to follow a Master’s Degree/Doctoral Degree at a foreign university. The Petitioner-Respondent claims that, soon thereafter, the cordial relationship which existed between the 27<sup>th</sup> Respondent-Appellant and him, “*disappeared*”. He also claims that, the 27<sup>th</sup> Respondent-Appellant “*insisted*” that he travels to Japan on 13<sup>th</sup> October 2004 to follow a six week training programme despite his request that he be permitted to stay in Sri Lanka with his family since his wife was pregnant and the baby was due in December.

The Petitioner-Respondent claims that, “*As soon as*” he left Sri Lanka to attend the training programme in Japan, the 27<sup>th</sup> Respondent-Appellant had ordered that a cupboard in which the Petitioner-Respondent stored documents, be opened. Shortly thereafter, on 19<sup>th</sup> October 2004, the 27<sup>th</sup> Respondent-Appellant had made a written complaint to the then Dean of the Faculty of Medicine stating that, she had “*detected some financial misappropriations in the bills submitted by Dr.D.Wickremasinghe, Lecturer Department of Parasitology. I hereby request you to get the Internal Audit, University of Ruhuna to investigate this matter and to take necessary action*”. This complaint is filed with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ Statement of Objections in the Court of Appeal marked “**2R1**”.

Acting upon the 27<sup>th</sup> Respondent-Appellant's complaint and at the request of the then Dean of the Faculty of Medicine, the then Vice Chancellor of the University directed the Assistant Internal Auditor of the University [the 25<sup>th</sup> Respondent-Appellant] to carry out an audit investigation of two of the research projects. The Report dated 10<sup>th</sup> March 2005 of the Assistant Internal Auditor was marked "**P10**" with the Petition. The entire Report with its Annexures has been filed with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Statement of Objections marked "**2R2**".

A perusal of this Report shows that, the first research project had a team of five researchers headed by the 27<sup>th</sup> Respondent-Appellant. The Petitioner-Respondent was a member of that team. The Report states that, the applicable regulations had not been followed when cash advances were taken and that two cash advances (of Rs.50,000/- and Rs.25,000/-) had not been accounted for/repaid despite a period of three-four months having lapsed. The Report also stated that, some bills submitted when accounting for cash advances had been fraudulently altered. The Report states that, a fraud had taken place.[වංචාවක් සිදුවී ඇති බව නිරීක්ෂණය කරමි.] Further, the Report states that, an unnecessarily large sum of money had been spent on the hire of vehicles for research work; that, applicable regulations had not been followed when vehicles were hired; and that some Claim Forms had been altered in a manner which made it impossible to determine the amounts of the payments made to the hirers.

Next, the Report states that, the second research project was carried out by only the Petitioner-Respondent under the supervision of the 27<sup>th</sup> Respondent-Appellant. The Report states that, here too, applicable regulations had not been followed when cash advances had been taken and one cash advance (of Rs.10,000/-) had not been accounted for/repaid despite a period of five months having lapsed. The Report also stated that, there were discrepancies and fraudulent alterations in some of the bills submitted when accounting for cash advances and, further, that several bills submitted with regard to laboratory expenses, had been fraudulently altered. The Report states that, a fraud had taken place.[වංචාවක් සිදුවී ඇති බව නිරීක්ෂණය කරමි.] The Report also states that, irregularities similar to those which had occurred in the first research project, had taken place with regard to the hiring of vehicles for this second research project too.

The Report concludes that, there had been misconduct amounting to "*negligence*" and "*lack of integrity*" (as defined in Section 2:2:3 and Section 2:2:4 of Chapter XXII of the Universities Establishment Code) on the part of "*the relevant officers*" engaged in the two research projects. The Report recommended that, disciplinary action be taken against "*the relevant officers*". [The full title of the "Universities Establishment Code" referred to in the Report is the "Establishments Code of the University Grants Commission and the Higher Educational Institutions". It will be referred to in this Judgment as the "Universities Establishments Code"].

It is to be noted that, the Report of the Assistant Internal Auditor does **not** identify the “*the relevant officers*” who committed the acts of misconduct and does **not** identify the “*the relevant officers*” against whom disciplinary action should be taken for ‘negligence’ and ‘lack of integrity’.

After the aforesaid Report of the Assistant Internal Auditor was submitted, there was a meeting of the Council of the University which took place on 18<sup>th</sup> April 2005. The relevant extract of the minutes of this meeting was marked “**P11**” with the Petition and as “**2R3**” with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ Statement of Objections.

The extract reveals that, the then Vice Chancellor [*not* the 2<sup>nd</sup> Respondent-Appellant who later assumed the office] advised the Council that, the Assistant Internal Auditor had reported that **the Petitioner-Respondent had committed a fraud**. Thereafter, the Vice Chancellor had recommended that, disciplinary action be taken against the Petitioner-Respondent. [උපකුලපති කරුණු දක්වමින් වෛද්‍ය පීඨයේ පර්යේෂණ ව්‍යාපෘතියක නිරත වෛද්‍ය දර්ශන වික්‍රමසිංහ මහතා මුදල් වංචාවක් සම්බන්ධයෙන් අභ්‍යන්තර විගණක අංශය විසින් වාර්තා කර ඇති බවත් ඒ අනුව විනයානුකූලව කටයුතු කිරීමට සිදුව ඇති බවත් පැවසීය ].

