

Judgment
4/1/1964

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
23 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1.

- (1) THE UNIVERSITY COUNCIL OF THE VIDYODAYA UNIVERSITY OF CEYLON
- (2) VENERABLE WELIWITEYE SIRI SORATHA NAYAKE THERO
- (3) VENERABLE PALANNARUWE WIMALADHAMMA NAYAKE THERO
- (4) VENERABLE KALUKONDAYAWE PANNASEKERE NAYAKE THERO
- (5) VENERABLE PARAWAHERA WAJIRANANA NAYAKE THERO
- (6) STEPHEN FREDERICK DE SILVA
- (7) PANDIT GABRIAL PERERA WICKREMAARATCHI
- (8) NORMAN EDWARD WEERASOORIA
- (9) HETTIARATCHIGE JINADASA (ceased to be a member of the University Council)
- (10) ANANDA WELIHENA PALLIYA GURUGE
- (11) DON PAULIS JAYASEKERE (ceased to be a member of the University Council)
- (12) LEKAMWASA LIYANAGE KANAKERATNE GUNATUNGA (ceased to be a member of the University Council)
- (13) LALITHA ABHAYA RAJAPAKSE
- (14) CHANDRA DATTA ASHEYASIRI GUNAWARDENE
- (15) GAMINI JAYASOORIYA
- (16) CHRISTOPHER WILLIAM WIJEKON KANNANGARA
- (17) WIMALA DHARMA HEWAVITARNE
- (18) ANDREW MARTIN SAMARASINGHE (deceased)
- (19) MUDALIYAR EGODAGE ALFRED ABEYESEKERE
- (20) PAULUS EDWARD PEIRIS DERANIYAGALA
- (21) NISSANKA PARAKRAMA WIJERATNE (appointed in place of the 9th Respondent-Appellant)
- (22) MAPATUNGA JAMES PERERA (appointed in place of the 11th Respondent-Appellant)
- (23) WELIGAMA POLWATTE GALLAGE ARIYADASA (appointed in place of the 12th Respondent-Appellant)
- (24) DR. ATUKORALAGE DON PETER ALBERT WIJAYA GUNAWARDENE (appointed in place of the deceased 18th Respondent-Appellant)

- 78685

(Respondents) APPELLANTS

AND

LINUS SILVA

(Petitioner) RESPONDENT

STEPHENSON HARWOOD & TATHAM,
Saddlers Hall,
Gutter Lane,
Cheapside, London, E.C.2.
Appellants Solicitors.

SIMMONS & SIMMONS,
1, Threadneedle Street,
London, E.C.2.
Respondent's Solicitors.

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

- (1) THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON
- (2) VENERABLE WELIWITEYE SIRI SORATHA
NAYAKE THERO
- (3) VENERABLE PALANNARUWE WIMALADHAMMA
NAYAKE THERO
- (4) VENERABLE KALUKONDAYAWE PANNASEKERE
NAYAKE THERO
- (5) VENERABLE PARAWAHERA WAJIRANANA
NAYAKE THERO
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GUNATUNGA (ceased to be a member of
the University Council)
- (13) LALITHA ABHAYA RAJAPAKSE
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- (15) GAMINI JAYASOORIYA
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(appointed in place of the 12th Respondent-
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GUNAWARDENE (appointed in place of the
deceased 18th Respondent-Appellant)
- (Respondents) APPELLANTS
- AND
- LINUS SILVA (Petitioner) RESPONDENT

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IN THE PRIVY COUNCIL

No.42 of 1962

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON
and 19 OTHERS (Respondents) APPELLANTS

- and -

LINUS SILVA (Petitioner) RESPONDENT

RECORD OF PROCEEDINGS

10

No.1

Journal Entries 22nd August 1961 to
(Not Reproduced) 7th February 1962.

In the
Supreme Court

No.1

No.2

PETITION OF LINUS SILVA

No.2

Petition of
Linus Silva
8th August
1961

IN THE HONOURABLE THE SUPREME COURT
OF THE ISLAND OF CEYLON.

20

In the matter of an application for the
grant and issue of Mandates in the nature
of Writs of Certriorari and Mandamus in
terms of Section 42 of the Courts Ordin-
ance (Chapt.6) of the Revised Legislative
Enactments of Ceylon.

LINUS SILVA Petitioner.

VS

THE UNIVERSITY COUNCIL OF THE VID
VIDYODAYA UNIVERSITY OF
CEYLON and 19 OTHERS Respondents.

TO: His Lordship the Honourable the Chief Justice

In the
Supreme Court

and to their Lordship the Honourable the
Puisne Judges of the Honourable the Supreme
Court of the Island of Ceylon.

No.2

ON THIS 8TH DAY OF AUGUST, 1961.

Petition of
Linus Silva
8th August
1961
continued

The Petition of the Petitioner abovenamed
appearing by C.H.D.A.Vethecan his Proctor states
as follows :-

1. The Vidyodaya University of Ceylon is a University established under and by virtue of the provisions of Vidyodaya University and Vidyalankara University Act No.45 of 1958. 10
2. The 1st Respondent is under Law the Executive body of the said Vidyodaya University of Ceylon and at all times material to this petition the 2nd to the 20th Respondents are the persons who in terms of 17 (2) of the aforesaid Vidyodaya University and Vidyalankara University Act No.45 of 1958 constitute University Council of the said Vidyodaya University. 20
3. The Petitioner was at all times material to this petition a Teacher in the aforesaid Vidyodaya University.
4. On or about the 15th day of May, 1959, the petitioner was appointed Lecturer Grade I and Head of the Department of Economics in the said Vidyodaya University of Ceylon. The petitioner continued to work as Lecturer in the said University till the 1st day of October, 1960, when he was promoted as Professor and Head of the Department of Economics and Business Administration. The Petitioner files herewith documents marked "A" and "B" respectively letters dated 1st September, 1960, and the reply thereto dated 2.9.60 which constitute the Agreement relating to the Petitioner's appointment as Professor and Head of the Department of Economics and Business Administration. 30 40
5. On or about the 13th day of September, 1960, the Petitioner prepared a scheme for

In the
Supreme Court

No.2

Petition of
Linus Silva
8th August
1961
continued

10 the re-organisation of the Department of
Economics and Business Administration in
the aforesaid Vidyodaya University of Cey-
lon and submitted a Memorandum and obtained
the sanction of the Vice-Chancellor for in-
troducing New Courses in Insurance, Trans-
port, Public Administration, Business
Administration, Statistics, Economic History,
Sociology, Commercial Law, Applied Economics,
Public Finance, Political Science and
Accounting in the University.

20 6. After his appointment as Professor and Head
of Department the Petitioner was engaged in
the multifarious Administration, and academic
duties which devolved on him as Professor and
Head of the Department of Economics & Busi-
ness Administration and these included the
drawing up of syllabuses for the New Courses
of studies, organisation and the supervision
of the work of Lecturers, teaching and re-
search.

30 7. Mr. K.M.P. Rajaratne, Member of Parliament
who was at all dates material to the peti-
tion a Lecturer in Indian History in the
said Vidyodaya University began a fast unto
death for certain reasons and the students of
the Vidyodaya University were greatly agitat-
ed over the said fast. The Petitioner states
that several students from the Vidyodaya &
Vidalankara Universities showed their sym-
pathy for the fast and gathered in large num-
bers along with others at the venue of the
fast.

8. The Petitioner states that some students from
the Vidyodaya University even entered the
precincts of the House of Representatives and
the Honourable the Speaker had directed their
removal therefrom.

40 9. On the 9th day of June, 1961, the Hon. The
Prime Minister wrote a letter to the Vice-
Chancellor of the Vidyodaya University to the
effect that the behaviour of some of the
students of the Vidyodaya University with a
Buddhist background was a matter of great
concern to all Buddhists and requested the
Vice-Chancellor to look into the matter and

In the
Supreme Court

No.2

Petition of
Linus Silva
8th August
1961
continued

take any action he considered necessary.
This letter was exhibited on the Notice Board
of the University.

10. On the 10th day of June, 1961, the Hon. The Prime Minister issued a statement to the effect that some young Buddhist Priests who are students of the Vidyodaya and Vidyalankara Universities are endeavouring to sponsor his (Rajaratne's) cause to win Public sympathy for him. The Hon. The Prime Minister further stated "These ill-considered schemes which are calculated to create lawlessness and disorder in the country cannot be condoned." The Petitioner files herewith document marked "C" a news item relating to this statement in the Ceylon Daily News of the 10th June, 1961. 10
11. On or about the 17th day of June, 1961, there was a meeting of the Vidyodaya University Teacher's Association at which meeting the question of Students' demonstration in sympathy with Mr. K.M.P. Rajaratne's fast was considered and the Petitioner moved the following resolution "In view of certain distressing and regrettable incidents which have brought disrepute to the University, and with a view to saving the good name of the University, we the Members of the Vidyodaya University Teacher's Association respectfully request the Honourable the Prime Minister to institute such inquiries and adopt such remedial measures as would serve the best interest of all concerned and permit the continued existence of this University as a real Temple of learning dedicated to the pursuit of disinterested knowledge." 20 30
12. The resolution was considered by the Members of the Association but after a prolonged discussion the meeting did not come to a final conclusion regarding the said resolution on that day. 40
13. The Petitioner states that on or about the 27th day of June, 1961, a decision was made by the Government that it was not conducive to the public interests and the cause of National Education in Ceylon that persons in the permanent employment of the Ministry of

Education should hold appointments under the Vidyodaya & Vidyalankara Universities and receive salaries, fees or other emoluments from the said Universities. The Petitioner files herewith a true copy of a news item which appeared in the Ceylon Observer of the 27th June, 1961, marked document "D".

