

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

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

Dr. Vickrambahu Karunaratne,
17, Barrack Lane,
Colombo 02.

Petitioner

S.C.(F.R.) Application 308/2013

Vs.

1. Prof. A. Senaratne
Vice-Chancellor
2. Prof. Shantha K. Hennayake,
Deputy Vice-Chancellor (Acting)
3. Prof. K. Samarasinghe
Dean/Agriculture
4. Prof. (Ms) A. Abhayaratne
Dean/Arts
5. Prof. U.B. Dissanayake Dean/Dental
Science
6. Prof. L Rajapaksha, Dean/Engineering
7. Prof. M.D. Lamawansa
Dean/Medicine
8. Prof. S.H.P.P. Karunaratne Dean/Science
9. Prof. H.B.S. Ariyaratne Dean/Vet.
Medicine
10. Dr. D.B.M.Wickramaratne
Dean/AHS

**Ex-Officio Members – Council of the
University of Peradeniya**

11. Prof. P.W.M.B.B. Marambe
Faculty of Agriculture
12. Prof. A. Wickramasinghe
Faculty of Science

**Members Elected by the Senate-
Council of the University of
Peradeniya**

13. Ms. M. Abeygunasekera
- 14 Mr. U.W. Attanayake
15. Mr. B.M.N. Balasooriya
16. Prof. M.L.A. Cader
- 17 Mr. R. Chandrasekera
- 18 Dr. A.U. Gamage
- 19 Mr. A. Hewage
- 20 Mr. G. Jayaratne
- 21 Ms. P. Jayasekera
- 22 Mr. M.S. Premawansa
- 23 Mr. S. Ratwatte
- 24 Mr. M. Samaranayake
- 25 Dr. L. Weerasinghe

**Members appointed by the University
Grants Commission- Council of the
University of Peradeniya**

**Collectively – The Council of the
University of Peradeniya**

- 26 The University of Peradeniya
Peradeniya
- 27 Honouable Attorney General,
Attorney General's Department,
Colombo 12

Respondents.

BEFORE : K. SRIPAVAN, J.
E. WANASUNDERA, P.C.,J.

COUNSEL : M.A.Sumanthiran for Petitioner.
Shavindra Fernando, P.C., Addl. Solicitor
General for Attorney General

ARGUED ON : 21.03.2014

WRITTEN SUBMISSIONS : Not filed.

DECIDED ON : 09.05.2014

K. SRIPAVAN, J.

When this application was taken up for support, the learned Additional Solicitor General appearing for the Attorney-General objected to leave to proceed being granted and in addition, raised a preliminary objection to the maintainability of the application on the basis that it has been filed outside the time limit prescribed by Article 126(2) of the Constitution.

In the instant application, the Petitioner impugns, inter alia, the failure and/or neglect and / or refusal on the part of all or any one or more of the 1st to 25th respondents to grant the Petitioner's retirement benefits. In paragraph 21 of the petition, the Petitioner alleges that 5 years and 5 months have lapsed from the time of retirement. The Petitioner in paragraph 17 of the petition states that the Respondents refused and/or failed or / neglected to honour the said findings or/recommendations of the Human Rights Commission as well and reasserted its purported position that since the Petitioner had tendered his resignation, the need to reinstate the Petitioner does not arise.

It is necessary to analyze the Petitioner's grievances in order to ascertain whether leave should be granted. It would appear that by letter dated 10th August 1967 the Petitioner was confirmed in the post of Assistant Lecturer with effect from 1st September 1967 in the University of Ceylon. On 9th June 1971, the Petitioner was promoted to the post of Lecturer in Engineering Mathematics with effect from 19th March 1971. In July 1977, the Petitioner was once again promoted to the post of Senior Lecturer in the Department of Engineering Mathematics with effect from

30th March 1977. In paragraph 6 of the petition, the Petitioner states that when Act No. 16 of 1978 came into operation, he lost the opportunity of retiring under the said Act. However, he submitted a letter to the 1st Respondent on 27th August 1982 marked **(P6)** requesting permission to retire with benefits due to him under Section 142 of Act No. 16 of 1978. However, the Vice Chancellor of the University of Peradeniya, by his letter dated 21st October 1982 marked **(P7)** sent the following reply to the Petitioner -

“Reference your letter dated August 27th 1982, I regret to inform you that you will not be able to retire under Section 142 of the Universities Act, No. 16 of 1978 at this stage. However, I am accepting your resignation from the post of Senior Lecturer in the Department of Engineering Mathematics with effect from 1st November, 1982 subject to Council approval. Approval of the Council is also being sought to pay you gratuity in terms of the UGC Circular 139 of August 24, 1981.

As regards your request for contribution to the Universities Provident Fund from October 1967 to October 1970, I regret that this could not be done as you had not made arrangements to get Council approval and continue your contribution during the period of your leave.”

