

SUMANASIRI

v.

UNIVERSITY OF PERADENIYA AND OTHERS

SUPREME COURT

FERNANDO, J.

WADUGODAPITTYA, J. AND

ISMAIL, J.

SC APPLICATION NO. 739/98

13TH JANUARY AND 3RD FEBRUARY, 2000

Fundamental rights - Appointment of Registrar of a University - Successful candidate guilty of making a false statement - Infringement of Article 12(1) of the Constitution.

The petitioner and the 23rd respondent were among the applicants for the post of Registrar of the University of Peradeniya. A Selection Committee interviewed the candidates. Thereafter the Council of the University decided to appoint the 23rd respondent (who was then the Bursar) as Registrar. At the hearing of the application, it was established that in his application for the post of Bursar, 23rd respondent had, in stating his qualifications, claimed to possess a Postgraduate Diploma in Statistics the truth of which he was unable to establish by any evidence even after the court gave an opportunity to do so. In his application for the post of Bursar, the 23rd respondent had made a declaration that if particulars submitted by him were found to be false, he would be liable to be disqualified for selection or to be dismissed, if falsity is detected after appointment. At the time the Council decided to appoint the petitioner as the Registrar of the University, the allegation that he had previously made a false statement was pending inquiry by the University Grants Commission.

Held :

The decision of the Council to appoint the 23rd respondent as the Registrar of the University pending an inquiry into the allegation that he had made a false statement was arbitrary and unreasonable and contrary to established practice, and was thus in violation of the petitioner's fundamental right under Article 12(1).

APPLICATION for relief for infringement of fundamental rights.

Faisz Musthapha, P.C. with Sanjeewa Jayawardana and Faisza Musthapha Marker for the petitioner.

D.S. Wijesinghe, P.C. with J.C. Weliamuna for the 23rd respondent.

Saleem Marsoof, P.C. A S.G. with Viran Corea, S.C. for 1st, 10th to 14th, 17th, 20th and 25th respondents.

Cur. adv. vult.

10th February, 2000

FERNANDO, J.

The post of Registrar of the University of Peradeniya was advertised in June 1998, and the candidates were interviewed by a Selection Committee in July 1998. The Petitioner and the 23rd Respondent were among the four applicants. Thereafter the Council of the University decided at a meeting held on 14. 11. 98 to appoint the 23rd Respondent (who was then the Bursar) as Registrar. That decision was subject to confirmation at the next meeting of the Council which was scheduled for 28. 11. 98. The Petitioner filed this application on 23. 11. 98, alleging that his fundamental right under Article 12(1) had been infringed by that decision.

On the first date of hearing, Mr. Musthapha, PC, for the Petitioner submitted that the appointment was flawed for three distinct reasons: first, that the 23rd Respondent was not eligible for appointment in terms of the scheme of recruitment; second, that no criteria (or even guidelines) had been laid down, and that the Selection Committee had laid down criteria on an *ad hoc* basis, which were not objective; and, third, that upon a proper comparison the 23rd Respondent could not reasonably have been preferred to the Petitioner.

It is unnecessary to consider those contentions, in view of another matter which was raised by Mr. Musthapha in the course of his submissions. The 23rd Respondent had submitted an application for appointment as Bursar on 18. 10. 83, in which he had listed as one of his qualifications, a Diploma in Statistics. He had made the following declaration therein:

"I hereby certify that the particulars submitted by me in this application are true and accurate. I am aware that if any of these particulars are found to be false or inaccurate, I am liable to be disqualified before selection and to be

dismissed without any compensation if the inaccuracy is detected after the appointment.”

The relevant Council minute of 29. 01. 84 stated that the Selection Committee had recommended “the appointment of Mr. M. K. S. Kumarage, B. Com. (Hons.) (Ceylon), **Postgraduate Diploma in Statistics . . .**”

The Auditor - General had observed, in his letter dated 12. 11. 98 to the Vice-Chancellor, that although the 23rd Respondent had claimed to have obtained a Diploma in Statistics, that was not supported by any document in his personal file submitted for audit. That letter had been copied to the Secretary, Ministry of Education and Higher Education, and to the University Grants Commission. On 17. 11. 98, the Minister of Education and Higher Education (in the exercise of his powers under section 20(2)(a) of the Universities Act) directed the University Grants Commission to investigate that matter (as well as another) and to report to him on or before 10. 12. 98. That directive was copied to the Vice-Chancellor.

Although the University, the Vice-Chancellor and all the members of the Council have been made Respondents to this application, neither they nor the 23rd Respondent denied the facts that the 23rd Respondent had claimed to have a Diploma in Statistics; that he did not have such a diploma; that the Auditor - General had brought this to the notice of the Vice-Chancellor; that the Minister had ordered a prompt inquiry and report; and that there had been no such inquiry and report. Indeed, in the affidavit he filed in this case the 23rd Respondent listed his educational and other qualifications, but a Diploma in Statistics was not amongst them.

However, the question whether the 23rd Respondent had falsely claimed that qualification was a matter which he could easily and conclusively disprove, by simply producing his Diploma certificate. We accordingly adjourned the hearing to give him that opportunity. He then filed two affidavits and several documents, but did not produce his Diploma certificate, nor even any documents relating to any such Diploma;

indeed, he did not even aver in his affidavits that he had obtained a Diploma in Statistics.

I therefore hold that at the relevant time - both when the Council decided to appoint the 23rd Respondent, and when that decision came up for confirmation - there was an allegation against him of misrepresentation involving moral turpitude and/or serious misconduct, constituting a potential disqualification for any future appointment or promotion. That allegation certainly could not have appeared to the Council to be frivolous or insubstantial. The Council could not have ignored the fact that the Registrar has to deal with misrepresentations (as to qualifications and otherwise) by staff and students, and that his ability to act properly and effectively in such cases would be impaired so long as a cloud hangs over him. The only proper course open to the Council was to have deferred its decision until the matter had been resolved after due inquiry - especially considering that a finding adverse to the 23rd Respondent could even have resulted in his dismissal. The decision of the Council to appoint the 23rd Respondent as Registrar was arbitrary, unreasonable and contrary to established practice, and was thus in violation of the Petitioner's fundamental right under Article 12(1). It must therefore be quashed.

Mr. Musthapha submitted that we should direct that the Petitioner be appointed. But the Selection Committee ranked the Petitioner third, after the 23rd and 24th Respondents; and it was also Mr. Musthapha's contention that the evaluation procedure was flawed. The selection process must therefore commence afresh. The post must be re-advertised, enabling any other qualified candidates to apply. However, the decision of the Council was in violation of the Petitioner's fundamental right, and for that he is entitled to compensation and costs, which we fix at Rs 50,000, payable by the 1st Respondent on or before 29. 2. 2000.

WADUGODAPITIYA, J. - I agree.

ISMAL, J. - I agree.

Relief granted.