

**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.*

SC/FR APPLICATION 79/2016

N.K. Sooriyabandara
D 30, Old Galaha road,
Peradeniya.

PETITIONER

Vs

1. University of Peradeniya,
Peradeniya.
2. Prof. Upul B. Dissanayake
Vice Chancellor.
3. (b) Prof. S.H.P. Parakrama
Karunaratne,
Deputy Vice Chancellor.
4. (a) Dr. M. Alfred.

5. (a) Prof. O.G. Dayaratne Bandara
6. Prof. W.M. Tilakaratne.
7. Prof. Leelananda Rajapaksha.
8. Prof. V.S. Weerasinghe.
9. (a) Prof. D.K.N.P. Pushpakumara.
10. Prof H.B.S Ariyaratne
11. Prof. D.B.M. Wickramaratne.
12. (a) Prof. N.A.A.S.P. Nissanka.
13. (a) Prof. Anoma Abeyratne.
14. Prof. S.R. Kodituwakku.
15. Mrs. K.D. Gayathri M.
Abeygunasekera.
16. Dr. Ranil Abeysinghe.
17. (a) Prof. C.M. Maddumabandara.

18. Mr. U.W. Attanayake.

19. (a) Prof. I.M.K. Liyanage.

20. Mr. G.S.J. Dissanayake.

21. Mr. E.H.M. Palitha Elkaduwa.

22. Mr. Upul Kumarapperuma.

23. Prof. P.B. Meegaskumbura.

24. Dr. Mohamed Thaha Ziyad
Mohamed.

25. Prof. K.N.O. Dharmadasa.

26. Dr. Selvy Tiruchandran.

27. (c) Maneesha Seneviratne.

27. (i) Mr. Rawana Wijeratne.

28. Mr. Lal Wijenayake.

29. (a) Dr. M.A.J.C. Marasinghe.

Dean, Faculty of Allied Health
Sciences.

30. (a) Dr. J.A.V.P. Jayasinghe.

Dean, Faculty of Dental Science.

31. (a) Prof. G.B. Herath.

Dean, Faculty of Engineering.

32. (a) Dr. D.M.S. Munasinghe.

Dean, Faculty of Veterinary Science.

33. (a) Prof. A.S. Abegunawardana.

Dean, Faculty of Medicine.

34. (a) Most Ven. Niyangoda Vijithasiri

Council Member.

35. (a) Mr. Samantha Rathwaththe

Council Member

36. (a) Nihal Rupasinghe

Council Member

37. (a) Dr. D.M.R.B. Dissanayaka

Council Member

38. (a) Mr. Udayana Kirigoda
Council Member
39. (a) Mr. Prasanna Gunathilaka
Council Member
40. (a) Eng. Mahendra Wijepala
Council Member
41. (a) Dr. Gamini Buthpitiya
Council Member
42. (a) Dr. Cyril Wijesurendra
Council Member
43. (a) Prof. N.D. Samarawicrama
Council Member
44. (a) Mr. Janaka Chaminda Warnakula
Council Member
45. (a) Mr. Gamini Dissanayaka
Council Member
46. (a) Prof Geri Pieris
Council Member

2nd to 46(a) Respondents all of University of Peradeniya but 6th, 7th, 8th, 10th, 11th, 15th, 16th, 17(a), 18th, 19(a), 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27(c) and 27 are no more present

29. Prof. Lakshman Wijeyaweera
Faculty of Dental Sciences,
University of Peradeniya,
Peradeniya

30. Dr. S.B. Ekanayake.
University of Peradeniya,
Peradeniya.

31. University Grants Commission,
No. 20, Ward Place,
Colombo 07.

32. Hon. Attorney – General,
Attorney – General’s Department,
Hulftsdorp Street,
Colombo 12.

RESPONDENTS

BEFORE : **S. THURAIRAJA, PC, J.**
E.A.G.R. AMARASEKARA, J and
JANAK DE SILVA, J.

