

IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for a
Mandate in the nature of Writs of Certiorari
and Mandamus under Article 140 of the
Constitution.

Divulgama Kankanamlage Arther
Chandradasa,
36/C, Kandumulla,
Ambagaspitiya.

PETITIONER

C.A. (Writ) Application No.782/2009

Vs

1. University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
2. Prof: K. Shanika Hirimburegama
Vice Chancellor
University Of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
3. Dr. Tudor Weerasinghe
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.

4. Prof: Indralal de Silva
Dean, Faculty of Arts,
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
5. Prof: S. Sandarasegram
Dean, Faculty of Education
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
6. Prof: Suil Chandrasiri
Dean, Faculty of Graduate Studies
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
7. Dr. P.S.M. Gunaratne
Dean, Faculty of Management and
Finance,
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
8. Prof: Rohan Jayasekera
Acting Dean, Faculty of Medicine
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
9. Prof: Rezvi Sheribb
Senate Representative
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
10. Prof: Nayani Melegoda
Senate Representative

University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.

11. Ranjan Asirwatham
Appointed Member
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
12. C. Maliyadda
Appointed Member
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
13. Mahinda Rajapakse
Appointed Member
94, Munidasa Kumarathunga MW,
Colombo 03.
14. P.W. Senaratne
Appointed Member
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
15. K. Kanag-Isvaran
Appointed Member
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
16. Chelliah Thangarajah
Appointed Member
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.

17. H.M.N. Warakaulle
Appointed Member
94, Munidasa Kumarathunga MW,
Colombo 03.
18. Vidyanidhi Dr. N.R. De Silva
Appointed Member
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
19. Prof: J. Thilakasiri
Appointed Member
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
20. Dr. Cuda Wijeyeratne
Appointed Member
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
21. Mrs. Leisha de Silva
Appointed Member
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
22. D.P.L.J. Nanayakkara
Acting Registrar
University of Colombo
94, Munidasa Kumarathunga MW,
Colombo 03.
23. A. Vedamulla
Member of the Disciplinary Inquiry,
University of Colombo
94, Munidasa Kumarathunga MW,

Colombo 03.

24. A.M.R.B. Amarakoon

Member of the Disciplinary Inquiry
University of Colombo

94, Munidasa Kumarathunga MW,
Colombo 03.

25. Hon. Attorney General

Attorney General's Department
Colombo 12.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

COUNSEL

: P.K. Prince Perera with
Asanka Dissanayake,

S. Amarasekera for the

Petitioner.

Riad Ameen with Inoka

Madawala for the 1st to 4th, 6th to
8th, 10th to 25th and for the
Respondents.

ARGUED ON

: 25th August, 2014

DECIDED ON

: 14th November, 2014

Deepali Wijesundera J.

The petitioner was registered as an external student of the Faculty of Law of University of Colombo and has done the first in Laws Examination in 1986 according to **P1** nearly 20 years later he has managed to sit for the Final Examination Part I and II held during June 2005 and July 2005 according to **P3A** and **P3b** time tables marked. The results of this examination was not released by the University and the petitioner had received a letter informing him that the 1st respondent had decided to withhold the results for breaching examination rules and that an inquiry will be held against him and he will be informed of the date of inquiry (**P4**). By **P6**, **P8** and **P9** he was informed of the date of inquiry. The inquiry was held on 20/05/2009 and the findings of the inquiry were given to the 1st respondent. The 2nd respondent by letter marked **P12** had declared the results of the petitioner null and void.

The petitioner has filed this application for a writ of certiorari to quash the findings of the inquiry marked **P10**, the decision of the University Council to declare the results null and void marked **P11** and the 2nd respondent's letter informing the petitioner that his results have been declared null and void marked **P12**. And also for a writ of

Mandamus to direct 1st to 22nd respondents to release the petitioner's results.

