

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

In the matter of an application in terms of Article
126 read with Article 17 of the Constitution of
the Democratic Socialist Republic of Sri Lanka.

S C (F R) Application No. 288/ 2017,

1. Dr. W M P N Weerasinghe,
No 9/11,
Ranasinghe Mawatha,
Hiripitiya,
Pannipitiya.

PETITIONER

-Vs-

1. University of Colombo,
College House,
No. 94,
Kumaratunga Munidasa Mawatha,
Colombo 03.
2. Prof. Lakshman Dissanayake,
Vice Chancellor,
University of Colombo.
3. K A S Edward,
Secretary / Registrar,

- University of Colombo.
4. Dr. R C K Hettiarachchi,
Rector,
Sri Palee Campus,
University of Colombo.
 5. Prof. M D A L Ranasinghe,
Dean,
Faculty of Arts,
University of Colombo.
 6. Prof. M V Vithanapathirana,
Dean,
Faculty of Education,
University of Colombo.
 7. Ms. Indira Nanayakkara,
Dean,
Faculty of Law,
University of Colombo.
 8. Dr. R Senathiraja,
Dean,
Faculty of Management and Finance,
University of Colombo.
 9. Prof. Jennifer Perera,

Dean,

Faculty of Medicine,

University of Colombo.

10. Prof. K R R Mahanama,

Dean,

Faculty of Science,

University of Colombo.

11. Prof. Nayani Melegoda,

Dean,

Faculty of Graduate Studies,

University of Colombo.

12. Prof. Janaka de Silva

13. Prof. J K D S Jayanetti

14. Rajan Asiriwatham

15. Dr. Harsha Cabraal PC

16. Thilak Karunaratne

17. Nigel Hatch PC

18. Prof. Lakshman Ratnayaka

19. Dr. Mrs. Raneey Jayamaha

20. J M Swaminathan

21. Prof. Rohan Jayasekera,

All of, the Council of the University of
Colombo.

22. Ms. D D N N Dissanayake

23. Ms. S D P S Dissanayake

Both, lecturers (probationary),

Department of Mass Media,

Sri Palee Campus,

Wewala,

Horana.

24. Dr. D Sri Ranjan,

Senior Lecturer,

Sri Palee Campus,

Wewala,

25. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENTS

Before:

BUWANEKA ALUWIHARE PC J

P. PADMAN SURASENA J

E A G R AMARASEKARA J

Counsel:

Upul Jayasuriya PC with P Radhakrishnan for the Petitioner.

Uditha Egalahewa PC with Nalliah Ashokbharan for the 1st, 2nd and 3rd Respondents.

Viran Correa with Sarita de Fonseka for the 4th and 24th Respondents.

S W Wilwaraarachchi for the 22nd and 23rd Respondents.

Rajiv Goonetilleke, SSC for the Hon. Attorney General.

Argued on : 28 - 01-2020

Decided on : 20-07-2020

P Padman Surasena J

The Petitioner had served as the Head of the Department of Mass Media at the Sri Palee Campus of the University of Colombo and had held the substantive post of Senior Lecturer (Grade II) in the University Service at the time of his interdiction from service, which occurred on 10-03-2016. It was in mid-February 2016 that several members of the academic staff of the Sri Palee Campus had submitted written complaints against the Petitioner. Among them were the 22nd and 23rd Respondents who were at that time, lady probationary lecturers. The said two lady probationary lecturers had complained that they were subjected to sexual harassment by the Petitioner. The said complaint also alleged that the Petitioner had abused his authority as the Head of the Department. The said 22nd and 23rd Respondents have produced the copies of the written complaints made by them marked **R 2 A** and **R 2 B** respectively. They also have produced (marked **R 2 C**) the joint complaint made by six other senior lecturers of the academic staff which had set out the alleged unacceptable general conduct of the Petitioner.

Upon the receipt of the above complaints, the 1st Respondent University, having caused a preliminary investigation conducted against the Petitioner, had taken steps to interdict the Petitioner by the letter dated 10-03-2016, produced marked **P 3**.