COUNSEL : Nihal Jayawardena, PC with Buddhi Kaluthanthri instructed by Nelum Senanayake for the Petitioners.
Suren Gnanaraj SSC for the Respondents.

ARGUED ON : 25th February 2021.

WRITTEN SUBMISSIONS : Respondents on 21st October 2020.

DECIDED ON : 12th November 2021.

S. THURAIRAJA, PC, J.

The 1st Petitioner, N.K. Sooriyabandara (Hereinafter referred to as “the Petitioner”) has made the instant application seeking relief in respect of the infringement of his Fundamental Rights guaranteed under and in terms of the Constitution, in the manner hereinafter more fully set out, against the Respondents.

The 1st Respondent is the University of Peradeniya (hereinafter referred to as “the University”), the 2nd Respondent is Prof. Upul B. Dissanayake; the Vice Chancellor of the University and the 3rd Respondent is the Deputy Vice Chancellor of the University. The 4th-30th Respondents are parties affiliated with the University, 31st Respondent is the University Grants Commission and the 32nd Respondent is the Hon. Attorney General.

The Petitioners instituted an action at the Supreme Court under Article 126 of the Constitution, through Petition dated 3rd March 2016 against the Respondents claiming that the Fundamental Rights of the Petitioner as guaranteed by Article 12(1) and Article 14(1)(g) of the Constitution have been infringed by the Respondents and further requesting for interim relief suspending the letter of termination of services of the Petitioner as contained in the document marked 'P12' and interim relief restraining the Respondents from evicting the Petitioner from staff quarters until the final determination of the instant case.

The Court was inclined to grant Leave to Proceed for the alleged violation of Article 12(1) of the Constitution. Additionally, the University was agreeable to give an undertaking that they would maintain the status quo to the extent of permitting the Petitioner to remain in the quarters until the final determination of the instant case, which was further extended on the grounds that the Petitioner would pay rent for the same.

The Facts

The Petitioner had joined the University as a Marshal Grade II in September of 2007. Thereafter, the University had published an advertisement internally for the post of Chief Security Officer (CSO) Grade II on the 26th of November 2012 in accordance with the scheme of recruitment. The University received authorization to advertise this post by the University Grants Commission (UGC) by the Commission Circular No.160 dated 26th February 1982, which authorized each University to advertise, hold interviews and to make recommendations to the Commission for the appointments to all posts coming within the purview of Section 71(2)(ii) of the Universities Act No.16 of 1978 (hereinafter referred to as "the Universities Act"), excluding those posts referred to in paragraph (1) of the circular.

Pursuant to the said advertisement, the Petitioner and another applicant were called for an interview on the 26th of April 2013 before a selection committee appointed by the

University Council of the 1st Respondent. However, since neither candidate had performed satisfactorily at the interview, the University had decided to give the Petitioner an acting appointment for a period of 3 months with effect from 15th May 2013.

The selection committee was reconvened in October 2013 to reconsider the qualifications and the experience of the two short listed candidates in order to recommend one of them for a permanent post. At the said meeting, the selection committee had decided to recommend the Petitioner to the Council for the post of Chief Security Officer, initially on an acting basis for a period of 3 months, and on satisfactory completion of the same to appoint him on a permanent basis subject to probationary period of 1 year. This recommendation had thereafter been approved by the Council.

The Petitioner's acting appointment was thereafter extended for a further 3 months, subsequent to which the Petitioner was appointed by the UGC to the post of Chief Security Officer by letter dated 24th August 2014, subject to a probationary period of one year in terms of Section 71(2)(ii) of the Universities Act No.16 of 1978.