In the
Supreme Court

No.2

Petition of
Linus Silva
8th August
1961
continued

- 10 14. Dr. Ananda Guruge is a member of the Ceylon Civil Service and is at present Assistant Secretary to the Ministry of Education. The Petitioner states that of all dates material to this petition Dr. Ananda Guruge was in addition to his duties as Assistant Secretary to the Ministry of Education.
- (a) Administrative Assistant to the Vice-Chancellor of the Vidyodaya University and was paid an allowance of Rs.1000/= per month;
- 20 (b) Visiting Professor and Head of the Department of Sanskrit of the said University; and was paid an additional fee for delivering lectures and setting question papers and correcting answer scripts in the said University.
- 30 15. The Petitioner states that the decision of the Government referred to in Para.13 above affected the said Dr. Ananda Guruge adversely and that Dr. Ananda Guruge suspected the Petitioner of having induced the Government to make the said decision.
16. The Petitioner states that on or about 30th day of June, 1961, the said Dr. Ananda Guruge wrote a letter to one of the Cabinet Ministers as follows: ;

The Honourable Minister,

I am writing this in order to bring to your notice a very important matter.

40 Mr. Linus Silva is boasting that the officers of the Department of Education including myself have been prohibited (prevented) from (working) teaching at Vidyodaya University on account of a request made by

In the
Supreme Court

No.2

Petition of
Linus Silva
8th August
1961
continued

Mr. Linus Silva to you which (request) was placed (brought) before the Cabinet by you. Stopping of our works (at Vidyodaya University) however is a small matter, but he goes on to say that he has even power to get you (to agree) to close down the entire Vidyodaya University.

I do not believe this. But as I fear that on account of this type of utterances you may unnecessarily have enemies (and also because) I have associated with you from my childhood and I am one who is happy at your progress and fame.

10

I am not grieved (sorry) on account of the stopping of my work at Vidyodaya. This is because notice had been given already. Yet Linus Silva announces that a note by him to you giving (including) correct and incorrect information regarding the monies I received has been (mainly) responsible for this decision. I do (did) not expect such an ungrateful action from Linus Silva. He should accept that the position he holds today has been obtained only on account of my assistance (help). It is because I trusted him as a friend that I appointed him, gave him a Professorship, gave him special responsibility and power, although various people had said that he was one who was trying to enter the University with the idea of (in order to destroy) sabotage, as he had been a catholic.

20

30

If you realise (know) that he has betrayed the trust placed in him by me this incident could be a lesson to you too. (it is because) the action of a traitor to a friend is not limited to one.

I am writing in this manner because I am very greatly grieved (pained) Pardon (me) if there be (any) shortcomings.

40

Ever faithful

Ananda Guruge.

In the
Supreme Court

No.2

Petition of
Linus Silva
8th August
1961
continued

18. On the 4th day of July, 1961, the Petitioner received a letter from the 2nd respondent, the Vice-Chancellor of the said University that the first Respondent the Council of the Vidyodaya University consisting of the 2nd to the 19th Respondents had unanimously decided to terminate the petitioner's appointment in the University as from the said date. A copy of the said letter marked "E" is filed herewith.
19. On or about the 6th day of July, 1961, the Members of the Teaching Staff of the Department of Economics & Business Administration of the Vidyodaya University wrote to the Respondents requesting the 1st Respondent to reinstate the petitioner as Professor of Economics & Business Administration of the Vidyodaya University, A copy of the said letter marked "F" is filed herewith.
20. On or about the 13th July, 1961, the 2nd Respondent wrote to Dr. W.M. Tillakeratne one of the signatories to the Memorandum of the teaching staff referred to above, that the termination of the services of the petitioner was decided upon in terms of Section 18 E of the Vidyodaya University and the Vidyalankara University Act No.45 of 1958. A copy of the said letter marked "G" is filed herewith.
21. The petitioner states that the aforesaid Dr. Ananda Guruge was present and actively participated in the meeting of the Council of the 4th July, 1961, and that the said order was made maliciously, unlawfully and for reasons extraneous to those contained in Section 18E of the Vidyodaya & Vidyalankara Universities Act No.45 of 1958. The Petitioner states that Dr. Ananda Guruge was biased against the Petitioner and that the decision dated 4th July 1961 was made by the Council is therefore wrongful and illegal.
22. The Petitioner respectfully submits that the Respondents in ordering his dismissal in terms of Section 18E of the aforesaid Act, acted wrongfully and unlawfully and in

In the
Supreme Court

No.2

Petition of
Linus Silva
8th August
1961
continued

violation of the rules of natural justice by not making the Petitioner aware of the nature of the accusations against him and also by not affording him an opportunity of being heard in his defence.

23. The Petitioner states that the Respondents' act in dismissing him was wrongful and unlawful and in excess of the powers vested in the Council of the Vidyodaya University by Law. The Petitioner further states that the Order of the Council of the Vidyodaya University as set out in the letter of the 4th July, 1961 and attached to this petition is erroneous in Law. 10
24. In the aforesaid premises the Petitioner is entitled to an order from Your Lordships' Court in the nature of Writs of Certiorari and Mandamus quashing the order of the Respondents and directing the Respondents to restore the Petitioner to the position as Professor and Head of the Department of Economics & Business Administration in the Vidyodaya University of Ceylon. 20

Wherefore the Petitioner prays that Your Lordships' Court be pleased:

- (1) to grant and issue a mandate of a Writ of Certiorari quashing the aforesaid order by the Respondents terminating the appointments as Professor & Head of the Department of Economics & Business Administration in the Vidyodaya University. 30
- (2) to grant a Mandate in the nature of Mandamus compelling, commanding and directing the Respondents and each one of them to recognise that the Petitioner was and is Professor and Head of the Department of Economics and Business Administration in the Vidyodaya University and not to impede the Petitioner from discharging the duties of the said office. 40
- (3) to award the Petitioner the costs of this suit and such other and further relief as

to your Lordships' Court shall seem meet.

In the
Supreme Court

Sgd: Charles Vethecan
Proctor for Petitioner.

No.2

Settled by: K.Thevarajah, Advocate,
M.Tiruchelvam, Q.C., Advocate.

Petition of
Linus Silva
8th August
1961
continued

Documents annexed to the Petition.

10

- (A) Letter of Appointment dated 1.9.60.
- (B) Reply accepting the same dated 2.9.60.
- (C) News Item of the 10.6.61. from Ceylon Daily News.
- (D) News Item in the Ceylon Observer 27th June, 1961 - page 1.
- (E) Termination of Appointment dated 4th July, 1961.
- (F) Letter from the Tutorial Staff of the Dept. to Chancellor, Pro-Chancellor, Vice-Chancellor & Members of the Council dated 6th July, 1961.
- (G) Letter to Dr.W.M.Tillakaratne one of the signatories to the memorandum of the teaching staff by the Ven. Vice-Chancellor dated 13th July, 1961.

20

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No.2 A

No.2 A

Letter of Appointment of Linus Silva.

Letter of
Appointment of
Linus Silva
Vice Chancellor
to Linus Silva
1st September
1960

VIDYODAYA UNIVERSITY OF CEYLON

Colombo 10.

1st Sept., 1960.

Linus Silva, Esq.,
Head of the Dept. of Economics,
Colombo.

30

POST OF PROFESSOR AND HEAD OF THE
DEPT. OF ECONOMICS & BUSINESS
ADMINISTRATION.

In pursuance of the decision of the Council

In the
Supreme Court

No.2 A

Letter of
Appointment of
Linus Silva
Vice Chancellor
to Linus Silva
1st September
1960
continued

to establish a Dept. of Business Administration in order to widen the scope of the Dept. of Economics, I am pleased to promote you to the Post of Professor and Head of the Depts. of Economics and Business Administration with effect from the 1st October, 1960. The salary scale attached to the post is Rs.15,000/- 4 of Rs. 600/- and 4 of Rs. 900/- Rs. 21,000/-. You will be entitled to cost of living special living and rent allowances according to Government Rates. You will continue to be a contributor to the University Provident Fund.

10

This promotion is, however, subject to the passage of the University Budget for 1960/61.

Please acknowledge receipt of this letter. I shall be glad if you will please undertake the reorganisation of the Departments immediately so that the two Departments will commence academic work from the beginning of the Third Academic Year.

20

Sgd. Dharmasastronnatiakami
Vice-Chancellor.

True copy
Sgd. Charles Vethecan
Proctor for Petitioner.

No. 2 B

Letter from
Linus Silva
accepting
Appointment
Linus Silva to
Vice Chancellor
2nd September
1960

No.2 B

Letter from Linus Silva
accepting Appointment.

