

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

*In the matter of an Appeal under and in terms of
Article 128 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

Dr. (Mrs.) Mangala Gunatilake
No. 864/5, Kotte Road, Etul Kotte.

SC Appeal No. 05/2015

PETITIONER

SC (SPL) LA 144/2014

-Vs-

CA (Writ) 668/2011

1. The University Grants Commission
No. 20, Ward Place, Colombo 7.

2(a) Prof S. S. M. Kshanika Hirimburegama
Chairperson,
The University Grants Commission,
No. 20, Ward Place, Colombo 7.

3. The University of Colombo
No. 94, Cumaratunga Munidasa Mawatha,
Colombo 03.

4(a) Dr. W. Kumara Hirimburegama
The Vice Chancellor,
University of Colombo,
No. 94, Cumaratunga Munidasa Mawatha,
Colombo 03.

5. Mr T. L. R. Silva
Acting Registrar,
University of Colombo,
No. 94, Cumaratunga Munidasa Mawatha,
Colombo 03.

6. Dr. Tudor Weerasinghe
The Rector,
Sri Palee Campus, Wewala,
Horana.

7. Prof. Indralal de Silva
Dean, Faculty of Arts,
University of Colombo,
No. 94, Cumaratunga Munidasa Mawatha,
Colombo 03.

8. Prof. Marie ES Perera,
Dean, Faculty of Education,
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9. Mr. N. Selvakkumaran,
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10. Dr. H. D. Karunaratne,
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Colombo 03.

11. Prof. M. M. R. W. Jayasekera,
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Kynsey Road, Colombo 08.

12. Prof. T. R. Ariyaratne,
Dean, Faculty of Science,
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13. Prof. K. Sunil Chandrasiri,
Faculty of Graduate Studies,
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14. Prof. Nayani Melegoda,
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15. Mr. Rajan Asirwatham,
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16. Mr. K. Kanag-Isvaran,
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No. 94, Cumaratunga Munidasa Mawatha,
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17. Mr. Thilak Karunaratne,
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18. Dr. Harsha Cabral,
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19. Mr. C. Maliyadda
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20. Mrs. Leisha de Silva Chandrasena,
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25. Dr. Cuda Wijeratna
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26. Prof. J. Thilakasiri
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27. Mr. H. M. N. Warakaulle,
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Faculty of Medicine,
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30. Prof. Susirith Mendis,
Vice Chancellor,
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31. Prof. Deepal Mathew,
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35. Prof. Anura Weerasinghe,
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RESPONDENTS

AND NOW BETWEEN

Dr. (Mrs.) Mangala Gunatilake
No. 864/5, Kotte Road, Etul Kotte.

PETITIONER-APPELLANT

-Vs-

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2(b) Prof. Mohan de Silva - Chairman

2(c) Prof. Sampath Amaratunga – Chairman

The University Grants Comission

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4(c) Prof. Chandrika N. Wijeyaratne – The Vice
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4(d) Prof. H. D. Karunaratne – The Vice
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22(d) Rev. Father Quintus Fernando

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26(c) Mrs. Indrani Weeratunga

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27(i)(a) Prof. Sam Karunaratne

27(ii) Prof. P. A. J. Perera

27(ii)(a) Ms. Padmini Ranaweera

27(iii) Prof. A. N. I. Ekanayake

27(iii)(a) Mr. Ariyaratne Hewage

27(iii)(b) Mr. Channa de Silva

27(iv) Mr. Mahinda Madihahewa

27(v) Mr. Anil Rajakaruna

27(v)(a) Mr. J. M. U. B. Jayasekera

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RESPONDENT-RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**
MAHINDA SAMAYAWARDHENA, J. AND
SAMPATH B. ABAYAKOON, J

COUNSEL: Uditha Egalahewa, PC with Amaranath Fernando instructed by Lilanthi de Silva for the Petitioner-Appellant
Nirmalan Wigneswaran, DSG for Respondent-Respondents

WRITTEN Respondent-Respondents on 6th July 2015 and 07th May 2025
SUBMISSIONS: Petitioner-Appellant 7th July 2015 and 28th April 2025

ARGUED ON: 28th March 2025

DECIDED ON: 22nd January 2026

THURAIRAJA, PC, J.

