

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

***In the matter of an Application under Article
126 of the Constitution.***

SC FR No. 74/2020

Mrs. V. Hiroshini Piyadasa
No. 262, Bogahagoda,
Dorape,
Angulgaha.

PETITIONER

Vs.

1. University of Ruhuna
2. Senior Professor Sujeewa Amarasena
Vice Chancellor
3. Professor Saman Chandana
4. Professor S.D. Wanniarachchi
5. Dr. H.P. Suriarachchi
6. Dr. H.B. Asnanthi
7. Dr. K.G. Imandra
8. Senior Professor M.V. Weerasuriya

9. Dr. Upali Pannilage
10. Mr. Samantha Kumara
11. Professor P.A. Jayantha
12. Professor Vasantha Devasiri
13. Professor W.G.D. Darmarathne
14. Professor Sampath Gunawardena
15. Professor N.J.De.S. Amarasinghe
16. Mrs. H.M. Wanigasinghe
17. Mr. M.G. Punchihewa
18. Mr. K.N. Samarasinghe
19. Admiral Samarasinghe
20. Mr. U.G. Karunarathna
21. Mr. C.R. De Zoysa
22. Professor L.P. Jayathissa
23. Professor D.A.L. Leelamani
24. Professor Sarath Amarasinghe
25. Mr. Gunapala Wijesinghe Dedewage
26. Mrs. L.C. Amarasinghe

27. Mrs. G.S. Kalugama

The Registrar.

28. Ms. A.W. Nirasha

"Kanthi", Malimbada,
Palatuwa.

29. Major General (Retd) G.D.H. Kamal

Gunaratne

The Secretary, Ministry of Defence,
15/5, Baladaksha Mawatha,
Colombo 03.

30. Inspector General of Police

Police Head Quarters
Colombo 01.

31. Mr. Roshan Fernando

Senior Deputy Inspector General of Police,
Sothern Province, Galle.

32. Mr. A.S.L. Narangoda

Inspector of Police (SCIB),
Police Station, Galle.

33. Hon. Attorney-General

Attorney-General's Department,
Hulftsdorp, Colombo 12.

RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**
KUMUDINI WICKREMASINGHE, J. AND
MAHINDA SAMAYAWARDHENA, J.

COUNSEL: K.G. Jinasena with Vikum Jayanath for the Petitioner

Ms. Ganga Wakishta Arachchi, DSG for the 1st-27th and 29th-32nd
Respondents

Ms. Maneesha Kumarasinghe with Ms. Hasini Hettiarachchi for the 28th
Respondent

WRITTEN 28th Respondent on 08th January 2024

SUBMISSIONS: Petitioner on 22nd April 2024
1st to 27th Respondents and 29th to 32nd Respondents on 30th April
2024

ARGUED ON: 18th March 2024

DECIDED ON: 29th November 2024

THURAIRAJA, PC, J.

1. The Petitioner, namely Mrs. V. Hiroshini Piyadasa (hereinafter the "Petitioner"), filed this fundamental rights application by Petition dated 12th March 2020 under Article 126(1) read with Article 17 of the Constitution seeking, *inter alia*, a declaration that her fundamental right to equality before the law and equal protection of the law guaranteed under Article 12(1), and the fundamental right to freedom to engage in a lawful profession guaranteed under Article 14(1)(g) of the Constitution have been violated due to the actions and/or omissions by one or more of the Respondents.

2. On 27th July 2020, this Court granted leave to proceed for the alleged violation of fundamental rights guaranteed under Article 12(1) of the Constitution.