Thereafter, the 1st Respondent University having followed the necessary steps with regard to the conduct of disciplinary proceedings, had issued the charge sheet dated 19-09-2016 (produced marked **P 11**) against the Petitioner. The said charge sheet has alleged that the Petitioner being the Head of the Department of Mass Media at the Sri Palee Campus, had;

- i. sexually harassed the 22nd and 23rd Respondents,
- ii. engaged in discriminatory practices against the 22nd and 23rd Respondents, causing them to fear for the security of their jobs and their carriers,
- iii. created a hostile work atmosphere for the two lady probationary lecturers (the 22nd and 23rd Respondents) making it difficult for them to carry out their duties and responsibilities effectively.

The charge sheet has alleged that the Petitioner by committing one or more of the above offences, has brought into disrepute, his position and the institution which has resulted in the first Respondent University losing the confidence it has placed in him as a Senior Lecturer in the University of Colombo.

The Petitioner in his petition, inter alia, has taken up the following main positions.

- i. The two probationary lady lecturers had been instigated to make false complaints against him.
- ii. Placing him on interdiction is not warranted and contrary to clause 18.1(a) and 18.7 of the University Establishments Code produced marked **P 6** (the same document has been produced by the 22nd and 23rd Respondents marked **R 5**).
- iii. The 1st Respondent University has failed to conclude the disciplinary inquiry within 3 months as per clause 11.1 of the University Establishments Code.
- iv. The 1st Respondent University has failed to reinstate him after the lapse of one year from the date of his interdiction, as stipulated in clause 22.1 of the Government Establishments Code read with clause 18.3 of the University Establishments Code.

It is on the above basis that the Petitioner alleges that the 1st to 24th Respondents or anyone or more of them had acted illegally, arbitrarily, unreasonably and outside their powers in order to achieve an ulterior motive to the detriment of the Petitioner's holding the above post at the Sri Palee Campus.

This Court on 07-03-2018 having heard the submissions of the learned President's Counsel for the Petitioner, the learned counsel who appeared for the 1st to 3rd and 22nd to 24th Respondents and the submissions of the learned Deputy Solicitor General who appeared for the Hon. Attorney General, had decided to grant leave to proceed in respect of the alleged violations of Article 12(1) of the Constitution.

I observe that the learned counsel for the 1st to 3rd and 22nd to 24th Respondents on 07-03-2018 itself had raised a preliminary objection with regard to time bar. The Court when granting leave to proceed on that day, having considered the complexity of events referred to in the application, had thought it appropriate to consider the said objection at the time of argument of the case. As has been indicated in the aforesaid manner, the Respondents, in addition to their arguments based on the merits of the case, have indeed raised the issue that the Petitioner has failed to file this application within the period specified by law.

Therefore, I would at this point, proceed to consider whether the Petitioner has filed this application within one month from the act (by the Respondents) which has allegedly given rise to the infringement of the Petitioner's fundamental rights under Article 12(1). In order to ascertain the above, I have to ascertain the date on which the aforesaid alleged four acts of infringement complained by the Petitioner had occurred.

The first ground is that the two probationary lady lecturers had been instigated to make false complaints against him. If that is the case, the Petitioner should have felt and known it at the time of his interdiction. This is because the Petitioner is taking up the position that false evidence was fabricated against him for the purpose of interdicting him. If he has had nothing to do with the allegations leveled against him and if he is convinced that the two probationary lady lecturers had been instigated to make false complaints against him, he should have forthwith challenged his interdiction on that ground. However, the Petitioner has filed the instant application on 15-08-2017, which is more than one year and five months since the date of his interdiction from service, which occurred on 10-03-2016. Therefore, the Petitioner has failed to challenge the alleged infringement of his fundamental right on this ground within the time specified in Article 126 (2) of the Constitution.

The second ground urged by the Petitioner in his petition is that his interdiction is not warranted and contrary to clause 18.1(a) and 18.7 of the University Establishments Code.¹

If the interdiction of the Petitioner is not warranted and contrary to the University Establishments Code as alleged by the Petitioner he should have challenged it on that ground within one-month which is the time period specified in Article 126 (2) of the Constitution.

The third ground urged by the Petitioner in his petition is that the 1st Respondent University has failed to conclude the disciplinary inquiry within 3 months as per clause 11.1 of the University Establishments Code. If that is the case, I cannot see any impediment, which could have prevented the Petitioner from challenging the alleged infringement on that ground within one-month, which must start running immediately after the lapse of 03 months referred to in the said clause. This is because the alleged infringement on that ground would have completely occurred with the lapse of the said 03 months period.