Thus, it could be seen that the Petitioner was never allowed to retire in terms of Act No. 16 of 1978. The reply of the Vice Chancellor demonstrates that the University accepted the Petitioner's resignation from the post of Senior Lecturer with effect from 1st November 1982 subject to the approval of the Council. In the absence of any challenge to the document marked **(P7)** where the Vice Chancellor has accepted the resignation of the Petitioner from the post of Senior Lecturer, with effect from 1st November 1982, this Court is at a loss to understand the basis on which the Petitioner could claim the retirement benefits. No evidence was placed to show that the Petitioner was retired from the University.

The alternate argument of the Petitioner is that the Political Victimization Committee of the Ministry of Education recommended that the Petitioner should be re-instated and the said recommendation of the Political Victimization Committee was approved by the Cabinet, as evidenced by the letter dated 25th October 2001 marked **(P8)**. It is to be noted that the Political Victimization Committee was not a body appointed in terms of Act No. 16 of 1978. If the Petitioner's contention is that he should be reinstated based on the recommendation of the Political Victimization Committee, he should have come to Court within one month of the receipt of the letter dated 25th October 2001 marked **(P8)**. In *Gamaethige Vs. Siriwardene* (1988) 1 S.L.R. 384 at 398, Fernando, J. expressed the nature of the jurisdiction of this Court in the following terms :

“However, the effect of the conferment on this Court of sole and exclusive jurisdiction to hear and determine questions relating to the infringement of fundamental rights by executive or administrative action is two-fold, firstly, this Court cannot give relief under Article 126 in respect of an executive act though clearly or flagrantly wrongful unless it is also an infringement of a fundamental right, and secondly, no other court or tribunal can hear or determine any question relating to the infringement of a fundamental right by executive or administrative action, although it may give relief against other wrongful acts.”

Accordingly, no other Court or Tribunal other than this Court can grant relief to the Petitioner for the violation of his fundamental rights.

The allegation that the Respondents' refusal/ or failure and/or neglect to honour the views/recommendations of the Human Rights Commission cannot form the basis of the Petitioner's discrimination. In terms of Section 14(3) (C) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996, the Human Rights Commission could only make recommendations as it may think fit to the

appropriate authority or persons with a view to prevent any infringement or the continuation of such infringement. The findings, views, recommendations of the Human Rights Commission will not bind either of the parties or this Court. Where the appropriate authority or persons to whom a recommendation is addressed fails to report to the Commission within the period specified in such a recommendation, all what the Commission could do is to make a full report of the facts to the President who shall, cause a copy of such a report to be placed before Parliament. Hence, the remedy available to the Petitioner under Act No. 21 of 1996 is different from the remedy that could be granted to the Petitioner in terms of Article 126 of the Constitution. The Petitioner cannot seek to enforce the recommendations of the Human Rights Commission in an application of this nature.

The Petitioner in paragraph 19 of the petition avers that the 1st Respondent has failed to take necessary steps to facilitate the payment of his retirement benefits to fall in line with the settlement reached in F.R. Application No. 260/2002. It is observed that the proceedings in F.R. Application No. 260/2002 were terminated on 28.01.2003 upon a settlement reached between the Petitioners and the Respondents in the said application.

The Petitioner was not a party to the proceedings in F.R. Application No. 260/2002. In these circumstances, I am of the view that the Petitioner cannot rely on the settlement entered in the said application. In any event, the Petitioner was aware of the judgment delivered in F.R. Application No. 260 /2002 as far back as 28th January 2003. It is to be noted that time begins to run when the infringement takes place. The pursuit of other remedies whether judicial or administrative do not prevent or interrupt the operation of the time limit. The settlement in F.R. Application No. 260/2002, even if it is applicable to the Petitioner, the alleged violation would arise from a judicial order given and not

from an executive or administrative action. Thus, the Petitioner is not entitled to invoke the fundamental rights jurisdiction of this Court on the basis of a settlement reached in F.R. 260 /2002.

If the Petitioner claims that the 1st to the 25th Respondents have failed to comply with the Cabinet decision to re-instate the Petitioner with effect from 21.10.1982 as communicated by letter dated 25.10.2001 marked **(P8)** the Petitioner should have invoked the jurisdiction of this Court in terms of Article 126(2) of the Constitution. The preliminary objection raised by the learned Additional Solicitor General is entitled to succeed as the Petitioner has filed this application almost 12 years after the receipt of **(P8)**.

For the above reasons, I do not see any legal basis to grant leave to proceed. Leave to proceed is thus refused.

JUDGE OF THE SUPREME COURT.

E. WANASUNDERA, P.C.,J.,

I agree.

JUDGE OF THE SUPREME COURT.

