

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

In the matter of an application under Article 126 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

Sehu Allaudeen Fathima Shanaz  
No.12/16A George Mawatha  
Keranga Pokuna, Mabola, Wattala  
**Petitioner**

SC/FR 236/2011

Vs

1. University of Colombo
2. Prof. (Mrs.) Kanishka Hirimburegama
3. Dr. Tudor Weersainghe
4. Prof. Indralal de Silva
5. Prof. Maria E.S. Perera
6. Prof. N Selvakumaran
7. Prof. Harshalal Senevirathne
8. Dr. PSM Gunarathne
9. Prof. TR Ariyaratne
10. Prof. Sunil Chandrasiri
11. Prof. Nayani Malagoda
12. Prof. Rohan Jayasekara
13. Vidyanidhi NR de Silva
14. Ranjan Asirwardam
15. K. Kanag-Iswaran
16. Thilak Karunarathne
17. Chellaih Thangarajah
18. C. Maliyadda
19. Mahinda Rajapaksha
20. HWN Warakulle
21. PW Senevirathne
22. M Wckramasinghe
23. Leisha de Silva Chandrasena
24. Prof. J Thilakasiri
25. Dr. Cuda Witeratne

26.Prof. Sarath Wijesuriya  
 27.Rev. Agalakada Sirisumana  
 28.Dr. (Mrs.) Ajantha Hapuarchchi  
 29.TLR Silva  
 All are of  
 No.94,Cumarathunga Munidasa Mawatha  
 30.Hon Attorney General

### **Respondents**

Before : Eva Wanasundera PC, J  
 Sisira J De Abrew J  
 Upaly Abeyratne J

Counsel : K G Jinasena for the Petitioner.  
 Viran Corea with Sarita de Fonseka for the 1<sup>st</sup> to 6<sup>th</sup>, 9<sup>th</sup> to 12<sup>th</sup>  
 14<sup>th</sup>,15<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup>,20<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup>, 25<sup>th</sup> to 29<sup>th</sup> Respondents.  
 S Barrie SSC for the Attorney General.

Argued on : 20.11.2015

Written submission

Tendered on : 12.2.2013 by the Petitioner  
 28.11.2012 By the Respondent

Decided on : 24.2.2016

### **Sisira J De Abrew J.**

The petitioner, by this application, inter alia seeks a direction that her fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by the Respondents and a direction on the respondents to appoint the Petitioner to the post of lecturer (Probationary) of the Journalism Unit of the 1<sup>st</sup> Respondent University. This court, by its order dated 15.7.2011, granted

leave to proceed for the alleged violation of fundamental rights of the petitioner guaranteed under Article 12(1) of the Constitution. The Petitioner, in her petition, states the following facts:

The petitioner who is a citizen of Sri Lanka obtained her BA (Special) degree in Mass Communication with a second class (Upper Division) in 2006. The petitioner was appointed as Temporary Tutor of the Journalism Unit, Faculty of Arts of the University of Colombo with effect from 1.12.2008 for a period of six months. Her term of office of Temporary Tutor was extended for a period of six months with effect from 8.6.2009 to 7.12.2009. It was again extended for a period of six months with effect from 14.12.2009 to 13.6.2010. Subsequently by letter dated 17.6.2010 (P7D), she was appointed to the post of Temporary Assistant Lecturer in the Journalism Unit, faculty of Arts of University of Colombo from 21.6.2010 to 20.12.2010. She was reappointed to the same post from 27.12.2010 to 26.3.2011. Whilst functioning as an Assistant Lecturer, the petitioner, on an appointment made by the University of Colombo, functioned as a visiting lecturer of the Diploma in Journalism Programmes from 2009 to 2010 and from 2010 to 2011.

In February 2010, a notice was published in newspapers calling for applications for the post of lecturer (Probationary) of Journalism Unit of the University of Colombo. In response to the said advertisement, the petitioner submitted an application dated 2.3.2010. Thereafter the petitioner received a letter dated 27.1.2011 (P11) from the 29<sup>th</sup> Respondent requesting her to be present for an interview to be held on 10.2.2011. On 10.2.2011 the petitioner was interviewed by a selection committee comprising 2<sup>nd</sup>, 4<sup>th</sup>, 18<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup> and 28<sup>th</sup> Respondents. On 11.2.2011, the petitioner has learnt from the 28<sup>th</sup>

Respondent that she has been selected to the post of lecturer (Probationary). The petitioner complains that although she was selected for the said post by the selection committee, she was not appointed for the said post by the Respondents. The petitioner further complains that her fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by the Respondents.