Therefore it is clear that the Petitioner has failed to file the instant application as regards the above three grounds within the time period specified in Article 126 (2) of the Constitution. For those reasons, I uphold the preliminary objection raised by the Respondents that the Petitioner has failed to file this application within one-month time period specified in Article 126 (2) of the Constitution as regards the above three grounds.

I would now consider whether the Petitioner has failed to file his application in respect of the fourth ground (referred to above), within one-month, as specified in Article 126 (2) of the Constitution.

The Petitioner was interdicted on 10-03-2016 and the one-year period reckoned from the date of interdiction lapses on 10-03-2017. Therefore the 1st Respondent University could only have reinstated the Petitioner (if it decided to act as per the clauses referred

¹ Produced marked **P 6** by the Petitioner and also marked **R 5** by the 22nd and 23rd Respondents.

to in the fourth ground above), only after 10-03-2017. Therefore any infringement as alleged by the Petitioner on this ground can occur only after this date (i.e. 10-03-2017).

As has been mentioned earlier, the Petitioner has filed this application on 15-08-2017. However, even as at that date, the 1st Respondent University has not reinstated him. This is despite the said one-year period from the date of his interdiction has already lapsed. By such an act, if the 1st Respondent University infringes any fundamental right of the Petitioner, I am of the view that such an infringement would be a continuing infringement. This is because the 1st Respondent University, if it so decides, could have reinstated the Petitioner at any time up until the time the Petitioner had filed this application. I also observe that the alleged infringement complained by the Petitioner on this ground is a failure on the part of the 1st Respondent University as opposed to a positive action. The alleged failure had continued. Therefore, I am of the view that the Petitioner's application on that ground is not time barred as the alleged infringement is in the nature of a continuing infringement.

I would now proceed to consider whether the 1st Respondent university has infringed the fundamental rights guaranteed to the Petitioner by Article 12(1) of the Constitution by failing to reinstate him after the lapse of one year from the date of his interdiction, as stipulated in clause 22.1 of the Government Establishments Code read together with clause 18.3 of the University Establishments Code, as alleged by the Petitioner.

It is a fact that the formal disciplinary inquiry against the Petitioner, upon the charge sheet issued against him by the 1st Respondent University, had commenced on 13-07-2017. The said inquiry had proceeded on number of days thereafter.

It is the contention of the Petitioner that he is entitled to be reinstated in his post, after the lapse of one year from the date of his interdiction in terms of clause 22:1:1 of the Government Establishments Code.

At the time of interdiction, the Petitioner was serving as the Head of the Department of Mass Media of the Sri Palee Campus, University of Colombo, and held the substantive post of Senior Lecturer –Grade II in the University Service. Thus, it is primarily the

Establishments Code of the University Grants Commission (hereinafter sometimes referred to as UGC E-Code) which must apply to him. However, it is the contention of the Petitioner that since there is no specific provision in the said UGC E-Code on the above contentious point, it is the Government Establishments Code provisions, which must apply to him on the issue in question. The Petitioner relies on University Grants Commission Circular No. 911 dated 14-05-2009.² The said Circular has made the provisions of the Government Establishments Code applicable to matters for which specific provisions have not been provided in the Establishments Code of the University Grants Commission and Higher Educational Institutions (as amended).

In contradistinction to the position taken up by the Petitioner, the Respondents rely on clause 18.3 of the UGC E- Code to argue that it should be the only provision, which must apply to the Petitioner in this situation. It is to be noted that the said clause 18.3 only states that in a situation where an officer has been interdicted, the disciplinary inquiry against him, must as far as possible, be concluded without delay. The said provision is general in its nature. One can clearly observe that the UGC E-Code has not specifically provided any mechanism to be adopted when the disciplinary inquiry against an interdicted officer cannot be concluded without delay. Provisions in clause 18.3 cannot be considered as having provided for such a situation. Indeed, it is totally silent about such a situation. Thus, there is clearly a lacuna on this point in the UGC E-Code. Therefore, I conclude that the provision contained in clause 22:1:1 of the Public Administration Circular No. 06 / 2004 (1) dated 30-12-2011 [**P 6 (c)**] must apply to the Petitioner, as it is a matter for which the UGC E-Code has not made any specific provision.