Room 250, Bank of Ceylon
Buildings,
Colombo 1.
2.9.60.

30

The Ven.Vice-Chancellor,
Vidyodaya University of Ceylon,
Maligakanda,
Colombo 10.

Ven'ble Sir,

POST OF PROFESSOR & HEAD OF THE DEPT.
OF ECONOMICS & BUSINESS ADMINISTRATION

I acknowledge with thanks your favour of the

40

1st September, 1960, and I am pleased to accept the above appointment with effect from 1st October, 1960.

In the
Supreme Court

Yours faithfully,

No.2 B

Sgd. Linus Silva,
Head of the Department of
Economics.

Letter from
Linus Silva
accepting
Appointment
Linus Silva to
Vice Chancellor
2nd September
1960
continued

True copy.

Sgd. Charles Vethecan.

10

Proctor for Petitioner.

No.2 C

No.2 C

Extract from Ceylon Daily News

Extract from
Ceylon Daily
News
10th June 1961

On the 10th day of June, 1961, The Hon. The Prime Minister issued a statement to the effect that some young Buddhist priests who are students of the Vidyodaya and Vidyalankara Universities are endeavouring to sponsor his (Rajaratne's) cause to win Public sympathy for him. The Hon. The Prime Minister further stated "These ill-considered schemes which are calculated to create lawlessness and disorder in the country cannot be condoned".

20

True copy.

Sgd. Charles Vethecan

Proctor for Petitioner.

No.2 D

No.2 D

Extract from The Ceylon Observer

Extract from
the Ceylon
Observer
27th June 1961

13 Lecturers Forced to Resign

30

13 Lecturers have been forced to resign

In the
Supreme Court

No.2 D

Extract from
the Ceylon
Observer
27th June 1961
continued

from the Vidyodaya Pirivena University after the Government's decision to prohibit officers of the Education Dept. from holding posts in either of the Pirivena Universities.

The Ven. Weliwitiya Soratha Vice-Chancellor of the Vidyodaya Pirivena told the Observer today that the new regulation was causing the Pirivena Universities hardship. "It is extremely difficult to get new hands at this time of the year. I hope that the Government will permit these lecturers to remain till we find new hands" he said.

10

True copy

Sgd. Charles Vethecan.

Proctor for Petitioner.

No.2 E

Letter
Terminating
appointment
Vice Chan-
cellor to
Linus Silva
4th July 1961

No.2 E

Letter terminating appointment

VIDYODAYA UNIVERSITY OF CEYLON.

Colombo 10.

4th July 1961.

20

Mr. Linus Silva
P.O. Box 1342.
Colombo 1.

Dear Sir,

Termination of Appointment

You are hereby informed that the Council at its meeting held on the 4th of July 1961 has unanimously resolved to terminate your appointment in the University as from today.

The Council has also decided to pay a sum equivalent to three month's salary less whatever amounts are due from you. The total now due is Rs.1151.15, as shown in the Schedule hereunder.

30

I am hereby conveying to you the decision of the Council. I enclose the cheque No.D/9

207613 for Rs.3346.15 (Three thousand three hundred and forty six Rupees and Cents. Fifteen only); being the balance due to you in terms of the decision of the Council.

In the
Supreme Court
—————

No.2 E

Any books, answer scripts or other property of the University now in your custody should be returned by you.

Letter
Terminating
appointment
Vice Chan-
cellor to
Linus Silva
4th July 1961
continued

Dharmasastronnathakami,

Sgd.

VICE-CHANCELLOR.

10

Schedule referred to:-

Allowance as Head of Department over- paid since appointment as Professor, Oct. '60 to June '61.	Rs.900.00
--	-----------

Cost of Telegrams, paid from Petty Cash	5.65
--	------

Due on account of sale of Publications.	10.00
---	-------

Lecturers delivered by Mr.K.T.R.de Silva in Feb. 1961.	<u>235.50</u>
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20

Total Due	<u><u>Rs.1151.15</u></u>
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True copy.

Sgd. Charles Vethecan

Proctor for Petitioner.

No.2 F

Letter - Tutorial Staff to the
Chancellor & Others.

No.2 F

Letter -
Tutorial Staff
to the Chan-
cellor & Others
6th July 1961

TUTORIAL STAFF,
Dept. of Economics, Business
Administration & Public Adminis-
tration.

Vidyodaya University of Ceylon,
1/3, Race Course Avenue,
Colombo 7.

30

6. 7. 1961.

To:-

The Chancellor,
Pro-Chancellor,
Vice-Chancellor,
and Members of the Council,
of the Vidyodaya University of Ceylon,
Colombo 10.

40

Sirs,

It is with regret that we received a letter

To the
Supreme Court

No.2 F

Letter -
Tutorial Staff
to the Chan-
cellor & Others
6th July 1961
continued

from the Venerable Vice-Chancellor dated 6th July, 1961 intimating to us the decision of the University Council terminating the services of Professor Linus Silva from the Post of Professor of Economics Business Administration & Public Administration with effect from 4th July, 1961.

We have also seen the letter addressed to Professor Silva from the Venerable Vice-Chancellor and we find from it that no reasons have been assigned for summarily terminating his services as Professor of Economics, Business Administration & Public Administration. We the Members of the Teaching Staff of the Department of Economics, Business Administration & Public Administration view with regret that, quite apart from the dictates of common courtesy, the legal properties do not seem to have been observed in this matter. We further view with alarm the effect that such an action is bound to have on the morals and reputation of this institution, especially at this stage of its development. The element of uncertainty created by a decision of this nature and its effects on the loyalty and morale of the teaching staff are matters of deep concern to all people who have the interests of University Education at heart.

10

20

Most of us have been associated with the activities of the Department from its inception and we are aware that the pioneering work, organising ability and the untiring efforts of Professor Silva contributed in no small measure to the present stature and prestige of the University. We have been engaged in the process of solving the innumerable problems that necessarily arise in a new venture of this matter. The abrupt termination of Professor Silva's services at this juncture, especially at the vital stage of the first academic year of the Department, would deal a crippling blow to the Department in particular, which accounts for more than half of the student population of the University, and to the institution in general.

30

40

In this situation, it is further distressing to note that Professor K.P. Mukerji who has been appointed by the Council as the Professor and Head of the Department of Economics, Business Administration & Public Administration, has

not only declined to accept this Post, but has also sent in his resignation from the University as a protest against the termination of the services of Professor Silva and the arbitrary manner in which it has been done. We share the feelings that prompted Professor Mukerji to adopt this course of action at great personal cost to himself.

10 In the circumstances we earnestly request that in the interest of the University as a whole, the University Council do reconsider its decision and reinstate Mr. Linus Silva Professor of Economics Business Administration & Public Administration and also persuade Professor Mukerji to withdraw his resignation. Any other course of action, we feel, would inevitably lead to very serious repercussions detrimental to the best interest of the University.

Yours faithfully,

- | | | |
|----|-------------------------------|---------------------------|
| 20 | 1. Dr.W.M.Tilakeratne | Sgd. W.M.Tillekaratne |
| | 2. Dr.M.R.P.Salgado | Sgd. M.R.Salgado |
| | 3. L.C.Arulpragasam. | Sgd. illegibly |
| | 4. Y.D.S.Samaratunge | Sgd. illegibly |
| | 5. D.E.A.S.Samaraweera | Sgd. S. Samaraweera |
| | 6. Stanley Tilakaratne | Sgd. Stanley Tillekaratne |
| | 7. K.A.D.Perera | Sgd. K.A.D. Perera |
| | 8. H.D.B.Karunatilake | Sgd. Dingi Karunatileka |
| | 9. A.S. Jayawardene | Sgd. A.S. Jayawardene |
| | 10. S.N.Munasinghe | Sgd. S.N.Munasinghe |
| 30 | 11. L.P.Wickramarachchi. | Sgd. L.P.Wickramarachchi |
| | 12. N. Rajaratnam. | Sgd. N.Rajaratnam |
| | 13. Anil Moonesinghe | Sgd. illegibly |
| | 14. H.D. Dharmasiri
Alwis. | Sgd. illegibly |
| | 15. N. Karunatilake | Sgd. N. Karunatilake. |
| | 17. R.M.B. Senanayake | Sgd. illegibly. |

True copy.
Sgd. Charles Vethecan.
Proctor for Petitioner.

In the
Supreme Court

No.2 F

Letter -
Tutorial Staff
to the Chan-
cellor & Others
6th July 1961
continued

In the
Supreme Court

No.2 G.

No.2 G

Letter - Vice Chancellor to
Dr.W.M.Tilakaratne

Letter - Vice
Chancellor to
Dr.W.M. Tila-
karatne
13th July 1961

VIDYODAYA UNIVERSITY OF CEYLON,
Colombo 10.

July, 13th, 1961.

Dr.W.M.Tilakaratne,
Central Bank of Ceylon,
Colombo.

Dear Sir,

10

The Council at its meeting on 12/7/61
considered your letter of the 6/7/61 and of
11/7/61.

I am directed by the Council to inform
you that the termination of the services of
Mr. Linus Silva was decided upon in terms of
Section 18E of the University Act on adequate
evidence placed before it. The Council
therefore regrets its inability to vary its
decisions.