The Petitioner functioned in the post of CSO at the University from 15th September 2014 to 3rd March 2015. However, the University had received the following complaints relating to the conduct of the Petitioner as the CSO whilst on probation:

- a) Complaint by the Students Union, University of Peradeniya dated 23rd January 2015
- b) Complaint by the Proctor of the University of Peradeniya dated 26th January 2015
- c) Complaint by Director, Physical Education dated 5th February 2015
- d) Complaint by Federation of Peradeniya University Teachers Associations (FPUTA) dated 12th February 2015
- e) Complaint by residents Mawalawatta dated 23rd October 2014 regarding the indiscipline of the security officers under the control of the Petitioner.

The Respondents submit that the complaint made by the FPUTA, which is the parent association comprising of all the academics attached to the University of Peradeniya, was tabled before the Council of the University on the 28th of February 2015, where it was decided to send the Petitioner on compulsory leave with full pay pending a preliminary investigation.

As per the Respondents, the Council had thereafter appointed a 3-member committee on 9th May 2015 in order to conduct a preliminary inquiry in connection with the complaints received against the Petitioner. However, the committee could not convene due to prior commitments of two members. As one member, namely Dr. Sugath Gunasekara was reluctant to continue as a member of the panel due to his belief that the investigation should only be conducted by a single member from the staff of the University and not a panel, Professor R.L. Wijeyaweera (hereinafter referred to as the "29th Respondent") was appointed in his place to avoid further delay.

The Committee had thereafter convened for the first time on 6th of August 2015 and had recorded several statements including one from the Petitioner in connection with the complaint lodged by FPUTA on the 12th of February 2015. As per the Respondent all the documents made available to the committee during the investigation including statements made by the witnesses were made available to the Petitioner and the Petitioner was given the opportunity to place his response to the same including the complaints that had been made against him, both orally and in writing.

Further, The Petitioner's probation was also extended to facilitate the preliminary inquiry. Upon completion of the inquiry, the Committee had submitted its report dated 19th November 2015 to the Council of the University along with all the statements recorded and other evidence, including those submitted by the Petitioner.

As per the Respondent, the Committee had made the following findings with regard to the complaints made by FPUTA:

(A) The Petitioner allowed outsiders to use the University pool without approval, during hours when the pool was closed.

- i. The Petitioner had not obtained prior approval from the Director, Department of Physical Education to have the pool opened and used by some school children on the 2nd, 3rd, and 4th of February 2015;
- ii. The Petitioner had without any authorization used a key at the Chief Security Office and had opened the pool premises and allowed outsiders to use the pool despite objections from the security in charge of the pool;
- iii. The Petitioner had allowed outsiders to use the pool on the 2nd of February 2015 from 6.50 pm to 8.45 pm, when the pool was closed as the pool did not possess sufficient lighting to permit night-time swimming;
- iv. The Petitioner had transferred the security officer on duty at the Pool on the 3rd of February 2015 to the Department of Management Studies;
- v. The Petitioner had thereafter opened the pool on 3rd and 4th of February 2015, which were two public holidays without any approval and had allowed school children to use the pool, without the presence of pool attendants and lifeguards;
- vi. The Petitioner had also caused a loss of Rs. 26,000 by permitting outsiders to use the Pool without proper payment to the University.

(B) The Petitioner had inspected Room No.26 at the Arunachalam Hall in the night of the 5th of November 2014 without following the establishment procedure

- i. The Petitioner had admitted that he was aware that the procedure to be followed prior to entering a student room was that the Warden and/or the Proctor should be informed, and in their absence the Sub Warden should be informed, and the search party should comprise a Marshal and/or the Proctor or Deputy Proctor and the resident sub-Warden;
- ii. The Petitioner admitted that he had failed to inform any of the said persons and instead had entered Room No.26 on the 5th of November 2014 along with 6 other security officers at 2am, with prior notice to the Deputy Vice Chancellor;
- iii. The Deputy Vice Chancellor thereafter confirmed that he had not authorized the Petitioner to inspect Room No.26 in the Arunachalam Hall in the contravention of the established procedure.

(C) The Petitioner had brought disrepute to Prof. K. Samarasinghe, Chairman of the Staff Residence Committee at the 118th meeting held on the 14th of November 2014.