The above conclusion does not lay the matter in hand to rest. This Court has to next consider the effect of clause 22:1:1 in **P 6 (c)** to the given situation.

As per the Public Administration Circular No. 06 / 2004 (1) dated 30-12-2011,³ if the disciplinary authority fails to conclude the disciplinary proceedings and issue a disciplinary order within one year after the issuance of the charge sheet against an officer who is

² Produced marked **P 6 (a)**.

³ Produced marked **P 6 (c)**.

under interdiction, due to a reason other than a delay attributable to the said accused officer, then the said disciplinary authority has the discretion to reinstate the accused officer in service and pay him his salary.

This is a circular, which has amended the previous circular, which was hitherto in force, namely the Public Administration Circular No. 06 / 2004 dated 15-12-2004.⁴ Clause 22:1 of the said circular (No. 06 / 2004 dated 15-12-2004) shows that it was imperative (as it was then) on the disciplinary authority to reinstate such accused officer in service when the relevant disciplinary authority fails to conclude the disciplinary inquiry and issue a disciplinary order within one year from the date the charge sheet was issued. This provision had been made applicable to the charges other than a charge mentioned in clause 31:11.

Thus, it can be seen as per this clause (22:1:1) as it stood as at 15-12-2004 and up until 30-12-2011, the disciplinary authority in such circumstances, had not been given any discretion to decide whether it should reinstate such accused officer.

Quite contrary to the above position, by the Public Administration Circular No. 06 / 2004 (1) dated 30-12-2011, the disciplinary authority has now clearly been given a discretion to decide whether such an accused officer should be reinstated in service after the lapse of one year from the date of the issuance of the charge sheet. Indeed, it is relevant to observe that in the year 2011, this amendment [**P 6 (c)**] has been brought solely for the purpose of conferring on the disciplinary authority, the hitherto lacked discretionary power, to decide the reinstatement of an accused officer after one year as mentioned above.

This leads me to consider a yet another question. That is the question whether the non-re-instatement of the Petitioner after the said one-year period has amounted to any infringement of the fundamental right of the Petitioner to equal protection of law under Article 12(1) of the Constitution.

⁴ Produced marked **P 6 (b)**.

At the outset, as has already been mentioned above, one needs to be mindful that the imperative duty placed on the disciplinary authority to reinstate such an accused officer who is in a situation described in clause 22:1:1 in **P 6 (b)** has been deliberately removed by the circular **P 6 (c)**. Thus, as at present, the disciplinary authority has been vested with a discretion to decide whether such an accused officer who is in such a situation should be re-instated in service after the lapse of one year from the date of issuance of charge sheet. This is by virtue of the circular **P 6 (c)**.

The complaints made against the Petitioner are written complaints. One of them was jointly made by several senior members of the academic staff. They include Deans of several faculties. Moreover, as has already been mentioned above, the 22nd and 23rd Respondents are female probationary lecturers who have complained that the Petitioner abusing the powers of his post as the Head of the Department, has sexually harassed them. The said probationary lecturers have also given evidence in the disciplinary inquiry against the Petitioner. A copy of the said proceedings have been produced before this Court by the Respondents. Indeed, the disciplinary authority is obliged to afford equal protection of law to the 22nd and 23rd Respondents in the same manner as its obligation to the Petitioner.

Perusal of the proceedings of the disciplinary inquiry shows that number of days have been spent by the Petitioner's counsel to cross examine the witnesses. This includes the two female probationary lecturers as well. Thus, the question whether it would be in the best interest of justice to allow the Petitioner to continue to function in his post as the Head of the Department when two female probationary lecturers under him were to testify against him would definitely be a factor which the 1st Respondent University should consider.

Thus, having regard to the circumstances of the instant case, non-re-instatement of the Petitioner by his disciplinary authority after the lapse of one year from the date of issuance of the charge sheet, cannot be viewed as a wrong exercise of the discretion by the said disciplinary authority.

For the foregoing reasons, I am of the view that the allegation that the Respondents have failed to afford the equal protection of the law to the Petitioner must fail.

Therefore, I dismiss this application with costs.

JUDGE OF THE SUPREME COURT

BUWANEKA ALUWIHARE PC J

I agree,

JUDGE OF THE SUPREME COURT

E A G R AMARASEKARA J

I agree,

JUDGE OF THE SUPREME COURT