20

With regard to Prof. Mukerji, the
Council unanimously decided to request Prof.
Mukerji to reconsider his decision. A copy
of a letter addressed to him is annexed for
your information.

I shall be thankful if you will kindly
bring this letter to the notice of the other
signatories.

Dharmasastronnatikami

Vice-Chancellor.

30

True copy.
Sgd. Charles Vethecan
Proctor for Petitioner.

No.3

In the
Supreme Court

AFFIDAVIT OF LINUS SILVA

No.3

IN THE HONOURABLE THE SUPREME COURT OF

THE ISLAND OF CEYLON

Affidavit of
Linus Silva
8th August 1961

10

In the matter of an application for the grant and issue of Mandates in the nature of Writs of Certiorari and Mandamus in terms of Section 42 of the Courts Ordinance (Chapt.6) of the Revised Legislative Enactments of Ceylon.

LINUS SILVA Petitioner

VS

1. THE UNIVERSITY COUNCIL OF
THE VIDYODAYA UNIVERSITY
OF CEYLON, and 19 OTHERS Respondents

20

TC: His Lordship the Honourable the Chief Justice and to their Lordship the Honourable the Puisne Judges of the Honourable the Supreme Court of the Island of Ceylon.

I, Linus Silva of No.214, High Level Road, Kirillapone, Colombo 6, not being a Christian do hereby solemnly sincerely and truly declare and affirm as follows:-

30

1. I am the Petitioner abovenamed.
2. The Vidyodaya University of Ceylon is a University established under and by virtue of the provisions of Vidyodaya University and Vidyalkankara University Act No.45 of 1958.
3. The 1st Respondent is under Law the Executive body of the said Vidyodaya University of Ceylon and at all times material to this 2nd to the 20th Respondents are the persons who in terms of 17(2) of the aforesaid Vidyodaya

In the
Supreme Court

No.3

Affidavit of
Linus Silva
8th August 1961
continued

University & Vidyalankara University Act
No.45 of 1958 constitute Council of the
said Vidyodaya University.

4. I was at all times material to this petition a Teacher in the aforesaid Vidyodaya University.
5. On or about the 15th day of May, 1959, I was appointed Lecturer Grade I and Head of the Department of Economics in the said Vidyodaya University of Ceylon. I continued to work as Lecturer in the said University till the 1st day of October, 1960, when I was promoted as Professor and Head of the Department of Economics and Business Administration. I file herewith documents marked "A" and "B" respectively letters dated 1st September, 1960, and the reply thereto dated 2.9.60 which constitute the Agreement relating to my appointment as Professor and Head of the Department of Economics and Business Administration. 10
20
6. On or about the 13th day of September, 1960, I prepared a scheme for the re-organisation of the Department of Economics and Business Administration in the aforesaid Vidyodaya University of Ceylon and submitted a Memorandum and obtained the sanction of the Vice-Chancellor for introducing New Courses of Insurance, Transport, Public Administration, Business Administration, Statistics, Economic History, Sociology, Commercial Law, Applied Economics, Public Finance, Political Science and Accounting in the University. 30
7. After my appointment as Professor and Head of Department I was engaged in the multifarious Administrative, and academic duties which devolved on me as Professor and Head of the Department of Economics & Business Administration and these included the drawing up of syllabuses for the New Courses of studies, organisation and the supervision of the work of Lecturers, teaching and research. 40

In the
Supreme Court

No.3

Affidavit of
Linus Silva
8th August 1961
continued

8. Mr. K.M.P. Rajaratne, Member of Parliament who was at all dates material to the petition a Lecturer in Indian History in the said Vidyodaya University began a fast unto death for certain reasons and the students of the Vidyodaya University were greatly agitated over the said fast. I state that several students from the Vidyodaya & Vidyalankara Universities showed their sympathy for the fast and gathered in large numbers along with others at the venue of the fast.
9. I state that some students from the Vidyodaya University even entered the precincts of the House of Representatives and the Honourable the Speaker had directed their removal therefrom.
10. On the 9th day of June, 1961, the Hon. The Prime Minister wrote a letter to the Vice-Chancellor of the Vidyodaya University to the effect that the behaviour of some of the students of the Vidyodaya University with a Buddhist background was a matter of great concern to all Buddhists, and requested the Vice-Chancellor to look into the matter and take any action he considered necessary. This letter was exhibited on the Notice Board of the University.
11. On the 10th day of June, 1961, the Hon. The Prime Minister issued a statement to the effect that some young Buddhist Priests who are students of the Vidyodaya and Vidyalankara Universities are endeavouring to sponsor his (Rajaratne's) cause to win Public sympathy for him. The Hon. The Prime Minister further stated "These ill-considered schemes which are calculated to create lawlessness and disorder in the court cannot be condoned." I file herewith document marked "C" a news item relating to this statement in the Ceylon Daily News of the 10th June, 1961.
12. On or about the 17th day of June, 1961, there was a meeting of the Vidyodaya University Teacher's Association at which

In the
Supreme Court

No.3

Affidavit of
Linus Silva
8th August 1961
continued

- meeting the question of Students' demonstration in sympathy with Mr.K.M.P. Rajaratne's fast was considered and I moved the following resolution "In view of certain distressing and regrettable incidents which have brought disrepute to the University, and with a view to saving the good name of the University, We the Members of the Vidyodaya University Teacher's Association respectfully request the Honourable the Prime Minister to institute such inquiries and adopt such remedial measures as would serve the best interest of all concerned and permit the continued existence of this University as a real Temple of learning dedicated to the pursuit of disinterested knowledge." 10
13. The resolution was considered by the members of the Association but after a prolonged discussion the meeting did not come to a final conclusion regarding the said resolution on that day. 20
14. I state that on or about the 27th day of June 1961, a decision was made by the Government that it was not conducive to the public interests and the cause of National Education in Ceylon that persons in the permanent employment of the Ministry of Education should hold appointments under the Vidyodaya & Vidyalankara Universities and receive salaries, fees or other emoluments from the said Universities. I file herewith a true copy of a news item which appeared in the Ceylon Observer of 27th June, 1961, marked document "D". 30
15. Dr. Ananda Guruge is a member of the Ceylon Civil Service and is at present Assistant Secretary to the Ministry of Education. I state that of all dates material to this petition Dr. Ananda Guruge was in addition to his duties as Assistant Secretary to the Ministry of Education. 40
- (a) Administrative Assistant to the Vice-Chancellor of the Vidyodaya University and was paid an allowance of Rs.1000/= per month;

(b) Visiting Professor and Head of the Department of Sanskrit of the said University: and was paid an additional fee for delivering lectures and setting question papers and correcting answer scripts in the said University.

In the
Supreme Court

—————
No.3

Affidavit of
Linus Silva
8th August 1961
continued

10 16. I state that the decision of the Government referred to in Para.13 above affected the said Dr. Ananda Guruge adversely and the Dr. Ananda Guruge suspected me of having induced the Government to make the said decision.

17. I state that on or about 30th day of June, 1961, the said Dr. Ananda Guruge wrote a letter to one of the Cabinet Ministers as follows :-

The Honourable Minister,

I am writing this in order to bring to your notice a very important matter.

20 Mr. Linus Silva is boasting that the officers of the Department of Education including myself have been prohibited (prevented) from (working) teaching at Vidyodaya University on account of a request made by Mr. Linus Silva to you which (request) was placed (brought) before the Cabinet by you. Stopping of our works (at Vidyodaya University) however is a small matter, but he goes on to say that he has
30 even power to get you (to agree) to close down the entire Vidyodaya University.

I do not believe this. But as I fear that on account of this type of utterances you may unnecessarily have enemies (and also because) I have associated with you from my childhood and I am one who is happy at your progress and fame.

40 I am not grieved (sorry) on account of the stopping of my work at Vidyodaya. This is because notice had been given already. Yet Linus Silva announces that a note by him to you giving (including) correct and

In the
Supreme Court

No.3

Affidavit of
Linus Silva
8th August 1961
continued

incorrect information regarding the monies I received has been (mainly) responsible for this decision. I do (did) not expect such an ungrateful action from Linus Silva. He should accept that the position he holds today has been obtained only on account of my assistance (help). It is because I trusted him as a friend that I appointed him, gave him a Professorship, gave him special responsibility and power, although various people had said that he was one who was trying to enter the University with the idea of (in order to destroy) sabotage, as he had been a Catholic.

10

If you realise (know) that he has betrayed the trust placed in him by me this incident could be a lesson to you too. (It is because) the action of a traitor to a friend is not limited to one.

I am writing in this manner I am very greatly grieved (pained) Pardon (me) if thereby be (any) shortcomings.

20

Ever faithful

Ananda Guruge.

18. On the 4th day of July, 1961, I received a letter from the 2nd Respondent, the Vice-Chancellor of the said University that the 1st Respondent the Council of the Vidyodaya University consisting of the 2nd to the 20th Respondents had unanimously decided to terminate my appointment in the University as from the said date. A copy of the said letter marked "E" is filed herewith.

30

19. On or about the 6th day of July, 1961, the Members of the Teaching Staff of the Department of Economics & Business Administration of the Vidyodaya University wrote to the Respondents requesting the 1st Respondent to reinstate me as Professor of Economics & Business Administration of the Vidyodaya University. A copy of the said letter marked "F" is filed herewith.

