

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

**In the matter of an application under  
and in terms of Articles 17 and 126 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka**

Arabagedera Sanjeewa Ravindra  
Rajapakse,  
No.130, Kotakadeniya Road,  
Weligalla

**PETITIONER**

S.C.F.R. Application No.211/2010

Vs.

1. The University of Peradeniya  
Peradeniya.
2. Prof. S. B. S. Abayakoon,  
Vice Chancellor,
3. Prof. K. Premaratne,  
Deputy Vice Chancellor,
4. Dr. K. Samarasinghe,  
Dean/Agriculture,
5. Dr. A. S. P. Abayaratne,  
Dean/ Arts,
6. Prof. E. A. P. D. Amaratunga,  
Dean/ Dental Sciences,
7. Prof. W. M. S. B. Weerakoon,  
Dean/ Engineering,
8. Dr. A. G. Buthpitiya,  
Dean/ Medicine,

9. Prof. S. H. P. P. Karunaratne  
Dean/ Sciences,
10. Prof. P. Abeynayake,  
Dean/ Veterinary Medicine and  
Animal Science,
11. Prof. N. V. I. Ranatunga,  
Senate Representative,
12. Prof. R.L. Wijeyeweera,  
Senate Representative,
13. Prof. B. Hewavitarane,
14. Prof. A. D. P. Kalansooriya,
15. Prof. K. N. O. Dharmadasa,
16. Dr. Kapila Gunawardena,
17. Dr. Dushantha Medagedara,
18. Mr. W. M. Jayawardena,
19. Dr. P. Ramanujam,
20. Dr. S. B. Ekanayake,
21. Mr. D. Mathi Yugarajah,
22. Prof. K. Tennakoon,
23. Mr. W. L. L. Perera,
24. Mr. Lionel Ekanayake,
25. Mr. L. B. Samarakoon,

26. Mr. Mohan Samaranayake,  
  
All of University of Peradeniya,  
Peradeniya.
27. Mr. L. R. K. Perera,  
Head of Department,  
Department of Geology,  
University of Peradeniya,  
Peradeniya.
28. Mr. Dodanwela  
Acting Registrar,  
University of Peradeniya,  
Peradeniya.
29. Prof. H. M. N. Bandara,  
Faculty of Science,  
University of Peradeniya,  
Peradeniya.
30. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**BEFORE:** ALUWIHARE, PC. J  
ABEYRATHNE, J  
GOONARATNE, J

**COUNSEL:** Dr. Sunil Cooray for the Petitioner  
Shaheeda. Barrie, SSC, for the Attorney General

**ARGUED ON:** 16.12.2015, 19.01,2016 and 16.02.2016.

**DECIDED ON:** 28. 11. 2016

## **ALUWIHARE, PC. J**

When this matter was supported on 23<sup>rd</sup> March, 2010 leave to proceed was granted for alleged infringement of fundamental rights under Articles 12 (1) and 14 (1) g of the Constitution.

The background facts of this case are as follows:-

The Petitioner was attached to the 1<sup>st</sup> Respondent University (hereinafter referred to as the University) as a Trainee Technical Officer at the time relevant to the alleged infringement. The Petitioner asserts that having joined the University of Wayamba as a Grade 3 clerk in 2001, he was appointed as a Trainee Technical Officer with effect from 15<sup>th</sup> March, 2005.

It is the position of the Petitioner that he was successful in the examination conducted by the University for the selection of Technical Officers (Training) and was also successful at the interview and consequently was appointed to the said post. In terms of the letter of appointment (P3) the appointment is subject to a probation period of 3 years. He had been assigned to the Department of Geology and had worked under the supervision of the 9<sup>th</sup> and the 27<sup>th</sup> Respondents.

Although the Petitioner has asserted that (Paragraph 16 (d) of the petition) in terms of paragraph 3 of the letter of appointment the Petitioner is required to discharge his duties under a supervisor assigned to him by the University or by the 9<sup>th</sup> or the 27<sup>th</sup> Respondents, paragraph 3 of the letter of appointment only states that his appointment is subject to an evaluation, under and in terms of the rules applicable to Higher Education Institutes and University Grants Commission.

The Petitioner also asserts that in terms of paragraph 10 of the letter of appointment (P3) he was neither assigned to work under a Supervisor nor was he given a list of

duties to be performed. He further complains that as per the conditions of the letter of appointment there were no training programmes arranged for him.

It appears upon perusal of paragraph 10 of P3 that this assertion is a misconception as far as the Petitioner is concerned, in that the said paragraph only casts a duty upon the Petitioner to carry out duties assigned to him by an official to whom such authority is delegated by the Head of the Department.

The Petitioner's perception as to the conditions of the letter of appointment is significant in deciding the issues of this case. It appears that certain events as unfolded by the Petitioner have a direct bearing, on the perception of the aforesaid conditions in the mind of the Petitioner.

The gravamen of the Petitioner's complaint is that the 27<sup>th</sup> Respondent who was the head of the Department of Geology failed to provide him with a list of instructions or to provide him with an environment conducive to work.