However, as observed earlier, the Report marked “**P10**” of the Assistant Internal Auditor did *not* state that the Petitioner-Respondent was guilty of a fraud. The Report only made findings with regard to “*the relevant officers*” engaged in the two research projects. It would be useful to reiterate that, the Petitioner-Respondent was one of a team of five engaged in the first research project, which was headed by the 27<sup>th</sup> Respondent-Appellant. Although the second research project was carried out only by the Petitioner-Respondent, it was supervised by the 27<sup>th</sup> Respondent-Appellant. Thus, the Assistant Internal Auditor’s Report did *not* single out or identify the Petitioner-Respondent as the miscreant.

In these circumstances, I regret to state that, the then Vice Chancellor’s statement made to the Council, was factually incorrect.

The extract of the minutes goes on to record that, the Council discussed the issue and decided that, it should act in terms of the Report of the Assistant Internal Auditor and commence disciplinary proceedings against the Petitioner-Respondent by issuing a Charge Sheet to him. [මේ සම්බන්ධයෙන් සාකච්ඡා කළ පාලක සභාව අභ්‍යන්තර විගණක පරීක්ෂණ වාර්තාවේ නිරීක්ෂණ අනුව විධිමත් විනය පරීක්ෂණයක් පැවැත්වීමට විශ්වවිද්‍යාල ආයතන සංග්‍රහයේ රෙගුලාසි අනුව විධිමත් චෝදනා පත්‍රයක් නිකුත් කිරීමට පාලක සභාව අනුමැතිය දෙන ලදී ].

However, the extract of the minutes marked “**P11**”/”**2R3**” does not record that, the Report of the Assistant Internal Auditor was placed before the Council prior to the Council taking the aforesaid decision that a Charge Sheet should be issued to the Petitioner-Respondent.

In paragraph [32] of his Petition, the Petitioner-Respondent has averred that, the Assistant Internal Auditor's Report marked "**P10**" was not placed before the Council. Although the 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Appellants have denied the averments in that paragraph, they have not stated that, the Report was placed before the Council. I would think that, *if* the Assistant Internal Auditor's Report had been placed before the Council, that fact would have been specifically recorded in the minutes. At the very least, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Appellants would have expressly averred that fact, in their Statement of Objections.

In these circumstances, it can be reasonably concluded that, the Report marked "**P10**" of the Assistant Internal Auditor was *not* placed before the Council and was *not* considered by the Council before it took a decision to commence disciplinary proceedings against the Petitioner-Respondent and issue a Charge Sheet to him.

This leads to the inescapable conclusion that, at the meeting held on 18<sup>th</sup> April 2005, the Council took its aforesaid decision solely upon the aforesaid factually incorrect statement made to the Council by the then Vice Chancellor. Thus, the Council's decision to commence disciplinary proceedings against the Petitioner-Respondent and issue a Charge Sheet to him, was taken based upon a false and mistaken premise.

At this point, it will be also relevant to highlight that, Section 8:1 read with Section 8:2 of Chapter XXII of the Universities Establishments Code makes it clear that, a decision to issue a Charge Sheet to an employee could be validly taken "*if the preliminary investigation discloses a prima facie case against the suspect person.....*". This makes it essential that, the Council should have, properly and reasonably, arrived at an objective finding that a *prima facie* case against the Petitioner-Respondent had been disclosed. Section 8:2 makes it clear that, a Charge Sheet could be properly issued only if that requirement was first satisfied.

However, in the present case, the Assistant Internal Auditor's Report marked "**P10**" [which must be taken as the report of the preliminary investigation] did *not* identify that the Petitioner-Respondent was the specific person who committed the acts of misconduct. Instead, the Report marked "**P10**" only places culpability at the door of "*the relevant officers*" and makes *no* specific finding against the Petitioner-Respondent.

In these circumstances, it appears to me that, a *prima facie* case had *not* been made out against the Petitioner-Respondent when the Council decided, on 18<sup>th</sup> April 2005, to issue a Charge Sheet to him. It will follow that, under and in terms of the requirements of Section 8:2 of Chapter XXII of the Universities Establishments Code, there was *no* valid ground upon which the Council could have properly decided to issue a Charge Sheet to the Petitioner-Respondent. As mentioned earlier, the Council took this decision based upon a false and mistaken premise.

For the aforesaid reasons, I am of the view that, the decision taken by the Council, on 18<sup>th</sup> April 2005, to issue a Charge Sheet to the Petitioner-Respondent, was ultra vires.

In any event, a Charge Sheet dated 18<sup>th</sup> August 2005 was later *issued* to the Petitioner-Respondent. It has been filed with the Petition marked “**P13**”. This Charge Sheet is signed by the then Vice Chancellor. It sets out six Charges made against the Petitioner-Respondent, which relate to the alleged alteration of bills, discrepancies in bills and discrepancies in claims for payment of expenses.

In the first paragraph of the Charge Sheet, the then Vice Chancellor has stated that, the Petitioner-Respondent is required to show cause as to why disciplinary action should not be taken and the Petitioner-Respondent be punished in terms of Section 4:1:2 of Chapter XXII of the Universities Establishment Code on account of the Petitioner-Respondent being guilty of the Charges set out in the Charge Sheet. The then Vice Chancellor goes on to state that, he issues the Charge Sheet upon directions given to him by the Council of the University under and in terms of Section 8.2 of Chapter XXII of the Universities Establishment Code.

In paragraphs [49] and [50] of his Petition to the Court of Appeal, the Petitioner-Respondent submits that the aforementioned first paragraph of the Charge Sheet marked “**P13**” makes it clear that, the proposed Charge Sheet was *not* considered and approved by the Council before it was issued by the then Vice Chancellor. In paragraphs [18] and [19] of their Statement of Objections in the Court of Appeal, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Appellants have replied with a general denial of these averments. Thereafter, the Respondents-Appellants, somewhat ambiguously, state that, “..... *all the decisions were made by the Council as is clear from the Council meetings.*” But, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Appellants have *not* averred that, in fact, the proposed Charge Sheet was placed before the Council and was considered and approved by the Council *before* it was issued by the then Vice Chancellor.