(D) The Petitioner had been cautioned on several occasions with regard to his unsatisfactory conduct Chief Security Officer.

(E) The Petitioner had failed to maintain discipline among the security officers under his charge as evidenced by the complaints received from residents of Mawalawatta.

(F) The Petitioner had taken 30 university cloaks on the false pretext of being required for a function at the Dental Faculty.

Accordingly, the Report of the Committee revealed that the complaints made by the FPUTA against the Petitioner were true and were of a very serious nature and the

Committee recommended that the Petitioner should not be confirmed in the post of CSO. This report had thereafter been tabled before the Council on 28th November 2015, which had unanimously decided not to confirm the Petitioner in the post of CSO and accordingly to terminate his services with effect from 28th November 2015 under Section 21:3:1 of Chapter III and Section 6:1 of chapter V of the Establishments Code of the University Grants Commission and higher Educational Institutions.

The decision of the Council had been forwarded to the UGC by letter dated 14th December 2016 for its approval to terminate the services of the Petitioner who was still on probation at the time. In response to the said letter the UGC had informed the University by a letter dated 20th January 2016 that the concurrence of the UGC was not required and that the Council of the University was vested with the authority to terminate the services of the Petitioner.

The Petitioner had finally been informed of the termination of his services by letter dated 10th of February 2016 titled "Termination of service" informing him that the Governing Council has decided in its 448th meeting held on 28th November 2015 that subsequent to the findings of the Fact Finding Committee it was unanimously decided to not confirm him in the position of CSO and to terminate his services with effect from 28th November 2015 under Section 21:3:1 of Chapter III and Section 6:1 of Chapter V of the University Establishment Code of UGC and HEIs.

At this juncture, I find it pertinent to establish the facts as submitted by the Petitioner by the Petition dated 3rd March 2016.

The Petitioner states that during the time period the Petitioner functioned in the post of CSO from 15th September 2015 to 3rd March 2016, he had not received any complaints regarding his performance. The Petitioner states that he later came to know that the Governing Council had decided to hold a preliminary investigation in February 2015 in

respect of the alleged abuse of power by the Petitioner consequent to the complaint made by the FPUTA and that a committee comprising of the 28th, 29th and 30th Respondents were thereafter appointed by the Council for the purpose of this investigation.

The Petitioner states that he had been informed by letter dated 3rd March 2015 that he had been sent on compulsory leave with immediate effect and that a preliminary inquiry would be held in respect of the allegations. The Petitioner further submits that the Respondents failed to hold an inquiry for two months after placing the Petitioner on compulsory leave. The Petitioner states that he complained to the 2nd Respondent by a letter dated 4th May 2015 regarding the failure to record a statement from the Petitioner for a period of two months and had requested for the inquiry to take place at the earliest possible date. The letter also expresses his concern that should the inquiry be further delayed it would exhaust his leave entitlement and compel him to go on no pay leave.

Subsequently, the Petitioner had been given notice by letter dated 17th September 2015 that the probation period was extended until 14th September 2016 under Section 21:1:5 of Chapter III of University Establishment Code, pending the decision of the preliminary inquiry. The Petitioner states that he had neither been warned nor informed of any shortcomings in respect of discharging the duties of the post of CSO.

The Petitioner states that he was asked to appear before the aforementioned Preliminary Investigation Committee in person on 30th September 2015 after lapse of over 6 months from the date of sending the Petitioner on compulsory leave. The Petitioner states that he objected to the 29th Respondent, however, the 28th Respondent had rejected the said objection and proceeded with the inquiry. The Petitioner further submits that the 29th Respondent conducted himself in a very aggressive manner and even threatened the Petitioner during the proceedings of the said Committee. The Petitioner states that he had written to the 2nd Respondent informing him of the unsatisfactory

manner in which the Preliminary Investigation had been conducted and requested the tape recordings of the proceedings to be preserved.