Facts According to the Petitioner

3. The Petitioner was employed as the Senior Assistant Registrar to the Faculty of Medicine of Ruhuna University, the 1st Respondent (hereinafter the "1st Respondent University"), during which she worked with several subordinate non-academic members in conducting the duties assigned to her role, primarily involving administrative and examinations-related work. The Petitioner was placed under interdiction effective from 11th December 2018, which, *inter alia*, forms the basis of the Petitioner's instant application, and was subsequently terminated.
4. Petitioner submits that, as part and parcel of the Petitioner's role as the Senior Assistant Registrar, she was responsible for all documents in the Dean's Office while all the "other documents" were handled by her subordinate officers and the staff attached to the Dean's Office.
5. The 28th Respondent, Ms. A. W. Nirasha (hereinafter the "28th Respondent"), was a student admitted to the Medical Faculty of the 1st Respondent University, having been seconded by the Sri Lanka Navy for the academic year 2011/12 as per selections made by the University Grants Commission in terms of the Special Provisions for Enlisted Armed Forces.
6. The Petitioner submits that a routine inspection revealed that the 28th Respondent, despite failing her second-year MBBS examination had advanced to the third-year of the MBBS programme and was permitted to sit for Part I of the third-year MBBS Examination. The Petitioner states that further investigations revealed that the 28th

Respondent had submitted forged documents¹ to the Sri Lanka Navy to establish that she had passed the second-year MBBS Examination.

7. Importantly, the Petitioner claims to have promptly informed the aforementioned irregularities to the Dean of the Medical Faculty and the Vice Chancellor of the 1st Respondent University on 26th June 2018.
8. According to the Petitioner, a series of inspections had followed, conducted by a Preliminary Investigation Committee tasked with investigating the alleged fraudulent activities committed by the 28th Respondent. The Report of the Committee's findings² indicate that the Committee concluded that the 28th Respondent had, in fact, forged documents in order to advance to the next stage of her MBBS Examination. The Report further indicates that the Committee has discovered ample evidence of the Petitioner's involvement in the aforementioned fraudulent activities.
9. Upon the said findings of the Preliminary Investigations Committee, the Council of the 1st Respondent University had made the decision to temporarily suspend the studentship of the 28th Respondent as well as place the Petitioner under interdiction with half-pay according to the provisions in paragraph **18(1)** of **Chapter XXII** read with **paragraph 8(4)** of **Chapter VI** of the **Establishment Code** effective from 11th December 2018. The said decision had been communicated to the Petitioner by letter dated 11th December 2018.³

¹ Available as 'P7 annexure 3' appended to the Petition of the Petitioner dated 12th March 2020

² Marked 'R8' appended to the Written Submission of behalf of the Respondents (except the 28th Respondent) dated 30th April 2024

³ Marked 'P9' appended to the Petition of the Petitioner dated 12th March 2020

10. The Petitioner submits that, for reasons unknown to her, a second Preliminary Investigation was conducted by the 25th Respondent, and she was requested to appear on 2nd September 2019 by letter dated 20th August 2019.⁴ The Petitioner argues the second Preliminary Investigation itself to be indicative of the fact that she was prematurely placed under interdiction with inadequate evidence. The Petitioner had refused to appear before the 25th Respondent having received legal advice to not do so whilst her letter of interdiction was in place.
11. Subsequently, the Petitioner received a letter dated 11th February 2020⁵ stating that the Governing Council of the 1st Respondent University had taken the decision to suspend her entire pay on the basis of her failure to support the ongoing investigations pertaining to examination irregularities in the Faculty of Medicine.
12. The Petitioner attempts to establish that the 1st Respondent University was remiss in its duty for its failure to promptly file a police complaint to commence an investigation into the offence committed by the 28th Respondent soon after it was discovered. As such, she claims to have been forced to assume responsibility and take action independently by filing the complaint herself to the Officer-in-Charge of the Criminal Investigation Division, Galle.⁶
13. The Petitioner also alleges that neither the University nor the Vice Chancellor took steps to commence investigations against the other academic staff who had direct involvement in permitting the 28th Respondent to sit Part 1 of the third-year MBBS Examination without first successfully passing the second-year Examination.

⁴ Marked “P12” appended to the Petition of the Petitioner dated 12th April 2020

⁵ Marked “P20” appended to the Petition of the Petitioner dated 12th April 2020

⁶ Included in ‘P18’ appended to the Petition of the Petitioner dated 12th April 2020

14. Furthermore, the Petitioner states that the 1st Respondent University, despite having claimed to possess adequate evidence to frame charges, failed to issue a charge sheet against her.