1. The instant appeal arises out of a writ application filed by the Petitioner-Appellant [hereinafter 'Appellant'] before the Court of Appeal seeking, *inter alia*, the following relief:
 - a. "*A Writ of Certiorari quashing the decision of the 4th Respondent-Respondent, contained in P13(b) rejecting the Petitioner's appeal for the promotion to the post of Professor;*¹
 - b. *A Writ of Mandamus directing the 3rd – 33rd Respondent-Respondents to appoint the Petitioner to the post of Professor, with effect from 14.07.2008.*"

¹ The 'appeal' referred to herein is an appeal to the Vice Chancellor of the University of Colombo dated 5th April 2011. This letter of appeal is marked P13(a) in the Petitioner-Appellant's Petition before the Court of Appeal, whereas the P13(b) is the letter dated 20th October 2011 by which the Petitioner-Appellant was informed of the rejection of the said appeal

2. By judgment dated 27th June 2014, the Court of Appeal dismissed the application of the Petitioner-Appellant. Aggrieved by the said judgment, the Appellant filed a Special Leave to Appeal Application before this Court, and on 13th January 2015, this Court granted special leave to appeal on three questions of law set out in paragraphs 13(a), 13(c) and 13(d) of the said Petitioner of Appeal.
3. I must place on record that the Appellant was, in fact, promoted to the post of Professor while this matter was pending before this Court. However, this does not render the instant case futile, as the judgment of this Court would determine whether her appointment to the post of Professor ought to be backdated or not. While this matter was pending before this Court, various attempts were made to resolve this matter administratively. Failing at which, the Court proceeded to fix this matter for judgment.

CIRCUMSTANCES OF THE APPEAL

Background of the Case and the Applicable Scheme of Recruitment

4. The Appellant, presently a Professor in the Department of Physiology, Faculty of Medicine, University of Colombo, was an Associate Professor at the time of filing her application before the Court of Appeal. The Appellant's writ application relates to grievances associated with the very same application process which led to her promotion as an Associate Professor.
5. Circular No. 723 dated 12th December 1997 issued by the University Grants Commission [Marked "P4"] contains the scheme of recruitment for the posts of Associate Professor, Professor and Senior Professor in the University System. Although a different scheme of recruitment is in operation today, the said Circular is the scheme applicable to the Appellant, who was seeking a merit promotion. This has not been disputed.
6. According to Item 14 of the said Circular, the application and the marking scheme for the

selections consists of four sections: Contribution to Teaching and Academic Development (Section 1); Research and Creative Work (Section 2); Dissemination of Knowledge (Section 3.1) and University and National Development Activities (Section 3.2). A Senior Lecturer may be considered for promotion if such a lecturer obtains the required minimum mark under the said criteria. Naturally, the minimum mark threshold to be considered for the grade of Professor is higher than that which is set for the grade of Associate Professor.

7. Under the applicable scheme, the applications of a candidate consist of a self-assessment of the candidate under each of the abovementioned four sections. Following the submission of such a self-assessment with the application, the same is to be evaluated by two panels appointed by the Senate. Evaluation of Sections 1 and 3.2 is carried out by a panel headed by the Vice Chancellor/Dean of the Faculty to which an applicant belongs and two other Professors of the University appointed by the Senate. Evaluation of Sections 2 and 3.1 is carried out by a panel of two experts from outside the University, and the said panel, too, is to be appointed by the Senate. Following these evaluations, the final selection is to be made by the Selection Committee based on the reports from said evaluations.
8. As the learned Deputy Solicitor General highlighted, the scheme of recruitment requires such initial evaluations of a candidate's application to be submitted to the Selection Committee, which is responsible for the final selection. Evaluation panels do not select candidates but rather conduct an evaluation of the self-assessed applications made by such candidates.
9. On 14th July 2008, while the Appellant was serving at the University as a Senior Lecturer, she had made an application [marked '**P7**'] seeking promotion to the post of "Associate Professorship/Professorship" at the University of Colombo. Pursuant to this application, she had attended an in-person interview on 07th October 2010.

The Contentious Aspect of the Promotion Application

10. On 08th October 2010, the Appellant had been informed that the Selection Committee, which makes the final selection under the applicable scheme of recruitment, had deducted certain marks allocated to her by the external evaluators—which the Appellant alleges to be *ultra vires* and illegal. This deduction had resulted in the Appellant being promoted to the post of Associate Professor instead of Professor.
11. The Petitioner had been informed of her promotion to the post of Associate Professor with effect from 14th July 2008 by letter dated 24th January 2011 [Marked “**P12**”], and the Appellant had accepted the said promotion by letter of acceptance dated 2nd February 2011. However, she had, thereafter, by letter dated 05th April 2011 [Marked “**P13(a)**”], lodged an appeal to the Vice Chancellor of the University against the said deductions, which was rejected by letter dated 20th October 2011 [Marked “**P13(b)**”].
12. It is against the decision reflected in this letter marked “P13(b)” that the Appellant has sought relief in the nature of writs of certiorari and mandamus. As the Respondents highlight, the Appellant has not sought to quash the selection made by the Selection Committee nor the decision of the said Selection Committee to deduct marks from her application. Under these circumstances, the Respondents contended that the relief sought by the Appellant was futile.
13. In any event, the record indicates that the Selection Committee has effected two separate mark deductions in the Appellant’s application. One such deduction has been to correct an arithmetic error. The Appellant has not challenged this deduction in her writ application before the Court of Appeal.
14. The other deduction—which the Appellant seeks to challenge—relates to two items the Appellant has cited under Section 3.1.2 in her self-assessment. Under this particular