More significantly, in the usual course of procedure, it was only at a meeting of the Council, that the Council could have had the opportunity of considering and approving a proposed Charge Sheet *before* it was issued. However, the Respondents-Appellants do *not* claim that, such a meeting took place. The significance of the Respondents-Appellants’ silence is telling. Particularly so, in the light of their statement that, all decisions taken by the Council are clear from the proceedings of the *meetings* of the Council. *If*, in fact, the Council had, at a meeting, considered and approved the proposed Charge Sheet before it was issued by the then Vice Chancellor, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Appellants would have, no doubt, established that by producing an extract of the minutes of the meeting where that happened. But, they have been unable to do so.

In these circumstances, it can be reasonably concluded that, the Council did *not* consider or approve the Charge Sheet marked “**P13**” *before* it was issued by the then Vice Chancellor.

When he received the Charge Sheet, the Petitioner-Respondent denied that he was guilty of the Charges of Misconduct. This was done by his letter dated 17<sup>th</sup> November

2005 addressed to the then Vice Chancellor, which is filed with the Petition marked **“P14”**.

The letter marked **“P14”** was tabled at the meeting of the Council held on 21<sup>st</sup> November 2005. The extract of the minutes of this meeting, which has been filed with the Petition marked **“P17”** [and with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Appellant’s Statement of Objections marked **“2R7”**] reveals that, the Council considered the Petitioner-Respondent’s reply marked **“P14”** and approved the holding of a disciplinary inquiry against the Petitioner-Respondent and appointed the 26<sup>th</sup> Respondent-Respondent as the Inquiring Officer. The 26<sup>th</sup> Respondent-Respondent was an Inquiring Officer authorised by the Ministry of Public Administration and Home Affairs to conduct disciplinary inquiries of this nature. [වෛද්‍ය පීඨයේ පර්යේෂණ ව්‍යාපෘතියක අක්‍රමිකතාවයන්: මෙයට අදාළව වෝදනා පත්‍රයට පිළිතුරු ලැබී ඇති බවත්, එම පිළිතුරු පාලක සභාව සලකා බැලීමෙන් පසු මේ සඳහා විධිමත් විනය පරීක්ෂණයක් පැවැත්වීමට පාලක සභාවට අනුමැතිය දෙන ලදී. ඒ අනුව රාජ්‍ය පරිපාලන චක්‍රලේඛය අනුව එමී. ගොඩනැගිලි මහතා පත් කිරීමට ද පාලක සභාව අනුමැතිය දෙන ලදී. ]

The extract of the minutes of the meeting held on 21<sup>st</sup> November 2005 marked **“P17”** does not state that, the Charge Sheet marked **“P13”** [which had been issued by then] was placed before the Council at that meeting either. A perusal of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Appellants’ Statement of Objections, shows that, they do not claim that, the Charge Sheet was placed before the Council at this meeting and considered by the Council, before the Council decided to hold a disciplinary inquiry against the Respondent-Petitioner.

In these circumstances, it can be also reasonably concluded that, the Council did *not* consider the Charge Sheet marked **“P13”** before it decided, at its meeting held on 21<sup>st</sup> November 2005, to hold a disciplinary inquiry against the Respondent-Petitioner.

The disciplinary inquiry commenced on 12<sup>th</sup> December 2005 and ended on 22<sup>nd</sup> November 2006 with 20 dates of inquiry. The 26<sup>th</sup> Respondent-Respondent was the Inquiring Officer. The University was represented by a prosecuting officer of its choice. The Petitioner-Respondent was represented by a defending officer of his choice. The Assistant Internal Auditor, the 27<sup>th</sup> Respondent-Appellant, another member of the research team on the first research project and the Respondent-Petitioner gave evidence. 63 documents were produced in evidence. At the conclusion of the inquiry, the parties tendered their written submissions. These facts are evident from the Report dated 10<sup>th</sup> May 2007 of the Inquiring Officer, which has been filed with the Statement of Objections marked **“2R8”**. The Inquiring Officer’s Report is addressed to the then Vice Chancellor.

A perusal of this Report marked **“2R8”** shows that, the Inquiring Officer had considered the evidence placed before him and the submissions made to him. Having done so, the

Inquiring Officer has concluded that, the six Charges against the Petitioner-Respondent had *not* been proved.

In addition to this determination, the Inquiring Officer has commented that, there had been a cordial teacher-student relationship between the 27<sup>th</sup> Respondent-Appellant and the Petitioner-Respondent [ගුරුගෝල සම්බන්ධතාවයක්] but that, this relationship had soured. The Inquiring Officer has commented that, since then, the 27<sup>th</sup> Respondent-Appellant and the Petitioner-Respondent had been hostile towards each other.

Four days after the Inquiring Officer's Report marked "2R8" was submitted, it was considered by the Council at its meeting held on 14<sup>th</sup> May 2007. An extract of the minutes of the meeting relating to the Council's discussions and decision with regard to the Report and the disciplinary action to be taken against the Petitioner-Respondent, has been filed with the Petition marked "P23A" and with the Statement of Objections marked "2R9". The extract is lengthy and need not be reproduced in this Judgment.