The Petitioner states that after examining the documents that established the alleged charges against the Petitioner, which were in the possession of the said Committee, he had requested another opportunity to make oral representation before the aforesaid Committee. This request had been rejected and he was directed to tender written submissions by letter dated 13th October 2015 which states that the Petitioner may examine all relevant document on prearranged date and time prior to the 20th October 2015 and that he may further submit any facts or evidence before the 27th of October, which will be taken into account by the Committee. In response to the Petitioner's request to make further submissions before the Committee, he was informed by letter dated 16th October that he may make submissions to the Committee in written form prior to the 27th of October. Accordingly, the Petitioner had filed written submissions on 25th October 2015.

The Petitioner states that he later came to know he was found guilty of all charges which were reproduced above. However, the Petitioner states that the charge F regarding the taking of 30 cloaks stating that it is to be used at a function to be held at the Dental Faculty was not a charge levelled against him and as such, he could not place any material before the Committee to prove his innocence.

The Petitioner states that his salary for the month of December was suspended without any notice and when he had requested for the same, he was informed by Bursar's letter dated 18th January 2016 that the Petitioner's salary was suspended with effect from 28th November 2015 consequent to the letter received from the Non-Academic Establishments, which letter had not been annexed to the same.

The Petitioner had thereafter requested the 2nd Respondent to inform him of the reasons for the suspension of salary whereby the Petitioner was informed by the 2nd Respondent that the Governing Council had decided to terminate the services of the Petitioner based on the findings and recommendations of the Fact-Finding Committee with effect from 28th November 2015 under the relevant provisions of the UGC Establishment Code.

The Petitioner further states that as the preliminary inquiry included the 29th Respondent who was a member of the FPUTA that made the purported allegations, it violates rules of natural justice. The Petitioner also states that as the Petitioner was appointed as CSO by the UGC, the Governing Council lacks the authority to terminate his services. Based on the above submissions, the Petitioner claims that his Fundamental Rights guaranteed under Article 12(1) and Article 14(1)(g) of the Constitution have been violated.

Validity of the decision to terminate services

In deciding upon the merits of this case, I find it pertinent to examine the first matter of contention which is the claim by the Petitioner that the Governing Council does not have the authority to terminate the services of the Petitioner as the Petitioner was promoted to the position of CSO by the UGC. I find that this matter has been addressed by the evidence presented to this Court in the form of the letter dated 20th January 2016 sent by the UGC in response to the decision of the Governing Council to terminate the services by the Petitioner. The relevant portion of the letter has been reproduced below for ease of reference:

"This is in reference to your letter dated 14.1.2015 seeking concurrence of the UGC to terminate the services of Mr. N K Sooriyabandara, Chief Security Officer attached to your University.

In this regard, I would like to draw your kind attention to the direction laid down in the 2nd proviso of Section 75 of the Universities Act No.16 of 1978, the Governing Authority has the power over holder of any post at its employment at any time be suspended, dismissed or compulsory retired. On the other hand, in terms of Section 45(2)(xii), the Council can suspend, dismiss or otherwise punish persons in the employment of a University.

Therefore, concurrence of the UGC is not needed to be acquired in the case of Mr. N K Sooriyabandara Chief Security Officer since the Council, University of Peradeniya is vested with the required authority"

For the purposes of determining the validity of the dismissal of the Petitioner, the relevant sections of the Universities Act must be examined. Section 75 concerns the retirement of persons other than teachers. In terms of suspension or dismissal of such persons, subsection 2 states as follows:

*(a) the Commission or **the governing authority of any Higher Educational Institution to which the holder of such post is attached** or in the case where such person is attached to a Higher Educational Institute, the governing authority of the Higher Educational Institution to which such institute is affiliated **may based on the recommendations of the Institute suspend the holder of such post pending an inquiry by the Commission or such governing authority or the Institute, as the case may be**, for misconduct, inefficiency or dereliction of duty; or*