The Respondents in their objections and written submissions have admitted the following facts. When the notice was published in the newspapers calling for applications for the post of Lecturer (Probationary) of the Journalism Unit of University of Colombo, Circular No.271 dated 21.11.1997 of the University Grants Commission (2R2) was in operation and according to that circular, there was a requirement of work experience of one year. However this requirement was removed by subsequent circular No.935 dated 25.10.2010 (2R3) of the University Grants Commission. The Respondents further state that due to the said requirement of work experience of one year, out of 26 applications, 23 applications had to be rejected. Among the said 23 applicants, there were seven (7) who had obtained First Class (Hons). Two applicants had been called for the interview and the petitioner was the only person who came for the interview. The members of the Selection Committee on 10.2.2011 (the date of interview) recommended the appointment of the petitioner to the post of Lecturer (Probationary) in the Journalism Unit. The decision of the Selection Committee is found in the document marked 2R5. The members of the Selection Committee on 15.2.2011, by document marked 2R1(b) communicated their recommendation to the Management Committee of the University of Colombo. But the

Management Committee decided to call for fresh applications for the post for which the Petitioner had already been selected. The Management Committee at a meeting held on 17.3.2011 took this decision on the basis that a selection could be made from a wider number of applicants. They in taking the said decision observed that the requirement of one year work experience had already been removed. The Respondents have produced the minutes of the meeting of Management Committee of the University of Colombo as 2R7. The Council of the University of Colombo, at a meeting held on 10.8.2011(2R10c), considering the recommendation of the Management Committee decided not to appoint the Petitioner on the basis that the Petitioner was the only applicant present at the interview and that several applicants with First Class degrees have been rejected due to lack of one year experience.

From the objection and the written submissions of the Respondents it is clear that the Petitioner has been selected by the Selection Committee but she was not appointed by the Council of the University of Colombo on the basis that the Petitioner was the only applicant present at the interview and that several applicants with First Class degrees could not be interviewed due to lack of one year experience. They have observed that requirement of one year work experience had been removed by circular No.935 dated 25.10.2010 (2R3). It is noted here that the requirement of one year work experience was removed by circular No. 935 dated **25.10.2010** (2R3) and the interviews were held on **10.2.2011**. Thus when the applications of the applicants were examined by the Selection Committee, the requirement of one year work experience had already been removed. It is to be further noted that when the

Selection Committee rejected the seven applicants who had obtained First Class degrees, the requirement of one year work experience had already been removed. Therefore when the Council of the University decided that the applicants with First Class degrees had been rejected due to lack of one year work experience, the said decision is wrong. The respondents in their written submissions admit that out of 26 applications received for the post, 23 applicants including those who had obtained First Class degrees have been rejected. Thus when the Selection Committee rejected the said 23 applications, the members of the Selection Committee were aware that the requirement of one year work experience had been removed. Thus when Selection Committee rejected the 23 applications it could not have been due to lack of one year work experience. It has to be noted here that when the requirement of one year work experience was removed on 25.10.2010, the members of the Management Committee and/or the University Council did not re-advertise the post. At this stage it is relevant to consider certain judicial decisions.

In *Ratnadasa Vs Government Agent* [SC FR (Spl) No.66/96-SC Minutes of 16.12.1997- Reported in book titled 'Fundamental Rights and Constitution-II by RKW Goonesekere page 68] five persons were recommended by the District Registrar after a written competitive examination for the post of Registrar of Births and Marriages in order of merit. The person who was placed 4<sup>th</sup> was selected by the Registrar-General on the basis of experience in an acting capacity. The person who was placed 3<sup>rd</sup> challenged the appointment of the person who was placed 4<sup>th</sup> in the list by way of a fundamental rights application. *Bandaranayake J* (with GPS De Silva CJ and

Ananda Coomaraswamy J agreeing) held that the appointment of the person who was placed 4<sup>th</sup> in the list is invalid.

In *Leelananda Vs National Institute of Education* SC FR 266/93SC Minutes of 2.3.1994 [reported in book titled ‘Fundamental Rights and Constitution- II by RKW Goonesekere page 84] the petitioner who applied for the post of Director, Distance Education, was overlooked by an interview Board and another applicant (4<sup>th</sup> respondent) was appointed. For the petitioner it was contended that the 4<sup>th</sup> respondent was not eligible, that there was no ‘structured interview’, and a subjective assessment was made in favour of the 4<sup>th</sup> respondent who was not eligible without adequate supporting reasons. Fernando J (Goonewardena J and Wadugodapitiya J agreeing) held thus: “The appointment of the 4<sup>th</sup> respondent was plainly wrong. The appointment of an ineligible candidate, in preference to one or more qualified candidates, was in violation of Article 12(1) and must be quashed.”

Considering the above legal literature and the aforementioned reasons, I hold the view that the members of the Management Committee and the University Council have deliberately withheld the appointment of the Petitioner who had been selected for the post of Lecturer (Probationary) of the Journalism Unit of the 1<sup>st</sup> Respondent university by the Selection Committee and she (the petitioner) has not got equal protection of law.

For the above reasons, I hold that the University of Colombo; the Management Committee of the University of Colombo; and the Council of the University of Colombo have violated the fundamental rights of the Petitioner guaranteed by Article 12(1) of the Constitution. I order the University of Colombo, The Management Committee of the University of

Colombo and Council of the University of Colombo to appoint the Petitioner to the post of Lecturer (Probationary) Journalism Unit of the 1<sup>st</sup> Respondent University within two months from the date of this judgment. The present members of the Council of the University of Colombo and the Management Committee of the University of Colombo should implement this order within two months from the date of this order. The Registrar of this Court is directed to send a copy of this order to all the Respondents forthwith.

Judge of the Supreme Court.

Eva Wanasundera PC, J

I agree.

Judge of the Supreme Court.

Upaly Abeyratne J

I agree.

Judge of the Supreme Court.