The Petitioner complains that the 27<sup>th</sup> Respondent directed him to perform certain duties that are assigned to labourers, in addition to the laboratory work. In elaborating this, the Petitioner states that he was called upon to open and shut the doors and windows of the laboratories, and entrusted duties such as moving gas cylinders, photocopying administrative documents and delivering official letters within the campus, etc.

The Petitioner appears to have been distressed by this situation and had complained to the 27<sup>th</sup> Respondent that it was unfair to be assigned work that is performed by labourers and had requested that he be given a duty list. The Petitioner had stated that he refused and refrained from delivering letters within the campus when he was instructed to do so by the 27<sup>th</sup> Respondent.

The Petitioner, subsequent to these events had requested for a transfer to the faculty of medicine, but the transfer had not been approved by the 9<sup>th</sup> and the 27<sup>th</sup> Respondents on the ground that there was no replacement.

The Petitioner also alleges, that he along with another employee of the University were nominated for a computer training programme, but later the training was denied to him. The Petitioner further alleges that at one point several new appointments were made to the post of Technical Officer, yet the 27<sup>th</sup> Respondent refused to accept a new recruit to his department, which the Petitioner asserts would have enabled him in turn to get a transfer to the Faculty of Medicine.

Petitioner also alleges that his period of probation/training was extended by one year. By letter dated 12<sup>th</sup> February, 2007 the Deputy Registrar had informed the Petitioner that during the designated period, the degree of training he had is unsatisfactory and for that reason his training/probation period is being extended up to 15<sup>th</sup> March, 2008 (P8).

Subsequent to receiving the letter P8 the Petitioner had faced another written test with a view to getting him confirmed in his job. He states however that he was informed of the test only on the morning of the day the test was held. In an interview held subsequent to the written test, petitioner says he was informed by the 9<sup>th</sup>, 27<sup>th</sup> and the 29<sup>th</sup> Respondents that his public relations were not satisfactory.

Petitioner alleges that there is no provision to hold a written test in terms of the Scheme of Recruitment for the post of Technician that is the Commission Circular No. 622 of the University Grants Commission (P10), and according to the same, a recommendation for a permanent appointment shall be made after oral and or practical test by a committee. The Petitioner states that he brought this fact to the attention of the interview panel, but was of no avail.

On the 12<sup>th</sup> February, 2010 the Petitioner alleges that he was served with a letter dated 9<sup>th</sup> February, 2010 from the 28<sup>th</sup> Respondent, informing him that the Governing Council of the University had decided to terminate his services (as a Trainee Technician) and the Petitioner have to revert to his original post of Grade III Clerk (P12).

The Petitioner asserts that apart from the irregularities committed by the 9<sup>th</sup> and 27<sup>th</sup> Respondents and the failure on their part to follow the procedure laid down by the University Establishment Code, the decision of the University Governing Council that the Petitioner revert to the post of Clerk Grade III is unreasonable and capricious and was violative of the fundamental rights of the Petitioner guaranteed under Article 12 (1) and 14 (g) of the Constitution.

In response to the allegation referred to by the Petitioner, the 2<sup>nd</sup> Respondent Vice Chancellor (hereinafter referred to as the Vice Chancellor) refuting all allegations in general had taken up the position that due to the inability on the part of the Petitioner to demonstrate a basic level of competence to carry out his duties, it was not possible to confirm the Petitioner in the post of Technical Officer. The Vice Chancellor states that the decision to extend the probation period of the Petitioner was taken by members of the Selection Committee sequel to the evaluation of the Petitioners' performance at the interview and the written examination which is borne out by the report of the Selection Committee (2R7). The 9<sup>th</sup> Respondent, the Dean of the Faculty of Science, 27<sup>th</sup> Respondent, Head of Department of Geology and the 29<sup>th</sup> Respondent, Head of Department of Chemistry were the members of the selection committee.

The Vice Chancellor has taken up the position that 'trainees' are not given a list of duties and had stated that even the members of the staff open and close doors when the occasion so demands. The Vice Chancellor asserts that the Petitioners' request for transfer to the Faculty of Medicine could not be obtained as the Petitioner had

made the request on 28<sup>th</sup> April, 2005 (P5) and he had been appointed as a trainee only on 15<sup>th</sup> March, 2005, a period little over a month after assuming duties. The Vice Chancellor points out in his objections, that no special preference was given to Mr. Gamage over the Petitioner with regard to computer training. The reason he adduces for the selection of Mr. Gamage is that, Gamage was an officer confirmed in his post, and had worked in the Department of Geology since 2003 and Mr. Gamage was selected for computer training a considerable time after he was confirmed in the post.

The Vice Chancellor had also pointed out that the work of an officer on probation has to be evaluated during the period of probation on a continuing basis and effecting transfers during the period of training is not a practice that is encouraged by the University.