section, a candidate can cite books written by them that are to be used for supplementary reading, whereas Section 3.1.1 and Section 3.1.3 refer to textbooks and translations of books, respectively. While an applicant is able to cite however many books written by them under this Section 3.1.2 and claim 4 marks for each such book, in cases of joint authorship, marks are to be assigned according to the applicant's contribution.

15. The Appellant in her self-assessment has claimed 4 marks each, and 8 marks in total, citing the following two items as books under the aforementioned Section 3.1.2:
 - a. *"3.1.2.1 – Manual on Determination of Erythrocyte Sedimentation Rate, compiled by Dr. Mangala Gunatilaka, Dr. Arundathi Kurukulasuriya, Dr. Kusum de Abrew"*; [Marked "R2"] and
 - b. *"3.1.2.2. – Manual on Measurement of Whole-blood coagulation time, compiled by Dr. Mangala Gunatilaka, Dr. Arundathi Kurukulasuriya."* [Marked "R3"]
16. The two External Evaluators had also given 8 marks and 7.6 marks, respectively, for the two items. However, the Selection Committee had deducted these 7.6 marks after examining the two items at the meeting held on 07th October 2010 on the basis that "R2" and "R3" cannot be considered as "books".
17. The reasoning of the Selection Committee has been recorded as follows in the document marked "R6":

"The Section Panel having gone through marks given for selections, decided that no marks should be given to Section 3.1.2 – reason – the submissions are practical manuals for a single practical and not books"
18. As the Respondent highlighted, the Appellant had claimed 2 marks each for the very same items under Section 2.14.2 for "Other Creative Work". The Court observes this assertion

to be correct, as can be clearly seen on Section 2: Page 16 [Case Brief, p. 150] of the Appellant's application.

19. In addition to this, the Respondents also highlighted that the Appellant herself has identified these items as "manuals" that were jointly "compiled" by her with many others. Moreover, learned Deputy Solicitor General strenuously argued that these works, consisting of merely 10 and 21 pages—that too in very large font and most of it being photographs, cannot simply constitute "books" as contemplated in the scheme of recruitment.
20. However, the Appellant's submission is that, since the independent Evaluation Panel, consisting of external experts, has granted marks on the basis that "R2" and "R3" were books, the Selection Committee has no power under the Circular to remove those marks.
21. In addition to the aforementioned submissions, the Respondents have also raised several key objections before the Court of Appeal, including futility, acquiescence, laches and failure to exhaust an effective alternative remedy.

QUESTIONS OF LAW

22. As mentioned earlier, this Court granted special leave to appeal on three questions of law set out in paragraph 13 of the Petition of Appeal, which are as follows:

- (i) *"Did the Court of Appeal failed [sic] to consider that the selection committee had acted beyond its power and this [sic] acted ultra vires?"*
- (ii) *"Did the Court of Appeal failed [sic] to consider the provisions contained in P4 annexed to X1?"*
- (iii) *"Did the Court of Appeal erred [sic] by refusing to grant writs on the basis that alternative remedies are available?"*

ANALYSIS

23. I see it fit to first consider the third and final question of law, as it would not be necessary for this Court to venture into any other questions if the third question of law is answered in the negative.
24. The first question of law is whether the Court of Appeal erred in refusing to grant orders in the nature of writs of certiorari and mandamus as prayed for by the Appellant on the basis that an alternative remedy was available under the *Universities Act, No. 16 of 1978*.
25. It is well understood that a prerogative writ will be refused where there is an adequate alternative remedy available to the petitioner. This bar, of course, is not an absolute one. Where a party can satisfy the court as to the existence of any exceptional circumstances, the court may still exercise its writ jurisdiction despite the existence of an alternative remedy.
26. As S.N. Silva, J [as His Lordship then was] observed in ***Halwan and Others v. Kaleelul Rahuman***,²

...A party dissatisfied with a judgment or order, where a right of appeal is given either directly or with leave obtained, has to invoke and pursue the appellate jurisdiction. When such party seeks judicial review by way of an application for a Writ as provided in Article 140 of the Constitution he has to establish an excuse for his failure to invoke and pursue the appellate jurisdiction. Such excuse should be pleaded in the petition seeking judicial review and be supported by affidavits and necessary documents. In any event, where such a party has failed to invoke and pursue the

² [2000] 3 Sri LR 50, at pp. 61-62.