The salient facts to be related with regard to the Council's discussions and decision, as reflected in this extract of the minutes, are:

- (i) The Vice Chancellor placed, before the Council, the Inquiring Officer's Report and the entire record of the disciplinary inquiry, including the proceedings which set out the evidence, the documents which were produced and the written submissions;
- (ii) The Council had a lengthy discussion with regard to the Inquiring Officer's Report;
- (iii) After having considered the Inquiring Officer's Report and the evidence, the Council rejected the Inquiring Officer's determination that, the first, second, fifth and sixth Charges against the Petitioner-Respondent had not been proved;
- (iv) The Council decided that, the evidence led at the disciplinary inquiry was adequate to prove the first, second, fifth and sixth Charges against the Petitioner-Respondent;
- (v) The Council decided to act in terms of Section 12.1 of Chapter XXII of the Universities Establishment Code and revise the Inquiring Officer's Report and determine that, the Petitioner-Respondent was guilty of the misconduct set out in the first, second, fifth and sixth Charges [ඉහත කී කරුණු සලකිල්ලට ගත් පාලක සභාව විශ්වවිද්‍යාලීය ආයතන සංග්‍රහයේ xxii වන පරිච්ඡේදයේ 12.1 උපවගන්තියට අනුව චූදිතට එරෙහිව ඇති චෝදනාවන් කිහිපයක් ඔප්පු කිරීමට ප්‍රමාණවත් සාක්ෂි ඉදිරිපත් වී ඇති හෙයින් පරීක්ෂණ වාර්තාව ප්‍රතිශෝධනය කිරීමට තීරණය කරන ලදී. ඒ අනුව චෝදනා අංක 1,2,5,හා 6 චෝදනා ඔප්පු වී ඇති බවට පාලක සභාව නිගමනය කරන ලදී];

- (vi) The Council decided that, since the Petitioner-Respondent was subject to a period of probation, the aforesaid misconduct on his part merited the termination of his services, in terms of Section 4:1:2 of Chapter XXII of the Universities Establishment Code;
- (vii) The Council decided to terminate the services of the Petitioner-Respondent with effect from 15<sup>th</sup> May 2005;
- (viii) The Council noted that, Ministry of Public Administration and Home Affairs prepares the list of authorised Inquiring Officers and decided to advise the Secretary of the Ministry that, the Inquiring Officer had conducted the Disciplinary Inquiry in a biased manner.

In pursuance of the aforesaid decisions, the Vice Chancellor [the 2<sup>nd</sup> Respondent-Appellant who had succeeded to that office] issued a letter dated 15<sup>th</sup> May 2015 terminating the services of the Petitioner-Respondent. This letter has been filed with the Petition marked “**P23**”.

As mentioned above, the Council purported to act in terms of the power conferred upon it by Section 12.1 of Chapter XXII of the Universities Establishments Code when the Council decided to revise the Inquiring Officer’s Report and hold that, the first, second, fifth and sixth Charges against the Petitioner-Respondent had been proved.

However, Section 12:1 and 12:2 of Chapter XXII of the Universities Establishments Code state:

*“12:1 The Disciplinary Authority is free to accept or reject or revise any or all of the findings of the Tribunal/Inquiry Officer.*

*12:2 If the Disciplinary Authority requires further clarification on any point, he may refer the matter back to the Tribunal/Inquiry Officer. Or for further inquiry as necessary. If circumstances justify, the Disciplinary Authority may quash any inquiry proceedings and order a fresh inquiry.”*

Section 12:1 certainly empowered the Council to decide to “*reject*” the Inquiring Officer’s determination that, the first, second, fifth and sixth Charges against the Petitioner-Respondent had not been proved, provided the Council had reasonable grounds to reach that conclusion.

However, I do not think that, the authority given to the Council by Section 12:1 to “*revise*” the determination of the Inquiring Officer can be reasonably or properly taken as empowering the Council to reject the Inquiring Officer’s determination and then immediately proceed to substitute its own and entirely different determination in place of the Inquiring Officer’s determination.

It is clear to me that, when the Council decided to reject the Inquiring Officer's determination, the Council was required to act in terms of Section 12:2 and refer the matter back to the Inquiring Officer for "*further inquiry*" or "*quash*" the Report marked "**2R8**" of the Inquiring Officer and order a "*fresh inquiry*".

Accordingly, I am of the view that, the aforesaid decisions taken by the Council, at its meeting on 14<sup>th</sup> May 2007, to determine that, the Petitioner-Respondent was guilty of the misconduct set out in the first, second, fifth and sixth Charges; and to, therefore, terminate his employment; were manifestly unreasonable, ultra vires and are bad in Law.

There is another aspect of the events which requires to be mentioned. This is:

- (a) As set out above, the Petitioner-Respondent had been awarded a Presidential Scholarship to follow a Masters' Degree/Doctoral Degree at a foreign university.

However, more than two months prior to the Assistant Internal Auditor finalizing his Report marked "**P10**", the then Dean of the Faculty of Medicine, [who is the 2<sup>nd</sup> Respondent-Appellant in this Appeal], had written a letter dated 04<sup>th</sup> January 2005 to the Additional Secretary to Her Excellency, the President stating that, the Petitioner-Respondent "*.... is under investigation by the University of Ruhuna for serious misappropriation of funds....and requesting that, the scholarship be withheld until a final decision can be taken after "the completion of the formal disciplinary inquiry"*".

This letter, which has been filed with the Petition marked "**P9**" reveals that, long before the Assistant Internal Auditor had submitted his Report, the 2<sup>nd</sup> Respondent-Appellant had decided that, a formal disciplinary inquiry should be held against the Petitioner-Respondent. This raises the inference that, the 2<sup>nd</sup> Respondent-Appellant had 'pre-judged' that the Petitioner-Respondent was guilty of misappropriation of funds or, at the very least, that there was *prima facie* case to such effect.