40

20. On or about the 13th July, 1961, the 2nd

Respondent wrote to Dr. W.M. Tillakeratne one of the Signatories to the Memorandum of Teaching Staff referred to above, that the termination of the services of myself was decided upon in terms of Section 18E of the Vidyodaya University and the Vidyalankara University Act No.45 of 1958. A copy of the said letter marked "G" is filed herewith.

In the
Supreme Court

No.3

Affidavit of
Linus Silva
8th August 1961
continued

- 10 21. I state that the aforesaid Dr. Ananda Guruge was present and actively participated in the meeting of the Council of the 4th July, 1961, and that the said order was made maliciously, unlawfully and for reasons extraneous to those contained in Section 18E of the Vidyodaya & Vidyalankara Universities Act No.45 of 1958. I state that Dr. Ananda Guruge was biased against me and that the decision dated 4th
- 20 July 1961 was made by the Council is therefore wrongful and illegal.
22. I respectfully submit that the Respondents in ordering my dismissal in terms of Section 18E of the aforesaid Act, acted wrongfully and unlawfully and in violation of the rules of natural justice by not making me aware of the nature of the accusations against me and also by not affording me an opportunity of being heard in my defence.
- 30 23. I state that the Respondents' act in dismissing me was wrongful and unlawful and in excess of the powers vested in the Council of the Vidyodaya University by Law. I further state that the order of the Council of the Vidyodaya University as set out in the letter of the 4th July, 1961, and attached to this petition is erroneous in law.
- 40 24. In the aforesaid premises I am entitled to an order from Your Lordships' Court in the nature of Writs of Certiorari and Mandamus quashing the order of the 1st Respondent and directing the Respondents to restore me to the position as Professor and Head of the Department of Economics & Business Administration in the

In the
Supreme Court

Vidyodaya University of Ceylon.

No.3

Affidavit of
Linus Silva
8th August 1961
continued

Signed and affirmed to at)
Colombo on this 8th day } Sgd: Linus Silva
of August, 1961. }

Before me

Sgd: A.V.Pushpadevi Joseph
Commissioner for Oaths.

No.4

Motion of
Proctors for
2-20 (Respon-
dents)
Appellants
11th October
1961

No.4

MOTION OF PROCTORS FOR 2-20 (RESPONDENTS)
APPELLANTS.

10

IN THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON

In the matter of an application for the
grant and issue of Mandates in the nature
of Writs of Certiorari and Mandamus in
terms of Section 42 of the Courts Ordin-
ance (Chapt.6) of the Revised Legislative
Enactments of Ceylon.

S.C. LINUS SILVA Petitioner
Application No.378. VS

20

1. THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON,
and 19 OTHERS Respondents.

We move to file the statement of Objections
of the Respondents abovenamed together with the
affidavit dated 10th October 1961 of the 2nd
Respondent abovenamed and the joint affidavit
dated 10th October 1961 of the 3rd to 5th, 7th,
8th, 10th, 12th and 14th to 17th 19th and 20th
Respondents abovenamed and the documents R1 to
R15 respectively in triplicate and for the
reasons stated therein move that Your Lordships'
Court be pleased to dismiss the Petitioner's
application with costs.

30

Colombo, 11th October, 1961.

Sgd. Perera & Wijenaike.

Proctors for 2nd to 20th Respondents.

Received Notice with copies.

Sgd. Charles Vethecan

Proctor for Petitioner.

40

In the
Supreme Court

No.5

Statement
of Objections
of 2 - 20
(Respondents)
Appellants
11th October
1961
continued

2. These Respondents further state that the Petitioner's application is misconceived and he is not entitled to the relief claimed for in his petition for the following amongst other reasons that may be urged by Counsel on their behalf at the hearing of this application.

(a) The 1st Respondent Council is in fact and in law the executive body of the Vidyodaya University of Ceylon which is responsible for the administration of the University and it is not a judicial or quasi-judicial body.

10

(b) The Council does not maintain a record nor has it made any orders which are capable of being reviewed or questioned by means of a Writ of Certiorari.

(c) The 1st Respondent Council is not a body against which a Writ of Mandamus can issue.

(d) The Petitioner was an employee of the Vidyodaya University of Ceylon and the decision to terminate such employment by the 1st Respondent Council cannot be reviewed by way of Certiorari.

20

3. These Respondents further state that this is not a fit case for the exercise of the discretion vested in Your Lordships' Court in granting the high prerogative writs of Certiorari and or Mandamus in as much as :-

(a) There was no necessity and in any event there was no legal obligation cast on the Respondents to inform the Petitioner of the grounds of the termination of his services since the Respondents acted in their capacity as members of the chief executive and administrative body of the Vidyodaya University and were fully aware of the Petitioner's dereliction of duty and other lapses which rendered him unfit to be a member of the teaching staff of the University and they had full power and authority to terminate the petitioner's services.

30

(b) The Petitioner has the alternative remedy of bringing an action in the ordinary way, to vindicate his rights in the original Courts and/or before a Labour Tribunal.

40

Wherefore these Respondents pray that the Petitioner's application :-

- (a) Be dismissed,
- (b) For costs and for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd: Perera & Wijenaikē.

Proctors for 2nd to 20th Respondents.

In the Supreme Court

No.5

Statement of Objections of 2 - 20 (Respondents) Appellants 11th October 1961 continued

10

Settled by

Sena Wijewardene, Advocate
H.W.Jayawardene, Q.C.

No.5A

AFFIDAVIT OF VENERABLE WELIVITIYE SRI SORATHA NAYAKA THERO

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON.

No.5A

Affidavit of Ven.Welivitiye Sri Soratha Nayaka Thero 10th October 1961

20

In the matter of an application for the grant and issue of Mandates in the nature of Writs of Certiorari and Mandamus in terms of Section 42 of the Courts Ordinance (Chapt.6) of the Revised Legislative Enactments of Ceylon.

LINUS SILVA Petitioner

S.C.Application VS
No.378

- 1. THE UNIVERSITY COUNCIL OF THE VIDYODAYA UNIVERSITY and 19 OTHERS Respondents.

30

TO: His Lordship the Honourable the Chief Justice and to their Lordships the Honourable the Puisne Judges of the Honourable the

In the
Supreme Court

No.5A

Affidavit of
Ven.Welivitiye
Sri Soratha
Nayaka Thero
10th October
1961
continued

Supreme Court of the Island of Ceylon.

I, Venerable Welivitiye Siri Soratha Nayake Thero, of The Vidyodaya University of Ceylon, Maligakande Road, Colombo, do hereby solemnly sincerely and truly declare and affirm as follows :-

1. I am the 2nd Respondent abovenamed and from the date of inception of the Vidyodaya University of Ceylon, namely 1st January 1959, I have been Vice-Chancellor of the said University. Prior to the said date I was a co-principal with the late Rev. Baddegama Piyaratana of the Vidyodaya Pirivena. 10

2. I have read the affidavit dated 8th August 1961 of the Petitioner abovenamed which was served on me with the petition in these proceedings.

3. I admit the averments in paragraphs 2 and 3 of the said affidavit and I further state that by virtue of Section 17(1) of the said University Act 45 of 1958, and in fact, the University Council, of which I and the 3rd to 20th Respondents are the members, is the executive body of the University and as such entrusted with the powers and duties conferred on it by Section 18 of the said Act. 20

4. With reference to paragraph 4 of the affidavit, I state that at all times material to this petition the Petitioner was a servant or employee of the "Vidyodaya University of Ceylon", and was in receipt of an annual salary from the said University which is a body corporate with perpetual succession by virtue of Section 2(2) of the said Act. By virtue of Section 2(3) of the said Act, the powers conferred on the University by Section 2(2) are exercised by the 1st Respondent Council. 30

5(a) With reference to paragraph 5 of the affidavit, I state that the petitioner was first appointed to the permanent staff of the University by me. by my letter dated 15th May 1959, a copy of which is annexed hereto marked R1 in the exercise of the powers conferred on me by Section 62 of the said Act. 40

5(b) I admit that by letter dated 1st September 1960 marked "A", I purported to promote the Petitioner to the post of Professor and head of the Department of Economics and Business Administration with effect from the 1st October 1960 and that by letter dated 2nd September 1960 marked "B", the Petitioner purported to accept the said purported appointment as Professor. The 1st Respondent Council has purported to confirm the said purported appointment.

In the
Supreme Court

No.5A

Affidavit of
Ven.Welivitiye
Sri Soratha
Nayaka Thero
10th October
1961
continued

5(c) I am advised and state that the said documents marked "A" and "B" do not constitute in law a valid agreement in writing between the University and the Petitioner as required by Section 33 of Act No.45 of 1958 and in the circumstances the Petitioner was not duly appointed "a teacher" of the University. The Petitioner was given a draft agreement in writing in the usual form to be signed by him, but he has failed and neglected to sign the same. I annex for the information of Your Lordships' Court a copy of the usual agreement form signed by the "teachers of the University on their appointment, marked "R2".

