

BAMUNUARACHCHIGE

v

UNIVERSITY OF PERADENIYA AND OTHERS

COURT OF APPEAL
SRIIPAVAN, J. (P/CA)
ROHINI PERERA
CA 1722/05
APRIL 3, 2007
AUGUST 23, 2007

Writ of Certiorari – Decision of University Services Appeals Board – Is it final and conclusive – University Act – Section 87 – Making of a valid decision – Could the Court allow the issue of invalidity – to be raised in any proceedings where it is relevant? – Void acts – Voidable Acts – Challenge to same?

The petitioner Senior Lecturer (Temp) in the Department of Agricultural Biology applied for the post of Senior Lecturer Grade II, the selection committee recommended the appointment. There were protests that the petitioner did not possess the necessary educational qualifications. The 2nd respondent Vice Chancellor sought a clarification from the Vice Chancellor of the Open University from where the petitioner obtained his first degree. He was informed that, the petitioner's degree program was a 3 years general degree and that the standard of the petitioner's degree was that of the "2nd" class lower division". The 1st respondent decided not to approve the recommendation made by the Selection Committee. The petitioner appealed to the University Service Appeal Board (USAB). The USAB directed the 1st respondent to appoint the petitioner. The petitioner complained that he was not appointed.

Held:

- (1) It is apparent that, the petitioner does not satisfy the qualifications necessary for the appointment of 'Senior Lecturer Grade II'. He has only reached the standard requirement for a 2nd class lower division.

Per Sriipavan, J.

"It is open in these proceedings to impugn the decision of the Appeals Board as being unlawful or a void decision. The Court cannot issue a writ of mandamus compelling the 1st respondent to comply with an unlawful decision."

(2) As a general rule, the Court will allow the issue of invalidity to be raised in any proceedings where it is relevant. Void acts and decisions are indeed usually destitute of legal effect, they can be ignored with impunity, the validity can be attacked if necessary in collateral proceedings, they confer no legal rights on anybody. No legally recognized rights found on the assumption of its validity should accrue to any person even before the act is declared to be invalid or set aside in a Court of law.

AN APPLICATION for a writ of *mandamus*.

Case referred to:

(1) *Rajakulendran v Wijesundera* 1 Srikantha Law Reports 164.

K.G. Jinasena for petitioner.

Ms. M.N.B. Fernando DSG with *Deepthi Tilakawardane* SC for 1st and 2nd respondents.

J.C. Boange for 21st, 22nd and 23rd respondents.

September 27, 2007

SRIPAVAN, J. (P/CA)

The 1st respondent University by a notice marked P7 invited applications, *inter alia*, for the post of "Lecturer (Probationary)/Senior Lecturer (Grade II/Grade I)" in the Department of Agricultural Biology of the Faculty of Agriculture. The petitioner, pursuant to the said notice forwarded his application for the post of "Senior Lecturer". After an interview, the Selection Committee recommended the appointment of the petitioner for the post of "Senior Lecturer-Grade II". It was not in dispute that there were protests by a group of former students of the 1st respondent University not to appoint the petitioner on the basis that the petitioner did not possess the necessary educational qualifications for the appointment of "Senior Lecturer-Grade II". In fact, the 2nd respondent along with his objections furnished a copy of the letter marked 2R6 sent to him by the Alumni Association of the Faculty of Agriculture of the University of Peradeniya, seriously objecting to the petitioner's appointment. The 2nd respondent thereafter sought a clarification from the Vice Chancellor of the Open University of Sri Lanka from where the petitioner obtained his first degree. The reply received from the Vice Chancellor, Open University of Sri Lanka explains that the petitioner's Degree Programme was a three years general degree and that the standard of the petitioner's degree was that of a "2nd Class Lower Division". The verification of

the petitioner's results was brought to the notice of the University Council of the 1st respondent which decided not to approve the recommendation made by the "Selection Committee" but to re-advertise the said post. The petitioner thereafter preferred an appeal to the University Services Appeals Board against the decision taken by the University Council. The Appeals Board by its order dated 29.03.2005 directed the 1st respondent University to appoint the petitioner to the Post of "Senior Lecturer-Grade II". The complaint of the petitioner is that the 1st respondent University has failed to implement the order made by the Appeals Board, to date. The petitioner therefore seeks a *writ of certiorari* to quash the decision taken by the University Council not to appoint the petitioner to the post of "Senior Lecturer - Grade II" and a *writ of mandamus* directing the 1st respondent University to implement the decision of the Appeals Board dated 29.03.2005.