Subsequently, the 2<sup>nd</sup> Respondent-Appellant participated as a member of the Council, at the meeting held on 21<sup>st</sup> November 2005, when the Council decided to hold a disciplinary inquiry against the Petitioner-Respondent.

The 2<sup>nd</sup> Respondent-Appellant was later appointed Vice Chancellor and he presided over the Council, at the meeting held on 14<sup>th</sup> May 2007, when the Council decided to reject the Report of the Inquiring Officer, hold the Petitioner-Respondent guilty of four Charges and terminate his services.

I am of the view that, in the aforesaid circumstances, the 2<sup>nd</sup> Respondent-Appellant should not have participated as a member of the Council, at the

meeting held on 21<sup>st</sup> November 2005. In particular, the 2<sup>nd</sup> Respondent-Appellant should not have presided over the Council, at the meeting held on 14<sup>th</sup> May 2007. The Council and the 2<sup>nd</sup> Respondent-Appellant should have observed the golden rule set out in Lord Hewart's dictum in *R vs. SUSSEX JUSTICES* [1924 1KB 256 at p.259] that, "*Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice*";

- (b) Next, long before the Council decided to hold a disciplinary inquiry against the Petitioner-Respondent, the 27<sup>th</sup> Respondent-Appellant, in her capacity as the Head of the Department of Parasitology, had written two letters dated 04<sup>th</sup> August 2005 and 07<sup>th</sup> September 2005 to the Post Graduate Institute of Medicine stating that, she was unable to recommend the Petitioner-Respondent to register to obtain a Post Graduate Diploma in Medical Microbiology. The 27<sup>th</sup> Respondent-Appellant has gone on to state, with regard to the Petitioner-Respondent, "*Very soon he will face a formal inquiry by the university*" and that, the 27<sup>th</sup> Respondent-Appellant "*... is unable to give a good certificate or recommend a fraudulent Probationary Lecturer of this caliber ....*". These two letters have been filed with the Petition marked "**P12**" and "**P15**".

These letters marked "**P12**" and "**P15**" reveal that, the 27<sup>th</sup> Respondent-Appellant had known that a disciplinary inquiry would be held against the Petitioner-Respondent long before the Council had decided to do so. The letters also reveal that, even before a disciplinary inquiry reached a finding on whether or not the Charges against the Petitioner-Respondent had been established, the 27<sup>th</sup> Respondent-Appellant did not hesitate to state to the Post Graduate Institute of Medicine that, the Petitioner-Respondent was a fraudulent man of low caliber.

The 27<sup>th</sup> Respondent-Appellant wrote another letter dated 09<sup>th</sup> May 2007 to the Vice Chancellor [the 2<sup>nd</sup> Respondent-Appellant]. This letter is part of the document marked "**27R12**" filed with her with the Statement of Objections in the Court of Appeal. In this letter, the 27<sup>th</sup> Respondent-Appellant makes several complaints against the Petitioner-Respondent. She goes on to state that, "*I was not at all satisfied about the conduct of the Inquiry Officer who appeared to be biased towards the accused and obstructive towards me*" and "*At this juncture I wish to document that I am inclined to have no faith in the inquiry and the final report to be submitted*".

The 27<sup>th</sup> Respondent-Appellant has despatched copies of this letter to all the members of the Council. This letter has sent just a few days before the Council was scheduled to meet on 14<sup>th</sup> May 2007.

The 27<sup>th</sup> Respondent-Appellant was a senior academic holding professorial rank who undoubtedly wielded considerable influence in the

University of Ruhuna. Further, the 27<sup>th</sup> Respondent-Appellant's husband, who is the 11<sup>th</sup> Respondent-Respondent, was also a professor at the same University and was a member of the Council of the University.

In these circumstances, it is not unreasonable to suspect that, the 27<sup>th</sup> Respondent-Appellant's unfavourable perception of the Petitioner-Respondent is likely to have influenced the manner in which the Council dealt with him. Further, it is very probable that, the 27<sup>th</sup> Respondent-Appellant's aforesaid letter dated 09<sup>th</sup> May 2007 was in the minds of the members of the Council when they decided, on 14<sup>th</sup> May 2007, to reject the Report of the Inquiring Officer, hold the Petitioner-Respondent guilty of four Charges and terminate his services.

- (c) A perusal of the minutes of the meeting of the Council held on 14<sup>th</sup> May 2007 shows that, the 11<sup>th</sup> Respondent-Respondent [the 27<sup>th</sup> Respondent-Appellant's husband] recused himself from participating at that meeting when the issue of the Petitioner-Respondent was discussed. Thereby, the 11<sup>th</sup> Respondent-Respondent himself has recognised fact that, he should not participate in discussions of the Council regarding disciplinary action being taken against the Petitioner-Respondent.

However, prior to that, the 11<sup>th</sup> Respondent-Respondent did participate in the meetings of the Council held on 18<sup>th</sup> April 2005 and 21<sup>st</sup> November 2005 at which the Council decided to issue a Charge Sheet to the Petitioner-Respondent and to hold a Disciplinary Inquiry against him.

It can be reasonably concluded that, the circumstances set out in (a), (b) and (c) above, when taken together, are sufficient to raise a suspicion that, there was real likelihood of bias in the manner in which disciplinary action was taken by the Council against the Petitioner-Respondent.