5(d) I am advised, and without so-admitting, state that in any event if the said letters marked "A" and "B" constitute a valid agreement relating to the petitioner's appointment as a Professor in the University the said letters would then constitute the contract of employment between the Petitioner and the University.

6. With reference to paragraph 6 of the affidavit, I state that a scheme for re-organisation was prepared at my request by the Petitioner in association with and with the assistance of the other officers of the University and I approved a syllabus of work to be done in accordance with the said scheme of re-organisation.

7. With reference to paragraph 7 of the affidavit, whilst admitting that the Petitioner attended to his duties preparatory to the inauguration of the Department of Economics and Business administration which took place on the

In the
Supreme Court

No.5A

Affidavit of
Ven.Welivitiye
Sri Soratha
Nayaka Thero
10th October
1961
continued

20th of December 1960, I deny that he thereafter duly attended to his duties as Professor and Head of the Department under his charge. I have hereinafter in this affidavit set out the grounds and reasons for such denial.

8. With reference to paragraphs 8 and 9 of the affidavit whilst admitting that Mr.K.M.P. Rajaratne was a lecturer in Indian History in the said Vidyodaya University apart from what I have read in the newspapers and what I heard, I am personally not aware of the truth of the statements contained in the said paragraphs. In any event I state that the averments in the said paragraphs are irrelevant to the questions that arise for consideration in these proceedings. 10

9. With reference to paragraph 10, I admit the receipt of a letter from The Honourable the Prime Minister on the 9th of June 1961 which on my direction was exhibited on the Notice Board of the University for the information of the students. 20

10(a). With reference to paragraph 11, I recall having read a news item in the "Ceylon Daily News" in the terms referred to in annex "C".

10(b). I am advised and state that the averments in paragraphs 10 and 11 of the Petitioner's affidavit are wholly irrelevant to these proceedings.

11. With reference to paragraph 12, I state that I am aware that there was a meeting of the Vidyodaya University Teachers' Association on the 17th of June 1961 which was postponed for the 22nd of June 1961 and that the meeting did not come to a final decision in regard to the resolutions which were before it. I am however unaware of the precise terms of the said resolutions. 30

12. With reference to paragraph 13 of the affidavit, I was aware of the decision of the Government referred to therein which was made on the 22nd of June 1961 with immediate effect and I admit the statement made by me to the representative of the "Ceylon Observer" as set out in the document "D" which I state is correct. 40

In the
Supreme Court

No.5A

Affidavit of
Ven.Welivitiye
Sri Soratha
Nayaka Thero
10th October
1961
continued

10 13. With reference to paragraph 14 of the affidavit, I admit that Dr. Ananda Guruge, a member of the Ceylon Civil Service, was on all material dates an Assistant Secretary to the Ministry of Education. He was at the inception of the University with the approval of the then Minister of Education, appointed my Administrative Assistant and was later also appointed Professor and Head of the Department of Sanskrit. Dr. Ananda Guruge was paid an allowance of Rs. 750/- per month plus Rs. 250/= per month as travelling allowance for his work as my administrative Assistant. He received no salary or remuneration as Professor and Head of the Department of Sanskrit nor for delivering lectures. He was paid the normal fee for setting question papers and correcting answer scripts. Dr. Ananda Guruge was paid an additional supervision fee of Rs. 150/= a month for 20 the supervision of research for the Ph.D.course. All the above payments made to Dr. Guruge were approved by the University Council.

30 14. With reference to paragraph 15 of the affidavit, I state that Dr. Ananda Guruge by his letter dated 26th May 1961, a copy of which is annexed hereto marked R3, purported to resign from the post of Administrative Assistant and the Council having considered Dr. Guruge's said letter resolved at its meeting held on 2nd June 1961 to request Dr. Guruge to withdraw his resignation which he accordingly did. I annex the relevant extracts from the minutes of the meeting of the University Council held on 2nd June 1961 marked R4. The Government subsequent to the 22nd June 1961 postponed the date of relinquishment of duties by Officers of the Ministry of Education serving the University to the 31st of August 1961, (the end of the 40 academic year) so that the work of the University would not be inconvenienced. Dr. Guruge however, by his letter dated 11th July 1961, a copy of which is annexed hereto marked R5, resigned from all the offices held by him and carrying remuneration with immediate effect from 11th July 1961.

15. With reference to paragraphs 16 and 17 of the affidavit, I am unaware of the fact that Dr. Ananda Guruge wrote the letter referred to

In the
Supreme Court

No.5A

Affidavit of
Ven.Welivitiye
Sri Soratha
Nayaka Thero
10th October
1961
continued

and quoted in the said paragraph 17 as alleged to have been sent by the said Dr. Guruge. In any event, the alleged letter is not annexed to the petition or affidavit and I am advised and respectfully state that the contents of the said alleged letter are inadmissible and irrelevant for the purpose of this application.

16. With reference to paragraph 18 of the affidavit, I admit having sent the letter marked "E" referred to therein.

10

17. With reference to paragraphs 19 and 20 of the affidavit I admit the receipt of the letter dated 6th July 1961 marked "F" which was duly placed before the University Council and its decision as contained in the letter dated 13th July 1961 marked "G" was communicated to Dr. W.M. Tillekeratne by me. Professor Mukherjee, referred to in the said letter marked "G" withdrew his letter of resignation and continues in his employment as Professor of Political Science and in addition supervise the work of the Department of Economics and Public Administration, to this date.

20

18. With reference to paragraph 21, I admit that Dr. Ananda Guruge was present at the meeting of the Council on the 4th of July 1961 and being a member of the Council, appointed by his Excellency the Governor General he was entitled to be so present. I emphatically deny the rest of the averments in paragraph 21 and state that the allegations made against me and the members of the Council are incorrect and without any foundation whatsoever.

30

19. I deny the averments in paragraphs 22 to 24 of the affidavit.

20. I further declare and affirm that the Department of Business and Public Administration under the aegis of the Petitioner was inaugurated on the 20th December 1960 by the Honourable Mr. T.B. Illangaratne, Minister of Trade and Commerce and the same was located at 3/1 Racecourse Avenue, Colombo 7. As early as January 1961, I became aware that the Petitioner was not taking any interest in the Department under his control and in view of representations made to me and to my

40

Administrative Assistant by the Students, I caused the letter dated 15th January 1961, a copy of which is annexed hereto marked R6 to be sent to the Petitioner. The Petitioner did not reply to this letter but I am aware that he assured my Administrative Assistant, Dr. Guruge that he would remedy the shortcomings complained of.

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No.5A

Affidavit of
Ven. Welivitiye
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1961
continued

10 21. Early in February 1961 the students of the Economics Department, again interviewed me and my Administrative Assistant and handed to me a statement annexed hereto marked R7 and I directed my Administrative Assistant to speak to the Petitioner again about the contents of the said document R7. I accordingly directed my Office Assistant, Mr. N.P.S. Sumanasekera, who was the Officer detailed to supervise the work of the Department of Business and Public Administration at 3/1 Racecourse Avenue, Colombo
20 7, to send me monthly progress reports in regard to the work of the said Department of Business and Public Administration, I annex hereto the relevant extracts from the reports of the Office Assistant, Mr. N.P.S. Sumanasekera for the months of February 1961, March 1961, May 1961 and June 1961 marked R8, R9, R10 and R11. In April 1961 the University was in vacation.

30 22. I myself visited No.3/1 Racecourse Avenue on several occasions and at times when the Petitioner should have been present at the Department of Economics and Business Administration but not on one occasion was the Petitioner present. On several occasions I telephoned the Department at times when the Petitioner should have been present but there was no reply to my calls, the Telephone at the Department of Economics and Business Administration being installed in the Petitioner's room at his request.

40 23. I annex hereto audit query dated 30th June 1961 by the Audit Officer of the Auditor General, and letter dated 1st July 1961 from Mr. K.T.R. de Silva, Assistant Lecturer in the Department of Economics marked R12 and R13 respectively. I was personally aware that the statements contained in the said two documents are correct and borne out by the books maintained by the University.

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Affidavit of
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continued

24. The Petitioner has also used the petty cash of the Department for purely private purposes, namely, to send telegrams to summon members of the staff for the postponed meetings held on the 22nd of June 1961 and referred to in paragraph 11 above. The cost of these telegrams were deducted from the Petitioner's salary as is evident from the document "E" and the Petitioner has not questioned the correctness of the said deduction.

10

25. I have had reports from the members of my staff that the Petitioner had locked up his room at the Department of Economics and as a result of the Petitioner not attending Office the telephone was not available to the Officers of the Department. I also had reports which I had no reason to doubt, that the fan and lights in the room assigned to the Petitioner had been switched on for four days and nights during which time the Petitioner did not attend office and his room was locked.

20

26. Rule 19 of the instructions to Deans and Professors given by me is as follows:-

"All lecturers other than visiting lecturers should spend at least two hours at the University in addition to the time spent on teaching. The University Office and the students should be kept informed of these hours so that the officers and the students could contact them when necessary. The visiting lecturers should also be available similarly for at least two hours per week for discussions."

30

The Petitioner has given no information as required by this rule nor has he complied with the rule in any way.