The counsel for the petitioner submitted that declaring his results null and void is against the rules of natural justice since there was no detection of an examination offence committed by the petitioner in the examination hall and that there was only a finding of similarity in answering scripts, which he claimed was due to candidates attending the same private tuition classes and studying from the same source. The petitioner stated that he was only given his answer scripts at the inquiry to identify his handwriting which he did and no opportunity was given to him to cross examine the witnesses and also that he was not given an opportunity to call evidence. He further stated the report of the committee of inquiry is based on a mere suspicion and it is not a final and conclusive report.

The petitioner's counsel cited the judgment in *Nanayakkara Vs University of Peradeniya and Others 1985 1 SLR 174*. In this case the petitioner was not given prior notice of the inquiry he was taken before the committee on the same day. This does not apply to the instant case as he was informed of the pending inquiry by P4. The judgment in *Galappathi Vs Bulegoda 1997 1 SLR 393* cited by the petitioner is not

relevant to this case. Petitioner also cited the judgment of *Premaratne Vs University Grants Commission 1998 3 SLR 395* and *Sarath Amunugama and Others Vs Karu Jayasuriya Chairman United National Party and others 2000 1 SLR 172* and *Keralagamge Vs Commander of the Navy 2003 3 SLR 169* where they have held the petitioner should be given an opportunity to meet his case.

The counsel for the petitioner further stated that due to the declaration of his results null and void his legitimate expectations for his entire future have been denied.

The learned counsel for the respondents submitted that the petitioner's only argument is that he had not been given a fair hearing which is not correct as he was informed of the inquiry well in-advance by P4 for which he replied and by P9 he was informed of the date of inquiry and that the inquiry was held by three persons against whom the petitioner has not alleged bias. He further stated that the petitioner was shown his answer scripts and was shown the comparisons to other answer scripts and thereafter the inquiry panel has given this recommendation to the University Council by P10. The said council after considering P10 has made their decision by P11 which was informed to the petitioner by P12. The respondents' counsel submitted that the

respondents decision is comparatively lenient and that the petitioner was not dismissed from the university and that the petitioner could sit for the exam in a future date therefore he can not say that he was not given a fair hearing or that rules of natural justice was not applied.

The respondents further stated that rules of natural justice do not rigidly require the service of a charge sheet in all cases and that the decision P11 was made based on the similarity of the answer scripts which were shown to the petitioner and that he had adequate notice of the allegation against him. The petitioner also had the opportunity to answer to his allegations but he has not made any comment stating *"refused it due no transparency"* the respondents further stated. The respondents also stated that the petitioner after the inquiry had the opportunity to complain to the 1st respondent that he did not get a fair hearing if he thought so, but did not do so which shows that he had a fair hearing.

The counsel for the respondents compared the answer scripts of the petitioner and the others and stated that it is obvious that the petitioner and the other candidates have copied one answer.

On perusal of document **P4** it is clear that the petitioner was informed well in-advance of the pending inquiry even before he was informed of the inquiry date. He has replied to the said **P4** letter by **P5** which was followed by **P9** to inform him of the date. On perusal of **P10** the inquiry report it is evident that the members have carefully analyzed the relevant documents and the statements of the examiners. This finding of the inquiry panel was forwarded to the university council who went through the report and unanimously decided to cancel the results of the candidates who copied at the exam. Therefore petitioner can not say there was no impartial inquiry held; in fact three examiners have examined the alleged answer scripts.

The petitioner was shown his own answer scripts at the inquiry and he has identified his hand writing when he was asked to compare his scripts with some others he has refused to do so therefore he can not say he was not given an opportunity to place his case.

The petitioner had registered as an external student passed his first in laws examination 1986 and sat for the final examination in 2005 which is after 19 years, at which he was found guilty of copying and is now trying to secure his pass through this court which will contribute to the deterioration of the legal profession as stated by the respondents.

For the afore stated reason exercising the discretion of this court
the application of the petitioner is dismissed with cost fixed at Rs.
25.000/=

JUDGE OF THE COURT OF APPEAL