In this connection, it is apt to cite Fernando J in DISSANAYAKE vs. KALEEL [1993 2 SLR 135 at p.204] who stated that, a likelihood of bias would be held to exist, "*..... if there are circumstances which in the opinion of the court would lead a reasonable man to think it likely or probable that the adjudicator would or did favour one side unfairly*".

In his Petition to the Court of Appeal, the Petitioner-Respondent urged that, he was entitled to the aforesaid Writs of Certiorari on, *inter alia*, the following grounds:

- (a) That, since he was a "teacher" employed by the University as defined in Section 147 of the Universities Act No. 16 of 1978, his 'Disciplinary Authority' was the Council of the University, as specified by Section 45 (2) (xii) of the same Act.

The Petitioner-Respondent contended that, therefore, the Council was mandatorily required to have first considered and approved the Charge Sheet *before* it was issued. He submits that, the Council could not lawfully

delegate the power of issuing the Charge Sheet to the Vice Chancellor. He submitted that, however, the Council had not considered and approved the Charge Sheet *before* it was issued and that, this omission rendered the Charge Sheet marked “**P13**” null and void;

- (b) That, the Council had misinterpreted evidence and failed to consider relevant evidence, before taking its decision to terminate the employment of the Petitioner-Respondent and that this decision of the Council was unreasonable, arbitrary and illegal;
- (c) That, the 2<sup>nd</sup> Respondent-Appellant and the 27<sup>th</sup> Respondent-Appellant were biased against the Petitioner-Respondent and that they unduly influenced the Council against the Petitioner-Respondent and that, in these circumstances, the decision of the Council was biased;
- (d) That, the fact that, the 11<sup>th</sup> Respondent-Appellant [who was the husband of the 27<sup>th</sup> Respondent-Appellant] participated in the meetings of the Council held on 18<sup>th</sup> April 2005 and 21<sup>st</sup> November 2005, violated the Rule of Natural Justice enunciated in the maxim “*Nemo iudex in sua causa*”;

In their Statement of Objections in the Court of Appeal, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Appellants urged, *inter alia*: that, since the Petitioner-Respondent was on probation at the time his employment was terminated, he is not entitled to any reliefs; that, “*it was the decision of the Council as a whole, to issue a charge sheet to the Petitioner based on the Audit Report*” and “*all the decisions were made by the Council as is clear from the Council meetings*” and “*at the 231<sup>st</sup> Council meeting the Council approved the decision to issue charges*”; that, the 11<sup>th</sup> Respondent-Respondent did not “*get involved in*” the decisions taken by the Council to issue a Charge Sheet to the Petitioner-Respondent and to hold a disciplinary inquiry against him; and that, the Council had considered and discussed the Inquiring Officer’s Report and the evidence and was entitled to act in terms of Section 12.1 of Chapter XXII of the Universities Establishment Code and revise the Inquiring Officer’s determinations and find the Petitioner-Respondent guilty of the first, second, fifth and sixth Charges.

In a lengthy Statement of Objections in the Court of Appeal, the 27<sup>th</sup> Respondent-Appellant takes up positions on the same lines as those urged by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents-Appellants. She also states that, the Inquiring Officer was hostile to her and was partial towards the Petitioner-Respondent. The 27<sup>th</sup> Respondent-Appellant makes several allegations against the professionalism and competence of the Petitioner-Respondent. She highlights her own contribution to the research projects conducted by the Department of Parasitology, her many academic achievements and her high academic status and renown. She states that, she duly reported the irregularities she detected which indicated financial misappropriations by the Petitioner-Respondent. She stated that, she had a duty to write the letters marked “**P12**” and “**P15**”.

In his Statement of Objections in the Court of Appeal, the 26th Respondent-Respondent [Inquiring Officer] states that he properly analyzed the evidence placed before him at the disciplinary inquiry and correctly determined that, the Charges against the Petitioner-Respondent had not been proved.

In the Court of Appeal, Sri Skandarajah J held that, the failure of the Council of the University to consider or approve the Charge Sheet marked “**P13**” before it was issued by the then Vice Chancellor, resulted in the Charge Sheet having been issued without proper authority and *ultra vires*. In arriving at this determination, the learned Judge followed the decision of this Court in JINASENA vs. UNIVERSITY OF COLOMBO [2005 3 SLR 9] and held that, the Council was the ‘disciplinary authority’ in terms of the Universities Act No. 16 of 1978 and that, the Council has not delegated its disciplinary authority to the Vice Chancellor.

On that basis, His Lordship held that, all proceedings and decisions arrived at on the basis of the Charge Sheet marked “**P13**” were a nullity. Accordingly, the Court of Appeal issued the Writs of Certiorari prayed for by the Petitioner-Respondent quashing the Charge Sheet, the decision to terminate the services of the Petitioner-Respondent and the letter of termination.

In view of the aforesaid determination, Sri Skandarajah J did not proceed to consider the other grounds urged by the Petitioner-Respondent.

This Court has given the Respondents-Appellants Leave to Appeal on the following nine Questions of Law:

- (i) Has the Court of Appeal erred in law by misapplying the dicta of the Supreme Court in JINASENA vs. UNIVERSITY OF COLOMBO in holding that the Charge Sheet must be framed by the University Council ?
- (ii) Has the Court of Appeal erred in fact and in law in holding that the Respondent has not annexed the minutes of the 231<sup>st</sup> Council Meeting and drawing an adverse inference therefrom, when in fact the said minutes were annexed marked as “**2R3**” ?
- (iii) Has the Court of Appeal erred in law in imposing a precondition to the issuance of Charge Sheets, not sanctioned or contemplated by statute ?
- (iv) Has the Court of Appeal erred in fact and in law in failing to appreciate that the Council had in fact decided to issue a Charge Sheet in terms of “**2R3**” ?
- (v) Has the Court of Appeal erred in fact and in law in failing to consider the provisions of Section 8.2 of Chapter XXIII of the Universities Establishments Code, wherein the Chief Executive Officer of a Higher Educational Institute is specifically empowered to issue a Charge Sheet ?