27. The Petitioner was present at a meeting of the Senate held on the 28th February 1961 and his conduct at the meeting and in my presence was such that it was apparent to me and to all those present that the Petitioner's continued employment would be detrimental to the best interest of the University and the objects with which it had been created. At the said meeting of the Senate it was decided to appoint a

40

committee to investigate and report on the work of the Department of Economics, but I am aware that the Petitioner prevented the said Committee from conducting its affairs and doing the work entrusted to it. An extract from the minutes of the Senate meeting of 28th February 1961 is annexed hereto marked R14.

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Supreme Court

No.5A

Affidavit of
Ven.Welivitiye
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Nāyaka Thero
10th October
1961
continued

10 28. There was considerable unrest among the students at the University from March to June 1961 and I and several members of the Council were aware that the Petitioner was instrumental in causing the unrest. The students started a strike on 3rd June 1961.

20 29. At a meeting of the Council held on 4th July 1961, under my presidency, all the Respondents other than the 9th, 11th and 13th Respondents were present. Those present carefully considered the question as to whether the Petitioner's services should be continued or whether they should be terminated. The facts that I have set out in paragraphs 20 to 29 above and the documents R7 to R13 were carefully considered by those present. Those present were personally aware of most of the said facts and I informed those present of the facts within my own personal knowledge referred to by me above. We were satisfied that the continuance of the Petitioner in the service of the University and his presence would be an impedient to the progress of the University and would be detrimental to the noble objects with which the University had been founded. A resolution was moved by the 14th Respondent and seconded by the 16th Respondent in the following terms :-

30

"In the opinion of the Council the conduct of Mr. Linus Silva, the Professor of Business Administration, rendered him unfit to be a member of this University."

40 This was passed unanimously. It was also unanimously decided that the services of the Petitioner should be terminated forthwith and accordingly the letter marked "E" was sent by me to the Petitioner at the instance of the Council.

30. The Petitioner has accepted the sum of Rs.3345/15 paid to him in terms of the said letter

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No.5A

Affidavit of
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Sri Soratha
Nayaka Thero
10th October
1961
continued

and the cheque was cashed on the 11th of July 1961. I am advised and state that the Petitioner by his conduct has acquiesced in the termination of his services and by his conduct is estopped from challenging the same.

31. Since the termination of the services of the Petitioner and his departure from the University, the affairs of the University have been carried on peacefully without interference and the Department of Economics Business and Public Administration has been functioning according to schedule and the lectures have been regularly given. I sincerely believe and I am aware that my belief is shared by everyone interested in the future welfare of the University that if the Petitioner were to be re-employed in the University, the progress made in the University and particularly in the Department of Economics Business and Public Administration would be seriously impaired.

10

20

32. I further state that in all my actions my first consideration was the future welfare of the University and I acted bona-fide and in the bona-fide belief that I was acting in its best interest.

33. I am advised and state that the Petitioner is not entitled in these proceedings to claim and or obtain the relief prayed for in his petition in as much as :-

(a) The Council of the Vidyodaya University of Ceylon is not a judicial or quasi-judicial body.

30

(b) The Council does not maintain a record nor has it made any orders which are capable of being reviewed and questioned by means of a Writ of Certiorari;

(c) The Petitioner was an employee of the Vidyodaya University of Ceylon and the decision to terminate such employment by the 1st Respondent Council cannot be reviewed by way of Certiorari;

40

(d) This is not in any event a fit and proper case in which Your Lordships' Court should

exercise its discretion in granting the Writs prayed for by the Petitioner in as much as :-

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10 (i) There was no necessity to inform the Petitioner of the grounds for the termination of the Petitioner's services as the Respondents in their capacity as members of the chief executive and administrative body of the Vidyodaya University were fully aware of the Petitioner's dereliction of duty and other lapses which rendered him unfit to be a member of the teaching staff of the University and they had full power and authority to terminate the Petitioner's services.

Affidavit of
Ven. Welivitiye
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continued

(ii) The Petitioner has the alternative remedy of bringing an action in the ordinary way and making his claim to vindicate his rights, if any, in the Original Court and/or before a Labour Tribunal.

20 Read over signed and affirmed)
to at Colombo on this 10th) Sgd: (in
day of October, 1961.) Sinhala) :

Welivitiya Siri Soratha

Before me,
Sgd: M. Vincent Perera.
J.P.

No.5B

No.5B

LETTER OF APPOINTMENT - VICE
CHANCELLOR to LINUS SILVA.

Letter of
Appointment
Vice Chancellor
to Linus Silva
15th May 1959

15th May 1959

Linus de Silva, Esqre.,

30 Dear Sir,

Post of Lecturer -
Department of Economics.

With reference to the discussion you had with my Administrative Assistant, I am pleased to appoint you to the post of Lecturer Grade I in the Department of Economics of this University. You will continue to be the Head of

In the
Supreme Court

the Department and will represent it at the
various University bodies.

No.5B

The scale of salary attached to the post is
Rs.8,880/= to Rs.13,200/=.

Letter of
Appointment
Vice Chancellor
to Linus Silva
15th May 1959
continued

Please acknowledge receipt of this letter.

Dharmasastronnatikami,

Vice-Chancellor.

Copies to: Prof.S.F. de Silva, Dean of the
Faculty of Arts.

Assistant Registrar (General) who is
kindly requested to note the new
scale of payment which becomes oper-
ative with effect from today.

10

.....

I, D.J.Kumarage, Registrar of the Vidyodaya
University of Ceylon, do hereby certify that
this is a true copy of the letter dated 15th
May 1959 from the Vice-Chancellor to Mr. Linus
de Silva.

Sgd: D.J. Kumarage.
10.10.61.

20

No.5C

No.5C

Form of
Agreement

FORM OF AGREEMENT

VIDYODAYA UNIVERSITY OF CEYLON

AGREEMENT made thisday of.....
19... between the Vidyodaya University of
Ceylon (hereinafter called "the Vidyodaya
University") and
called "the Professor").

WHEREAS the Vidyodaya University has
appointed the Professor to be a Professor of
.....in the Vidyodaya University under
Section 31 of the Vidyodaya and Vidyalankara
University Act No.45 of 1958 (hereinafter
called "the Act") such appointment to date

30

from.....

In the
Supreme Court

No.5C

Form of
Agreement
continued

1. The Professor agrees diligently and faithfully to perform such duties as the Vidyodaya University may require him to undertake in accordance with the Act and the Statutes, Acts and Regulations made thereunder and shall obey the lawful orders of the Vice-Chancellor.

10 2. The salary of the post shall be Rupees..... rising to Rupees.....by four annual increments of Rupees.....and four annual increments of Rupees.....

3. The Professor shall be eligible for leave of absence from his duties in accordance with such Acts of the Vidyodaya University as may be in operation from time to time.

4. (i) The Professor may terminate this agreement by giving to the Vice-Chancellor three months notice in writing ending at the end of a term.

20 (ii) If the Professor terminates this agreement otherwise than in accordance with this agreement, the Vidyodaya University may not be bound to pay to him any salary to which he would otherwise have become entitled.

30 5. The appointment shall continue subject to this agreement until the end of the session after the Professor completes his fifty-fifth year but may by resolution of Council be extended for a further period until the Professor attains his sixtieth year.

6. The Vidyodaya University may annul this agreement on any ground on which it may be lawful for the Council, under the provisions of Section 18 of the Act to dismiss a teacher provided that the terms of that paragraph are complied with.

40 7. The Professor shall, as long as he is employed by the Vidyodaya University and has not completed his fifty-fifth year contribute to the Vidyodaya University Provident Fund in accordance

In the
Supreme Court

No.5C

Form of
Agreement
continued

with Part VIII of the Act.

AS WITNESS OUR HANDS the day the month
and the year above written.

.....

Vice Chancellor on behalf of the Vidyodaya University of Ceylon, in the presence of of the Office of the Vidyodaya University.

Signed by:

In the presence of -

Witness: (Signature:.....
(Address:
(Occupation:

10

I, D.J.Kumarage, Registrar of the Vidyodaya University of Ceylon, do hereby certify that this is a true copy of the usual agreement form signed by the "Teachers", of the University.

Sgd: D.J. Kumarage.

10.10.61.

NO.5D

LETTER OF RESIGNATION OF ANANDA
W.P.GURUGE FROM POST OF ADMINIS-
TRATIVE ASSISTANT.

In the
Supreme Court

No.5D

Letter of
Resignation
of Ananda W.P.
Guruge from
the Post of
Administrative
Assistant.
Ananda W.P.
Guruge to Vice
Chancellor
26th May 1961

Ananda W.P.Guruge
B.A.(Hons), Ph.D.(Ceylon)
Ceylon Civil Service.
Tel: Nugegoda 349.

"Anura"
35 Nugagahawatta
Kirillapone,
Colombo 5.

Venerable Vice-Chancellor,

10

As I have been entrusted with additional responsibilities at the Ministry of Education and as I am unable to set apart adequate time for the administrative duties of the University, I regretfully inform you that I will resign from the Post of Administrative Assistant with effect from 31st May 1961. I have already informed this to the Registrar two days ago. While offering you my sincere thanks (gratitude) for the confidence you have placed in me in appointing me to this post, I wish to inform you respectfully that you will continuously receive my cooperation.

20

Dharmasastronatikami,
Ananda Guruge,
26.5.1961.