Facts According to the Respondents

15. The learned Deputy Solicitor General contends that the Petitioner's claim of responsibility only over the documents in the Dean's Office while allowing subordinates to handle other documents was an attempt to evade accountability for the forgery of the result sheet concerning the 28th Respondent, particularly as the copy of the forged result sheet in question was under the direct control and custody of the Petitioner and the academic staff attached to the Petitioner's office, but under the Petitioner's direct supervision.
16. Moreover, upon perusal of the Magistrate's Court case record⁷ and Document marked 'R15',⁸ it is clear that the fraudulent act was, in fact, discovered in or around November 2017 and brought to the notice of the Petitioner, although no immediate action was taken by her. The Preliminary Inquiry Report⁹ clearly denotes that an inquiry has been carried out regarding several other officers besides the Petitioner, refuting any claims to the contrary by the Petitioner.
17. Furthermore, the 1st to 27th, 29th and 30th Respondents submit that 1st Respondent University did, in fact, file a police complaint to the Special Investigation Unit of Matara on 8th January 2019. They had also issued a letter dated 25th February 2019 to the

⁷ Marked 'P18' appended to the Petition of the Petitioner dated 12th March 2020

⁸ appended to the Written Submissions on Behalf of the Respondents except the 28th Respondent dated 30th April 2024

⁹ Marked 'R8' appended to the Affidavit of the 2nd Respondent dated 22nd April 2021

Officer-in-Charge of the Criminal Investigation Division, Galle, following a request for further information as a result of the Petitioner's complaint.

ANALYSIS

Alleged Improprieties in Conducting Inquiries

18. **Chapter XIX, Paragraph 16.2** of the **University Establishment Code** states as follows,

*"If a criminal offence or an offence of bribery or corruption is disclosed during the course of or at the end of a disciplinary proceeding, **the tribunal/inquiry officer shall report the matter to the Chairman of the Commission or Principal Executive Officer of the Higher Educational Institution/Institute** as the case may be, together with copies of records of proceedings so that he may **refer the matter to Decisions of the Police or the Commission to Investigate Allegations of Bribery or Corruption or such other statutory authority** for suitable action under the appropriate law."* [Emphasis added.]

19. As the **Establishment Code** itself provides, the complaint to the relevant authority can be filed during the inquiry or at the conclusion of the disciplinary proceedings by the chairman or the principal executive officer of the higher educational institution. As a result, any delay by the 1st Respondent University in informing the relevant authorities as per the Code can be justified. In fact, a perusal of the complaint made by the Petitioner to the police,¹⁰ reveals that the Petitioner herself filed the above-mentioned police complaint only after being suspended from her services.
20. As mentioned above, another allegation by the Petitioner is that the 1st Respondent University failed to issue a charge sheet against her.

¹⁰ Marked 'R11' appended to the Affidavit of the 2nd Respondent dated 22nd April 2021

21. **Chapter XIX, Paragraphs 8.2 and 8.3** of the **University Establishment Code** provide for preliminary inquiries and issuance of a charge sheet as follows,

[8.2] Preliminary Investigation

"A preliminary investigation is one that is conducted by a person or persons authorized to conduct preliminary investigations in subparagraph 6.1.1 of this Chapter to find facts as are necessary to ascertain the truth of a suspicion or information that an act of misconduct has been committed by an employee or several employees and to find out and report whether there is a prima facie case, sufficient material and evidence to prefer charges and take disciplinary action against the person or persons under suspicion.

[...]

"[8.3] If the preliminary investigation discloses a prima facie case against the suspected person, the Disciplinary Authority shall issue a Charge Sheet against him and call upon him to show cause as to why he should not be punished. Approval of the appropriate Disciplinary Authority shall be obtained for the charge sheet and the Disciplinary Authority shall authorize a specific natural person holding the Office such as Chairman of the Commission, or the Principal Executive Officer of the Higher Educational Institution/Institute to personally sign and issue the Charge Sheet."

22. In the Affidavit of the 2nd Respondent dated 23rd April 2021, the 2nd Respondent explains that the delay in the issuance of a charge sheet was a direct result of the Petitioner's refusal to participate in the investigations. Furthermore, quite telling of the Petitioner's dishonest deportment, it is observable on record that a comprehensive letter detailing the charges against the Petitioner was issued to the Petitioner by registered post on

22nd May 2020,¹¹ which the Petitioner has duly acknowledged by letter dated 8th June 2020, in requesting the documents referred to in the charge sheet.¹²

Was the Petitioner entitled to her monthly emoluments during the Inquiry?