*(b) **where such holder of post is found guilty after such inquiry**, the Commission, **the governing authority of the Higher Educational Institution to which such person is attached** or in the case where such person is attached to a Higher Educational Institute, the governing authority*

*of the Higher Educational Institution to which such Institute is affiliated, as the case may be, **may on resolution adopted by the Commission or the governing authority of the relevant Higher Educational Institution, dismiss or compulsorily retire the holder of such post.***

(Emphasis added)

In addition to the above, Section 45 of the Universities Act specifies the powers of a Council of a University and includes in Section 45(2) that a Council may exercise, perform, and discharge the powers, duties and functions pertaining to specific matters, including the following:

(xii) to appoint persons to, and to suspend, dismiss or otherwise punish persons in the employment of, the University:

Based on the above, The Governing Council of the University as the governing authority is indeed authorized to suspend, investigate, and terminate services of the Petitioner. As such, the University has followed an extra step of reaching out to the 30th Respondent for the termination of the services of the Petitioner.

I must also note that it is unreasonable to expect the UGC to intervene in all matters regarding dismissal of all employees of universities. It is impractical given the sheer number of persons employed by universities around the country and it would be an extremely inefficient mechanism that also undermines the authority exercised by each individual university over their respective employees. Considering all, the response of the UGC is correct according to the law applicable.

This was evidenced by Order of the Court of Appeal of case **K.G. Eranda Wijesiri v University of Kelaniya CA/WRIT/App No.756/2007 in minutes dated 15.10.2010**, in which a similar matter concerning a petitioner who was attached to the University of Kelaniya in the position of CSO. The university conducted a preliminary investigation

following which the university decided to interdict the petitioner of said case. The petitioner sought a writ of certiorari quashing the relevant charge sheets and prohibiting the proceedings of the disciplinary inquiry. In addressing the petitioner's challenge that the university was not the disciplinary authority upon whom the power to terminate his services was vested, the Court of Appeal assessed Section 8(1), Section 45(2)(i)(ix), Section 71(2) and Section 75, all of which are relevant to the instant case. The Learned Justice S. Sriskandarajah came to the conclusion that when an officer is attached to a Higher Educational Institution, the governing authority of said Institution has the power to deal with the officer on disciplinary matters.

Upon perusal of the above case, I find that in the instant case I am of the same view as the views expressed by the Court of Appeal in the above case, following careful examination of the same provisions pertaining to the specific circumstances of the instant case.

I am of the view that the above explanation sufficiently addresses the concern in confirming that the Governing Council was vested with the authority to come to the decision of terminating the services of the Petitioner

Violation of Rules of Natural Justice

While the Governing Council of the University is vested with the authority to conduct an inquiry and to terminate the services of the Petitioner, the exact manner in which the inquiry was conducted must be examined due to the concerns raised by the Petitioner. In terms of the inclusion of the 29th Respondent as a member of the Committee, the Petitioner raised the concern that the principles of Natural Justice have been violated. This is given that the 29th Respondent is a member of the FPUTA, which is the party that requested for a disciplinary inquiry in respect of alleged abuse of power by the Petitioner.

In assessing the Report of the Fact-Finding Committee (annexed as "P9" of the record), the Committee seems to have considered witness statements and available records in coming to a unanimous decision. The Report recommends that the petitioner should not be confirmed in the post of CSO. It must be further noted that the Governing Council, in arriving at the decision to terminate the Services of the Petitioner at its 448th Meeting (the minutes of which has been annexed as "1R14" of the record), has referred exclusively to the report of the fact-finding committee and the recommendations available in the same.

As the sole consideration in the decision to terminate the services of the Petitioner was based on the findings of the Fact-Finding Committee, I find it pertinent to examine whether the rules of Natural Justice have been violated by the inclusion of the 29th Respondent as one of the Committee members.

As expounded upon in the case of **R. v. St Edmundsbury BC ex p. Investors in Industry Commercial Properties Ltd. (1985) 1 WLR 1168**, it is an accepted fact that in terms of administrative decision, a standard of bias similar to that of judicial decisions must be followed.