See also *Tennakoon v. Director-General of Customs* [2004] 1 Sri LR 53; *Ishak v. Laxman Perera and Others* [2003] 3 Sri LR 18; *Thajudeen v. Sri Lanka Tea Board* [1981] 2 Sri LR 471

appellate jurisdiction the extraordinary jurisdiction by way of review will be exercised only in exceptional circumstances such as, where the court, tribunal or other institution has acted without jurisdiction or contrary to the principles of natural justice resulting in an order that is void. The same principle is in my view applicable to instances where the law provides for a right of appeal from a decision or order of an institution or an officer, to a statutory tribunal. The reason is that such appellate procedure as established by law being the ordinary procedure should be availed of before recourse is had to the extraordinary jurisdiction by way of judicial review as provided in Article 140 of the Constitution. The remedy by way of judicial review should not be allowed to supplant the normal statutory appeal procedure and should be available only in exceptional circumstances as noted above."

27. It was the Respondents' submission in the instant case that, as Sections 80-87 of the *Universities Act, No. 16 of 1978 (as amended)* provide for the University Services Appeal Board (USAB), the Appellant ought to have first made her appeal to the USAB under Section 86(a) of the said Act and exhausted such avenue before she is able to invoke writ jurisdiction of the Court of Appeal under Article 140 of the Constitution.
28. Section 86 of the *Universities Act, No. 16 of 1978*³ states as follows:

"The Appeals Board shall have and may exercise the following powers, duties and functions-

*(a) to **conduct investigations into appointments and promotions alleged to have been made to the staff of the Commission and to Higher Educational Institutions in contravention of the schemes of***

³ As amended by *Universities (Amendment) Act, No. 7 of 1985* and *Universities (Amendment) Act, No. 1 of 1995*

recruitment and the procedures for appointment in force at the time such appointments or promotions were made or alleged to have been made and into allegations that appointments or promotions have not been made to posts when vacancies have arisen in such posts;

- (b) to consider appeals from employees of the Commission or any Higher Educational Institution, who have been dismissed, compulsorily retired, or otherwise punished for misconduct, inefficiency or dereliction of duty, against such dismissal, compulsory retirement or other punishment;*
- (c) to consider appeals from employees of the Commission who were employees of the old University or any Higher Educational Institution, relating to compensation payable to employees of the old University under section 142 of this Act; and*
- (d) to convey to the Chairman of the Commission or the principal executive officer of the Higher Educational Institution concerned, as the case may be, the decisions arrived at after considering such appeals or conducting such investigations.”⁴*

29. In response, the Appellant submitted that Section 86(a) of the *Universities Act* was only applicable to the “staff of the Commission”, i.e. the University Grants Commission, and that it did not include lecturers.
30. However, as the Respondents correctly submitted, Part X (Sections 71-79) of the *Universities Act*, titled “Appointments to the Staff”, deals with the appointment of “teachers”, specifically under Section 72 therein.

⁴ Emphasis added

31. In addition to that, it must also be observed that Section 86(a) of the *Universities Act* refers not only to the "staff of the commission" but to "*the staff of the Commission and to Higher Educational Institutions*". Moreover, the case of **Prof. (Dr.) Chelliah Elankumaran v. the University of Jaffna and Others**,⁵ submitted by the Respondents, provide a clear example of where a lecturer lodged an appeal against a decision of a University to the USAB and thereafter challenged the decision of the USAB before the Court of Appeal. In the said case, very much like the instant case, the petitioner lodged an appeal to the USAB against the decision to appoint him an Associate Professor at the University of Jaffna, instead of appointing him a Professor.
32. As such, it is my considered view that the language of the statute itself, as well as the established practice, clearly indicate that the Petitioner-Appellant of the instant case has an effective alternative remedy under Section 86(a) of the *Universities Act, No. 16 of 1978*.
33. The Appellant has not explained any reason as to why such remedy may not be effective or expedient. Accordingly, it is my view that the Court of Appeal has not erred in refusing the Appellant's application on the basis that an effective alternative remedy was available.
34. The third and final question of law is answered in the negative. As relief prayed for by the Appellant ought to be refused on this basis alone, I see no necessity to consider the other two questions of law. The Appeal must therefore stand dismissed with costs.

Appeal Dismissed.

JUDGE OF THE SUPREME COURT

⁵ CA (Writ) Application No. 147/2013, CA Minutes of 17th May 2019

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT

SAMPATH B. ABAYAKOON, J.

I agree.

JUDGE OF THE SUPREME COURT