The Vice Chancellor asserts that even after the extended period of probation, the Petitioner's practical knowledge was assessed by P9, and to maintain fairness in the process of assessment each of the 11 questions on P9 were set and examined by different members of the relevant Departments, and the Petitioner failed to obtain satisfactory marks.

The Vice Chancellor had, in his affidavit stated that, when it comes to an internally recruited trainee, as per the provisions of circular No.622 of the University Grants Commission, if found unsatisfactory during the period of probation, the trainee has to revert to his previously held post, as happened in the case of the Petitioner.

The Petitioner had also complained that he was called upon to answer a 'question paper' in 2008 to be confirmed in the Post of Technical Officer Grade II B, and when he failed the test on the first occasion, he was afforded another opportunity to sit the examination again in 2009.

Before I deal with the specific allegations leveled by the Petitioner against some of the Respondents, I wish to note that this court would interfere only if the alleged executive and administrative action, (in the instant case the decisions) on the part of the Respondents are illegal and/or arbitrary and the burden of establishing that was so, is on the Petitioner. As held in the case of Dalpat Abasaheb v. B. S. Mahajan AIR 1990 SC 435 “ *it is not the function of Court to hear appeals over the decision of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proves mala fides affecting the selection etc.*”

Apart from the many instances of friction over administrative issues, between the Petitioner and the 27<sup>th</sup> Respondent and some other members of the University staff, the only instance on which an irregularity is alleged is in regard to the methodology used to assess the competence of the Petitioner to be confirmed in his post.

The Petitioner alleges that he cannot be subjected to a ‘written’ test as per the terms of recruitment, but only to an oral/practical test. The Petitioner alleges that he was made to sit for a test where he was called upon to provide written answers to questions and it is not a “practical” test as contemplated in the Scheme of recruitment. Further the Petitioner alleges that he was called upon to answer the questions at short notice and he was unable to get ready.

The Petitioner has pointed out that, in terms of the Scheme of Recruitment for the post of Technical Officer, the recommendation for permanent appointment shall be made after oral/practical test by a Committee consisting of the Dean of the Faculty,

Head of the Department and one other Head of a Department nominated by the faculty.

Refuting the allegation referred to above, the 27<sup>th</sup> Respondent had stated that the examination was held on a date and a time that was mutually agreed upon by the Petitioner and the University officials, and the questions were based on practical aspects on which, the Petitioner was required to acquire knowledge. Upon perusal of the question papers marked and produced as P6 and P9 it is quite evident that the position taken up by the 2<sup>nd</sup> Respondent is correct.

The Professor of Geology and an employee attached to the Department of Geology have sworn affidavits (2R9 (b) and 2R9 (a) respectively) to the effect that the Petitioner was known to them as a Trainee Technical Officer attached to the Department of Geology and that the Petitioner had not shown any interest in learning the laboratory techniques and his conduct did not show any enthusiasm to learn the work of the Department of Geology.

The Petitioner had complained that he was called upon to photocopy administrative documents and deliver letters and had referred to such tasks as “work that was to be performed by the labourers”.

The Petitioner was only a “Trainee” Technical Officer under probation and was going through a period of learning or acclimatising himself with the work of the relevant Department, and this does not appear to me, the correct spirit in which a trainee should attend to duties assigned, during the period of training.

The Petitioner also complains that he was not given a “List of duties” to be performed during the probationary period. Here again I do not think a “trainee” can demand that he be given a list of duties and it would not be practically possible

to have an exhaustive list of such duties which the Petitioner is required to be acclimatised to.

I have considered the numerous documents filed on behalf of the Petitioner as well as the documents filed on behalf of the Respondents. Reference, however, to each and every document does not seem necessary in this judgment considering the triviality of their relevance. Suffice it to state, that it is apparent from the facts placed before court that the working relationship between the staff of the University and the Petitioner however had reached a low ebb. The document filed by the Petitioner marked X7 amply reflects that situation. For a seat of higher learning such as a university, its smooth functioning is of paramount importance and the academic and the administrative staff are the best judges of how that could be achieved. .

Although it may seem unjust to impose an undue burden upon a Petitioner where an infringement of fundamental right is alleged, in proof of the same, the Court necessarily must evaluate the material placed before it, with caution, to determine, whether the facts alleged have been established with a fair degree of probability.

At its best, the series of events narrated by both the Petitioner and the Respondents are allegations and counter allegations without sufficient proof to come to a firm finding.

In the circumstances, I hold that none of the alleged violations of fundamental rights have been proved as against any of the Respondents, and I dismiss this application.

In the course of the hearing it was submitted that the 1st Respondent University is prepared to let the Petitioner revert to his former post.

Dismissal of the instant application of the Petitioner should not be considered as an impediment or a fetter on the part of the 1<sup>st</sup> Respondent University in the exercise of its discretion

In the circumstances of this case I make no order as to costs.

**JUDGE OF THE SUPREME COURT**

JUSTICE UPALY ABEYRATHNE

I agree

**JUDGE OF THE SUPREME COURT**

JUSTICE ANIL GOONERATNE

I agree

**JUDGE OF THE SUPREME COURT**