This Court recognizes that personal relationships, business interests, political affiliations may give rise to reasonable suspicion or a real danger of bias. The standard required of bias in situations similar to that of the instant case can be found upon examination of **Allison v. General Council of Medical Education and Registration (1894) 1 QB 750** which referred to the decision given in **Leeson v Council of Medical Education and Registration [1889] 43 Ch D 366**.

In determining bias, the test that is presently applicable is the real likelihood test which is based on the operative principle that justice must not only be done but must be seen to be done. In **R. v. Gough (1993) 2 All ER 724** Lord Goff held as follows

*"I think it is possible, and desirable, that the same test should be applicable in all cases of apparent bias, whether concerned with justices or other members of inferior tribunals, or with jurors, or with arbitrators...Furthermore, **I think it unnecessary, in formulating the appropriate test, to require that the court should look at the matter through the eyes of a reasonable man, because the court in cases such as these personifies the reasonable man;** and in any event the court has first to ascertain the relevant circumstances from the available evidence, knowledge of which would not necessarily be available to an observer in court at the relevant time. **Finally, for the avoidance of doubt, I prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias.** Accordingly, having ascertained the relevant circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly be regarded (or have unfairly regarded) with favour, or disfavor, the case of a party to the issue under consideration by him."*

(Emphasis added)

In this case Lord Goff also held that,

"it is not necessary that actual bias should be proved...the inquiry is directed to the question whether there was such a degree of possibility of bias on the part of the tribunal that the court will not allow the decision to stand".

In furthering the above, the Court of Appeal case of **Re Medicaments and Related Classes of Goods (No. 2) (2001) 1 WLR 700**, states as follows:

"The court must first ascertain all the circumstances which have a bearing on the suggestion that the judge was biased. It must then ask whether those

circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility, or a real danger, the two being the same, that the tribunal was biased.”

This reformulation of the test in **R. v. Gough** was approved by the House of Lords in **Porter v. Magill (2002) 2 AC 357**.

In applying the above views to the instant case, It is my view that in terms of assessing bias based on personal interest, it is apparent that the 29th Respondent has no pecuniary interest in this matter. Nevertheless, this Court recognizes that personal relationships, business interests, political affiliations may give rise to reasonable suspicion or a real danger of bias. As was understood in the case of **Allison v General Council of Medical Education and Registration**, not all such affiliations lead to the same conclusion. In this case, the Court of Appeal of England considered the fact that the member in question had resigned from the organization 2 months prior to the complaint having been made in deciding that there was no such danger of bias. However, in the present dispute, the 29th Respondent continued as a member of the FPUTA throughout the period of the inquiry.

While this does not amount to actual bias, the circumstances as it stands does not aid the appearance of justice being done as it may indicate a danger of bias on the part of the 29th Respondent. However, I am in no means disregarding the severity of the allegations levelled against the Petitioner and the fact that the Petitioner was acting in the capacity of a probationer.

Decision

While it is not contested that the Respondent is entitled to terminate the services of the Petitioner during the probationary period, based on the consideration above, it is apparent that the decision by the Respondents is based on the inquiry by the Preliminary

investigation committee. As enumerated above I am of the view that the manner in which the inquiry was conducted is in contravention with rules of Natural Justice.

As such, upon careful examination of all relevant facts and circumstances of the instant case, I declare the Fundamental Rights of the Petitioner as guaranteed by Article 12(1) of the Constitution have been infringed. I further declare that the termination of services of the Petitioner as contained in P12 is null and void and has no force or avail in law. However, considering the nature of the gravity of the allegations against the Petitioner, the Respondents are free to take appropriate action. I order no costs.

Application allowed.

JUDGE OF THE SUPREME COURT

E.A.G.R. AMARASEKARA, J

I agree.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J.

I agree.

JUDGE OF THE SUPREME COURT