It is common ground that the petitioner was appointed as an "Assistant Lecturer (Temporary)" in the Department of Agricultural Biology with effect from 07.01.2004; the said appointment was upgraded to the post of "Senior Lecturer (Temporary)" with effect from 01.04.2004 and the petitioner continued in the same capacity until 31.10.2005. The Scheme of Recruitment applicable to the post of "Senior Lecturer - Grade II" is as follows:

- a) the academic qualifications required for Lecturer (Probationary) [Non-Medical/Dental]; and
- b) A Masters Degree in the relevant field obtained after a full time course of study of at least 2 academic years (or an equivalent part time course of study) with a research component by way of thesis/dissertation or a Doctoral Degree.

Therefore, it becomes necessary to consider whether the petitioner possesses the academic qualifications required for the post of "Lecturer (Probationary)". It was not in dispute that one of the academic qualifications required for the post of "Lecturer (Probationary)" and heavily relied on by both Counsel for the purpose of this application is as follows:

- a) A Degree with specialization in the relevant subject without Honors or any other Degree with at least 2nd Class Honours; and

- b) A Postgraduate Degree of at least 2 academic years duration in the relevant subject with a research component by way of thesis/dissertation. (Emphasis added).

Learned Deputy Solicitor-General argued that since the vacancies were in the Department of Agricultural Biology, the petitioner must possess either a Degree with specialization in the relevant subject, namely, "Agricultural Biology" or any other Degree with at least a 2nd Class Honors. Both Counsel agreed that the petitioner did not specialise in "Agricultural Biology" but possess a general Degree of three years duration. The Counsel for the petitioner however failed to establish that the petitioner's Degree was at least with a 2nd Class Honors. The document marked 2R1 sent by the Vice Chancellor of the Open University of Sri Lanka shows that the petitioner has only reached the standard required for a 2nd Class Lower Division. A careful consideration of the petitioner's application marked 2R3 indicates that the petitioner obtained his Postgraduate qualifications in "Micro Biology" and not in the relevant subject, namely, "Agricultural Biology". In view of the foregoing, I cannot hold that the petitioner satisfies the qualifications necessary for the appointment of "Senior Lecturer-Grade II".

Learned Counsel for the petitioner strenuously contended that the decision made by the University Services Appeals Board was final and binding on the respondents. Learned Deputy Solicitor-General on the other hand relied on the case of *Rajakulendran v Wijesundera*⁽¹⁾ and submitted that the University Services Appeals Board has failed to make a valid decision within the meaning of Section 87 of the University's Act and that the purported decision of the Appeals Board was void in law. As a general rule, the Court will allow the issue of invalidity to be raised in any proceedings where it is relevant. Void Acts and decisions are indeed usually destitute of legal effect; they can be ignored with impunity; their validity can be attacked, if necessary, in collateral proceedings; they confer no legal rights on anybody. No legally recognized rights found on the assumption of its validity should accrue to any person even before the act is declared to be invalid or set aside in a Court of Law.

Accordingly, I hold that it is open to the learned Deputy Solicitor-General, in these proceedings to impugn the decision of the Appeals Board as being an unlawful or a void decision. The Court cannot issue a *writ of mandamus* compelling the 1st respondent to comply with an

unlawful decision. The petitioner's application is therefore dismissed in all the circumstances without costs.

ROHINI PERERA, J. - I agree.

Application dismissed