- (vi) Has the Court of Appeal erred in fact and in law in failing to consider whether no prejudice had been caused to the Respondent by the procedure followed and that consequently the Respondent was not entitled to any prerogative relief, even if there had been a procedural impropriety ?
- (vii) Has the Court of Appeal erred in fact and in law in failing to consider the fact that the Petitioner-Respondent had approbated and reprobated the applicability and validity of the Universities Establishments Code and as such was not entitled to discretionary relief ?
- (viii) Has the Court of Appeal erred in fact and in law in failing to consider whether the Respondent's conduct in relation to the Charge Sheet was such that it precluded him from raising an objection and obtaining prerogative relief ?
- (ix) Has the Court of Appeal erred in fact and in law in failing to consider whether in the totality of circumstances of this case, the Petitioner-Respondent was accorded treatment in consonance with the rules of natural justice ?

**Questions of Law No.s (i), (iii), (iv), (v) and (viii)** all raise the issue of whether the aforesaid determination of the Court of Appeal was correct in fact and in Law. Therefore, these five Questions can be conveniently considered together.

The Petitioner-Respondent was employed by the University of Ruhuna as a “*teacher*” within the meaning of the definition in Section 147 of the Universities Act.

S: 45 (2) (xii) of the Universities Act specifies that, it is the Council of the University which “..... *shall exercise, perform and discharge ..... the powers, duties and functions ..... to appoint persons to, and to suspend, dismiss or otherwise punish persons in the employment of, the University: Provided that, except in the case of Officers and teachers, these powers may be delegated to the Vice Chancellor: .....*”

Thus, it is very clear that, by operation of the provisions of the Universities Act, the Disciplinary Authority in respect of the Petitioner-Respondent was the Council of the University of Ruhuna. It is equally clear that, the Council is prohibited from delegating its disciplinary powers in respect of the Petitioner-Respondent since he was a “*teacher*”. This position is reflected in Section 1:1 and 1:1 (b) of Chapter XXII of the Universities Establishments Code which specifies that, the Council of an University will be the Disciplinary Authority in respect of all staff of that University and that, a Council cannot delegate its disciplinary powers in respect of “*teachers*”.

The phrase “..... *the powers, duties and functions ..... to appoint persons to, and to suspend, dismiss or otherwise punish persons.....* “ used in S: 45 (2) (xii) of the Universities Act refers to the imposition of the punishment, which is the final step of disciplinary action taken against an employee of an University. It is only logical that, the authority which is vested with the power, duty and function of taking that final step in disciplinary action, will also be the authority vested with the power, duty and function of

taking the preceding steps which are required when disciplinary action is taken. It would be entirely illogical to contend otherwise.

This principle was expressed by the Madhya Pradesh High Court in SHARDUL SINGH vs. THE STATE OF MADHYA PRADESH [AIR 1966 MP 193 at p.195] where Dixit CJ stated *“Now the exercise of disciplinary powers, or the field of disciplinary action, is not confined merely to the passing by the appointing authority of an ultimate order imposing disciplinary punishment against the employee. It extends even to the very initiation of disciplinary action against a civil servant or employee by framing charges against him and holding, or directing the holding of an enquiry into those charges. The framing of charges, the holding of an enquiry into them, the suspension of the civil servant during the enquiry, the notice to show cause, are all steps in the exercise of the disciplinary powers. These steps must be taken by the disciplinary authority and not by a delegate of that authority”*.

The issuing of a Charge Sheet is one of the main steps in the process of disciplinary action. The Charge Sheet sets out and defines the scope of the alleged acts of misconduct which have necessitated taking disciplinary action. All subsequent steps in the process of disciplinary action flow from and are usually circumscribed by the Charges set out in the Charge Sheet. The punishments that may be imposed at the end of the disciplinary action, are dependent on the Charges sets out in the Charge Sheet.

Therefore, on an application of the aforesaid principle, it is clear that, in the present case, the Charge Sheet marked **“P13”** had to be considered and approved by the Council since the Council was the Disciplinary Authority in respect of the Petitioner-Respondent. This had to be done *before* a Charge Sheet was issued by the Vice Chancellor. It is only if that was done that, the Charge Sheet marked **“P13”** could be duly and lawfully issued.

However, earlier in this Judgment, I have held that, the material placed before us establishes that, the Council did *not* consider or approve the Charge Sheet marked **“P13”** *before* it was issued by the then Vice Chancellor.

This omission rendered the Charge Sheet marked **“P13”** liable to be quashed since it was issued ultra vires by the Vice Chancellor.

I find authority for this conclusion in the decision of this Court in JINASENA vs. UNIVERSITY OF COLOMBO [2005 3 SLR 9] where it was held that, in a case in which the Council of the University of Colombo was the disciplinary authority of an employee, the fact that the Council had not approved the Charges set out in the Charge Sheet marked P9 issued to that employee, invalidated that Charge Sheet. S.N.Silva CJ stated [at p.12], *“The Council could not have approved of any charges that were not submitted to it”* and *“In the circumstances, we are of the view that the Petitioner has established that the decisions in P8 and P9 have not flowed from the proper authority namely the*

*Council of the University and as such are ultra vires and liable to be quashed by a Writ of Certiorari”.*

On the same lines, in SHARDUL SINGH vs. THE STATE OF MADHYA PRADESH, Dixit CJ stated [p.195], “..... *the disciplinary authority, if it decides that disciplinary action should be taken against a civil servant, must itself frame the charges and hold an enquiry into them or direct another to hold an enquiry into those charges.*”.