23. Upon perusing the letter of interdiction dated 11th December 2018 issued by the Vice Chancellor¹³ and the decision of the Council taken at its 386th meeting,¹⁴ this court further observes that the 1st Respondent University has suspended the Petitioner with half-pay in the first instance effective from 11th December 2018 pending the said preliminary inquiry.
24. The Petitioner states that, thereafter, she received the decision from the Governing Council to suspend her half-salary due to her failure to support ongoing preliminary inquiries, by a letter dated 11th February 2020.¹⁵
25. **Chapter VI, Paragraph 8.3** of the **University Establishment Code** stipulates as follows,

"A person against whom there is a prima facie case of negligence, misappropriation, fraud, forgery or similar misdemeanor committed in respect of public property and causing or resulting in a loss to the Government or to the Commission/Higher Educational Institution/Institute or any other Statutory Board or Corporation, or against whom there is a prima facie case of bribery or any other means of illegal gain, shall not receive any emoluments from the date of his interdiction."

¹¹ Marked 'R13' appended to the Affidavit of the 2nd Respondent dated 22nd April 2021

¹² Marked 'R14' appended to the Affidavit of the 2nd Respondent dated 22nd April 2021

¹³ Marked 'P9' appended to the Petition of the Petitioner dated 12th March 2020

¹⁴ Marked 'P9A' appended to the Petition of the Petitioner dated 12th March 2020

¹⁵ Marked 'P20' appended to the Petition of the Petitioner dated 12th March 2020

26. Upon perusal of the letter dated 19th August 2022 (Disciplinary Order),¹⁶ it is clear that the Petitioner was charged with an offence constituting a *prima facie* case of forgery capable of causing or resulting in a loss to the 1st Respondent University. Therefore, strictly according to the **University Establishment Code**, the Petitioner is ineligible to receive any emoluments from the date of her interdiction.

Is there a violation of the Petitioner’s fundamental rights?

27. The all-familiar non-discriminatory clause of our Constitution codified in Article 12 reads that, “All persons are equal before the law and are entitled to the equal protection of the law.”

28. In the case of ***Dissanayake v. Piyal De Silva***¹⁷ Bandaranayake C.J. held that,

*“The right to equality means that among equals, the law should be equal and should be equally administered and thereby the like should be treated alike. Provisions in Article 12(1) would only provide for the equal protection of the law and shall not provide for the equal violation of the law.”*¹⁸

29. Article 12(1) jurisprudence has now evolved well beyond the tenets of comparative equality. This court has time and time again recognised Article 12(1) as a provision that encapsulates the rule of law itself. Any illegal, arbitrary, capricious or mala fide treatment against a person is a violation of Article 12(1) of the Constitution.

30. As discussed hereinabove, it is clear that the Respondents have followed the proper procedure laid out in the **University Establishment Code** in the suspension of the

¹⁶ Marked ‘R16’ appended to the Written Submissions of the Respondents dated 30th April 2024.

¹⁷ [2007] 2 Sri L.R. 134

¹⁸ *ibid*, at 140-141

Petitioner's service with half-pay during the preliminary inquiry. Upon finding a *prima facie* case against the Petitioner for forgery, abetting or altering the documents in the said inquiry, her half-pay was terminated in accordance with **Chapter VI, Paragraph 8.3** of the **University Establishment Code**. Suspension of the pay, to which she had no entitlement to begin with, cannot be considered a violation of fundamental rights.

31. I am of the view that facts adverted to above do not disclose that the Petitioner has been treated in a discriminatory manner nor does it disclose that there has been any arbitrary, capricious or *mala fide* treatment of the Petitioner. The Respondents have acted in accordance with the **University Establishment Code** in suspending the pay, filing of the police complaint as well as in issuing the charge sheet and holding the inquiries against the Petitioner.
32. Therefore, in considering the totality of the aforementioned circumstances, I find that the Petitioner has failed to establish a violation of the fundamental right guaranteed under Article 12(1) of the Constitution by the Respondents.
33. Accordingly, the Petitioner's application is dismissed.

Application Dismissed.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT