

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

SC. FR. Application No. 478/2009

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

Srivaratharajan Pirashanthan
No. 11, Ramakrishna Gardens,
Colombo – 06.

Petitioner

-Vs.-

1. University of Peradeniya,
Peradeniya.
2. Prof. H. Abeygunawardena
Vice Chancellor, (Chairman of the Council)
University of Peradeniya,
Peradeniya.
3. Prof. A. Wickremasinghe
Deputy Vice Chancellor, (Chairman of the
Council)
University of Peradeniya,
Peradeniya.
4. Prof. P.W.M.B.B. Marambe
Deen, Faculty of Agriculture
(Member of the Council),
University of Peradeniya,
Peradeniya.
5. Prof. K.T. Silva
Deen, Faculty of Arts
(Member of the Council),
University of Peradeniya,
Peradeniya.

6. Dr. E.A.P.D. Amaratunge
Deen, Faculty of Sciences,
(Member of the Council),
University of Peradeniya,
Peradeniya.
7. Prof. S.B.S. Abayakoon
Deen, Faculty of Engineering,
(Member of the Council),
University of Peradeniya,
Peradeniya.
8. Prof. W.I. Amarasinghe
Deen, Faculty of Medicine,
(Member of the Council),
University of Peradeniya,
Peradeniya.
9. Prof. S.H.P.P. Karunaratne
Deen, Faculty of Science,
(Member of the Council),
University of Peradeniya,
Peradeniya.
10. Prof. P. Abenayake
Deen, Faculty of Veterinary Medicine and
Animal Science,
(Member of the Council),
University of Peradeniya,
Peradeniya.
11. Prof. Malkanthi Chandrasekera
Senate Representative,
(Member of the Council),
University of Peradeniya,
Peradeniya.
12. Dr. S.D. Pathirana
Senate Representative,
(Member of the Council),
University of Peradeniya,
Peradeniya.

13. Prof. J. M. Gunadasa
Council Member, (appointed by the UGC)
University of Peradeniya,
Peradeniya.
14. Mr. W.L.L. Perera
Council Member, (appointed by the UGC)
University of Peradeniya,
Peradeniya.
15. Mr. K.A.U.I. Kumarapperuma
Council Member, (appointed by the UGC)
University of Peradeniya,
Peradeniya.
16. Mr. W.M. Jayawardena
Council Member, (appointed by the UGC)
University of Peradeniya,
Peradeniya.
17. Dr. H.M. Mauroof
Council Member, (appointed by the UGC)
University of Peradeniya,
Peradeniya.
18. Mr. D. Mathi Yugarajah
Council Member, (appointed by the UGC)
University of Peradeniya,
Peradeniya.
19. Mr. Mohan Samaranayake
Council Member, (appointed by the UGC)
University of Peradeniya,
Peradeniya.
20. Dr. Kapila Gunawardena
Council Member, (appointed by the UGC)
University of Peradeniya,
Peradeniya.
21. Prof. K. Tennakoon
Council Member, (appointed by the UGC)
University of Peradeniya,
Peradeniya.

22. Mr. P. Rathees
Teacher,
St. Anne's Tamil Mahavidyalaya,
Wankalai, Mannar.
23. Mr. S. Sutharshan
C/o, Mrs. R. Susila,
456/F, Eariyagama,
Peradeniya.
24. Ms. R. Sarmiladevi
Kumara Kanda Estate,
18th Mile Post, Deltota Road,
Galaha, Kandy.
25. Ms. S. Vijitha
No. 4-5/2, 55th Lane,
Colombo – 06.
26. Mrs. Lareena
122/A, Kalalpitiya,
Ukkuwela, Matale.
27. University Grants Commission
No. 20, Ward Place,
Colombo – 07.
28. Dr. T. Manoharan
(a member of the Interview Board)
Head Department of Tamil,
University of Peradeniya,
Peradeniya.
29. Prof. M.A. Nuhman
(a member of the Interview Board)
Department of Tamil,
University of Peradeniya,
Peradeniya.
30. Hon. Attorney General
Attorney General's Department,
Hulftsdorp Street, Colombo – 12.

Respondents

SC.FR. No. 478/2009

BEFORE : Tilakawardane, J.
Hettige, PC., J. &
Wanasundera, PC., J.

COUNSEL : A.R. Surendran, PC., with N. Kandeepan and Jude
Dinesh for the Petitioner.
S. Mandaleswaran with Tharani Ganeshananthan
for the 23rd Respondent.

Rajiv Goonetillake, SSC., for the 1st - 20th , 27th and
30th Respondents.

ARGUED ON : 03.10.2012

WRITTEN SUBMISSIONS TENDERED
BY THE PETITIONER ON: 07.11.2012

WRITTEN SUBMISSIONS TENDERED
BY THE RESPONDENTS ON: 07.11.2012 & 22.11.2012

DECIDED ON : 13.02.2013

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Wanasundera, PC., J.

Leave to Proceed was granted by this Court on 01.10.2009 for an alleged violation of Article 12(1) of the Constitution and relief was granted in terms of prayer (f) restraining the 1st - 21st , 27th and 30th Respondents from appointing the 23rd Respondent to the post of Lecturer (Probationary)/Senior Lecturer Grade II/I in the Department of Tamil, Faculty of Arts in the 1st Respondent University until the final determination of this application.

At the outset of the argument, Counsel conceded that in terms of the advertisement, that the University of Peradeniya had advertised on 12.08.2008 for the applicants, to the vacancy calling for the post of Lecturer (Probationary)/Senior Lecturer Grade II/I in the Department of Tamil, Faculty of Arts.

Mr. Rajiv Goonetilleke, Senior State Counsel conceded that this advertisement sought to fill the vacancy in view of the exigency of the University which needed a Tamil Lecturer for the Faculty of Arts. The qualifications for the recruitment under the Scheme of Recruitment of Academic Staff has been produced by the 2nd Respondent and marked as 1R4.

It is also admitted that both the Petitioner and the 23rd Respondent had the basic qualifications set out in 1R4 for the Post of Lecturer (Probationary) (Non-Medical/Dental). Additionally, Counsel appearing for the Petitioner argued that, at that time, he was even qualified for the post of Senior Lecturer Grade II in terms of the qualification that has been set out in paragraphs 6(1) and 2(i) or (ii) and 3 of the Scheme of Recruitment for the Academic Staff issued by the University Grants Commission Circular No. 721 dated 21st November, 1997 (1R4 – pages 169 - k and 169 - l)

It is to be noted that whereas both the Petitioner and the contesting 23rd Respondent had the qualifications to be admitted as Lecturer [Probationary), only the Petitioner was qualified to be admitted as a Senior Lecturer. This point was contested by the 7th Respondent who filed an affidavit and produced the Summary of the Selection Proceedings for the Post of Senior Lecturer Grade II/I and the Summary of the Selection Proceedings for the Post of Lecturer (Probationary) marked as 1R1 dated 15.06.2009. (bearing 2 pages)

It has been endorsed at the bottom of these documents of pages 1 and 2 of 1R1 and reference has been made to the Petitioner as candidate No. 1, stating that “He did not possess the required experience to be considered” and therefore the Petitioner was unsuitable. It is pertinent to note that the affidavit filed in this Court by the 7th Respondent contended that though the Petitioner was employed as a temporary Lecturer for the period of 19th June 2001

to 15th May 2003, that the attendance of the Petitioner during this period was unsatisfactory. This is not reflected in the assessment contained in the document of 2 pages marked as 1R1.

It appears that in this case, the main issue is whether the Petitioner had acquired 06 years of experience which was a threshold requirement for the appointment in terms of the Scheme of Recruitment.

In the argument, it was conceded that from the date of the advertisement in the News Papers on 12.08.2008, it would appear that the Petitioner was six or seven days short on the requirement of 6 years experience. In terms of the same advertisement, P-13, the parties had the right to apply on or before 17th September 2008, and therefore by that date, the Petitioner had indeed completed the required 06 years experience. It is therefore important to note that the Petitioner had in terms of the facts disclosed to this Court by way of the pleadings of the affidavit and the arguments, been suitably qualified and had higher marks than the 23rd Respondent and he, therefore should have been appointed to the post of Lecturer (Probationary)/Senior Lecturer Grade II/I in the Department of Tamil (Faculty of Arts) in the 1st Respondent University.

In the light of the facts, this Court is able to hold the non-selection of the Petitioner for the post of Lecturer (Probationary)/Senior Lecturer Grade II/I in the Department of Tamil in the 1st Respondent University, specially, in view of the fact that he was more qualified than the 23rd Respondent who had been selected qualifies under infringement in the fundamental equality guaranteed by Article 12(1) of the Constitution.

Accordingly, this Court makes a declaration that the actions of the 3rd, 5th, 13th, 28th and the 29th Respondents (members of the interview Board) in selecting the 23rd Respondent for recommendation to the post of Lecturer (Probationary)/Senior Lecturer Grade II/I in the Department of Tamil in the 1st Respondent University are in infringement and/or imminent infringement of the fundamental rights of the Petitioner guaranteed by Article 12(1) of the Constitution.

This Court also makes a declaration that the Petitioner is entitled to be considered for

appointment to the post of Lecturer (Probationary)/Senior Lecturer Grade II/I in the Department of Tamil in the 1st Respondent University.

This Court accordingly grants relief as above on the application as prayed for. This Court makes no order on costs.

JUDGE OF THE SUPREME COURT

Tilakawardane, J.

I agree.

JUDGE OF THE SUPREME COURT

Hettige, PC., J.

I agree.

JUDGE OF THE SUPREME COURT