At this point, it will be useful to clarify that, when the Madhya Pradesh High Court stated the Disciplinary Authority must itself “*frame*” the Charges, it should be understood that, the Disciplinary Authority need not perform the task of actually drafting or framing the Charges itself. This may be lawfully done by another person. However, what must happen is that, once the Charges have been drafted or framed, they must be then placed before the Disciplinary Authority for its consideration and approval.

The Respondents-Appellants have submitted that, the fact that the Council decided, at the meeting held on 18<sup>th</sup> April 2005 to *issue* a Charge Sheet to the Petitioner-Respondent, was adequate authority for the Vice Chancellor to have lawfully and validly issued the Charge Sheet marked “**P13**”. This submission has no merit since it is patently clear that, a decision that a Charge Sheet should be *issued* to an employee is very different to an approval of the Charges to be set out in the proposed Charge Sheet. It is the *contents* of the Charge Sheet – namely the Charges set out in it – which must be considered and approved by the Council before the Charge Sheet is issued. As mentioned earlier, there is no indication whatsoever that, at the meeting held on 18<sup>th</sup> April 2005 or at any point thereafter, the Council considered and approved the Charges set out in the Charge Sheet marked “**P13**”.

The Respondents-Appellants have also submitted that, Section 8.2 of Chapter XXIII of the Universities Establishments Code specifically empowered the Vice Chancellor to issue a Charge Sheet and that, therefore, the Council was not required to consider and approve the Charge Sheet marked “**P13**” . I cannot agree with this contention since, as stated earlier, Section 45 (2) (xiii) of the Universities Act and Section 1:1 and 1:1 (b) of Chapter XXII of the Universities Establishments Code both specifically prohibit the Council from delegating its disciplinary powers in respect of “*teachers*”.

In the light of this specific prohibition on the delegation of disciplinary powers, it is evident that, Section 8.2 only refers to the fact that, after a Charge Sheet has been considered and approved by the lawful Disciplinary Authority, the Charge Sheet is to be signed and issued by the Vice Chancellor. Where the Disciplinary Authority is the Council, Section 8.2 cannot be reasonably interpreted to mean that, the Vice Chancellor can validly and lawfully issue a Charge Sheet unless the Charge Sheet has been first considered and approved by the Council. This is in line with the general principle enunciated in decisions such as GENERAL MEDICAL COUNCIL v. U.K. DENTAL BOARD [1936 Ch.41] that, a restrictive interpretation will be usually accorded to provisions which deal with the delegation of disciplinary functions.

Since the Charge Sheet marked “**P13**” was the foundation of the process of disciplinary action which followed, the fact that “**P13**” was issued ultra vires and is a nullity, will render invalid all the proceedings and decisions which are based on “**P13**” or are a result of “**P13**”.

Further, since the Charge Sheet marked “**P13**” was issued ultra vires and is a nullity, the fact that, the Petitioner-Respondent faced the disciplinary inquiry which followed, cannot bestow validity upon “**P13**”. The Petitioner-Respondent had no choice but to face the Inquiry.

Thus, I am in respectful agreement with Sri Skandarajah J when His Lordship held, *“In this instant application too the charge sheet issued to the Petitioner was not approved by the Council hence the charge sheet was not issued by the proper authority and it is ultra vires. The acquiescence of the Petitioner cannot give validity to a charge sheet that is ultra vires. The proceedings and the decisions arrived at on the basis of this charge sheet are a nullity.”*

Accordingly, I answer Questions of Law No.s (i), (iii), (iv), (v) and (viii) in the negative.

**Questions of Law No.s (vi) and (ix)** raise issues of whether the Petitioner-Respondent was not entitled to prerogative relief for the reason that, no prejudice had been caused to the Petitioner-Respondent during the course of the disciplinary action taken against him and whether the rules of natural justice and law had been observed.

As stated above, I am of the view that, decision taken by the Council, on 18<sup>th</sup> April 2005, to issue a Charge Sheet to the Petitioner-Respondent and the decisions taken by the Council, on 14<sup>th</sup> May 2007, to determine that, the Petitioner-Respondent was guilty of the misconduct set out in the first, second, fifth and sixth Charges; and to, therefore, terminate his employment; are also ultra vires and bad in Law. Further, as stated above, there are sufficient grounds to raise a suspicion that, there was real likelihood of bias in the manner in which disciplinary action was taken by the Council against the Petitioner-Respondent.

Accordingly, I answer Questions of Law No.s (vi) and (ix) in the negative.

In the aforesaid circumstances, I need not consider the remaining Questions of Law No.s (ii) and (vii).

The Respondents-Appellants have also submitted that, the Petitioner-Respondent being a probationer at the time his employment was terminated, disentitled him from obtaining any relief and, further, that, the Council had ratified the Charge Sheet marked “**P13**”. However, this Court has not given the Respondents-Appellants leave to appeal on these issues. Therefore, I am not required to consider these issues.

For the aforesaid reasons, the Appeal is dismissed. The 1<sup>st</sup> Respondent-Appellant will pay the Petitioner-Respondent Costs in a sum of Rs.50,000/-.

Judge of the Supreme Court

Sisira J. De Abrew J.  
I agree

Judge of the Supreme Court

K.T.Chitrasiri J.  
I agree

Judge of the Supreme Court