Translated by:

Sgd:
Sworn Translator,
District Court, Colombo.
.....

30

I, D.J.Kumarage, Registrar of the Vidyodaya University of Ceylon, do hereby certify that this is a true copy of a letter addressed to the Vice-Chancellor by Dr. A.W.P. Guruge and dated 26.5.61.

Sgd: D.J.Kumarage.
10.10.61.

In the
Supreme Court

No.5E

EXTRACT FROM MINUTES OF MEETING
OF THE UNIVERSITY COUNCIL

No.5E

Extract from
Minutes of
Meeting of
the University
Council
2nd June 1961

10. Administrative Assistant's letter of
Resignation.

A letter sent by Dr. Guruge expressing the wish to resign the post of Administrative Assistant, because of the increase in his work in the Ministry of Education and the consequent restriction in the time available for work in the University was placed before the Council by the Registrar.

10

The Ven. Vice-Chancellor speaking in appreciation of the services rendered by Dr. Guruge, stated that the need for his services was felt most at the present moment and requested him to withdraw his resignation. Several other members also endorsed this view.

Subsequently a resolution moved by Sir Lalitha Rajapakse that Dr. Guruge should continue to serve as Administrative Assistant was seconded by Dr. A.M. Samarasinghe and Dr. Guruge agreed to continue to function as Administrative Assistant.

20

.....

Translated by:

Sgd:

Sworn Translator,
District Court, Colombo.

.....

I, D.J. Kumarage, Registrar of the Vidyalaya University of Ceylon, do hereby certify that this is a true copy of the relevant extracts from the minutes of the meeting of the University Council held on 2nd June 1961.

30

Sgd. D.J. Kumarage

10.10.61.

No.5FLETTER OF RESIGNATION OF
ANANDA W.P. GURUGEIn the
Supreme CourtNo.5F"Anura",
35 Nugagahawatta,
Colombo 5.

11.7.61.

Letter of
Resignation
of Ananda W.P.
Guruge -
Ananda W.P.
Guruge to Vice
Chancellor
11th July 1961The Vice-Chancellor,
Most Ven. Sir,

10 Although I have been given permission to
work up to the end of this academic year, I
shall be grateful if you could relieve me of the
administrative and academic duties performed by
me.

20 I am thankful to you and the University
Council for the decision taken by the University
Council after considering my letter of 25th May
and the implicit confidence placed in me.
Although the Council has expressed the desire
to obtain my services without interruption, in
view of the present circumstances I deem it
desirable that other persons be appointed to
both posts held by me.

30 Although I am resigning the post that
carries remuneration I shall, as desired by you,
be glad to continue to hold my membership in the
Court, the Council and the Senate to which I
have been appointed by H.E. the Governōr-Generāl.
I wish to state that I would extend my co-opera-
tion and assistance in all matters that would
help the progress of this University which I
have organised with great affection. I shall
also be glad to devote my time and service in
giving advice to the administrative and academic
staff whenever necessary.

Dharmasastronnatikami
Ananda Guruge.

Translated by:

40 Sgd:
Sworn Translator,
District Court, Colombo.
.....

I, D.J. Kumarage, Registrar of the Vidyodaya

In the
Supreme Court

No.5F

Letter of
Resignation
of Ananda W.P.
Guruge -
Ananda W.W.
Guruge to Vice
Chancellor
11th July 1961

University of Ceylon, do hereby certify that this
is a true copy of a letter addressed to the Vice
Chancellor by Dr. A.W.P. Guruge, and dated 11th
July 1961.

Sgd: D.J. Kumarage
10.10.61.

No.5G

Letter Vice
Chancellor to
Linus Silva
15th January
1961

No.5G

LETTER - VICE CHANCELLOR
TO LINUS SILVA

VIDYODAYA UNIVERSITY OF CEYLON.

15th January 1961.

Prof. Linus Silva,
Head of the Department of Economics and
Business Administration.

B.A. First Year Classes in Economics.

The students of the above class saw me today
in deputation and informed me that they had not
had even one lecture given to their class since
the beginning of this Academic year on the 13th
December 1960. From their Time Table I find
that the following classes only had been arranged:

Sat. 10-11 Principles - M.T.Sumanananda
6-7 Econ. History - Prof. Silva
Sun. 8-9 Principles - Sumanananda.

No other classes have been arranged. I can under-
stand why the lectures assigned to Mr.Sumanananda
are not being delivered. But I do not see how no
other classes were given or arranged. Situations
of this nature are detrimental to the University's
progress. So I shall be glad if you will please
attend to this immediately and let me know what

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20

30

steps you have taken to give a satisfactory course to these students.

In the
Supreme Court

Dharmasastronnatikami

No.5G

Sgd: A.W.P. Guruge
for Vice-Chancellor.

Letter Vice
Chancellor to
Linus Silva
15th January
1961
continued

I, D.J. Kumarage, Registrar of the Vidyodaya University of Ceylon, do hereby certify that this is a true copy of a letter addressed to Mr. Linus Silva by Dr. A.W.P. Guruge and dated 15th January 1961.

10

Sgd: D.J.Kumarage.
10.10.61.

No.5H

No.5H

STATEMENT FROM STUDENTS OF THE
ECONOMIC DEPARTMENT TO VICE
CHANCELLOR

Statement from
Students of
the Economics
Department to
Vice Chancellor

Department of Economics,
Vidyodaya University,
Colombo 10.

20 Administrative Assistant,
Vice-Chancellor,

No useful purpose has been served as a result of reporting to you that our Department of Study has been inactive, this year. We were asked by you to take up the matter with the Professor. We have informed him more than a hundred times. But nothing has been done. His intention seems to be to mislead us. There is no one here who is responsible for the work in his department. You are the Head of the administration. Also as a person of learning you realise the value of our time and it is a great crime not to pay any consideration to us. If the Department of Economics not to be conducted here a decision on that should be taken. The students should not be deceived.

30

In the
Supreme Court

No.5H

Statement from
Students of
the Economics
Department to
Vice Chancellor
continued

Further, the injustice done to the students in General Degree (2nd Year) class, should be investigated. It is a crime for those responsible for education to allow this type of thing to take place. Political science has been substituted for applied Economics in the first year degree Syllabus.

1. What is the purpose of preparing for the Degree Examination?
2. What is list of subjects? 10
3. Where is the library?
4. No classes have been held in Economics History (India and Ceylon) for the final year students.

There is no scheme of work. Nobody knows what is being done. It is true that students have to do a certain amount of self study for the Degree Examination. But there should be a limit of that there should be a scheme of studies. Is there such a scheme? 20

This is not all. This is what the Professor has told some of the students in the 2nd year Degree Class "What you need is a certificate. I will see to that." What are we to do with such a certificate. You are responsible for this state of affairs. Please think of your student days. If any Department of study is unable to send out persons who would be of use to the country, that department should be abolished.

Here is another threat to the University although the students in the newly-joined Department of Economics have been instructed to attend the University for Classes in Buddhist Culture, the Professor in charge of the Department has ordered the students not to attend those classes and to boycott them. How many such secret campaigns are there? What difficulties will the University have to face in the future on account of this Department. This may have been started with the sole aim of seeing that the employment of one person would not suffer as a result of the University shifting to Gangodawila. 30 40

Whatever happens to that branch, if the Dept. of Economics at Maligakanda is not made to function very early, we have decided to bring this to the notice of Parliamentary Advisory Committee and to take other suitable steps because of the love we have for the University. We consider it our prime duty to bring this to your notice in the first instance.

In the
Supreme Court

No.5H

Statement from
Students of
the Economics
Department to
Vice Chancellor
continued

10

The Economics Department.

R.

(2) students speak re their lectures. I have already written to Prof. S. about I lectures. I will discuss this with him further and see that the students are given their lectures acc. to time table.

Sgd: A.W.P.G.

Translated by:

Sgd:

Sworn translator,
District Court, Colombo.

20

.....

I, D.J. Kumarage, Registrar of the Vidya-
daya University of Ceylon, do hereby certify
that this is a true copy of a statement handed
over to the Vice Chancellor by the Students of
the Economics Department of the University.

Sgd: D.J. Kumarage

10.10.61.

In the
Supreme Court

No.5J

NO.5J

EXTRACT FROM REPORT OF THE OFFICE
ASSISTANT FOR FEBRUARY 1961.

Extract from
Report of
the Office
Assistant for
February 1961.
28th February
1961

February 1961.

Confidential.

The Venerable The Vice-Chancellor,
Vidyodaya University of Ceylon,
Colombo.

Venerable Sir,

To comply with your request for a report,
I respectfully set down my observations below.

10

I regret to have to state that the day to
day work of this office suffers for lack of
prompt instructions. Letters addressed to the
Head of the Department often await him for days.
As Office Assistant, I have no authority to open
letters addressed to him as Head of the Depart-
ment. Even if I am so authorised, I cannot
take independent decisions on academic matters.
I can only reply to routine enquiries.

20

Dharmasastronnatikami

Sgd: Sumanasekera,

Office Assistant, ,

Department of Economics,
Business Administration &
Public Administration.

28.2.61.

I, D.J. Kumarage, Registrar of the Vidyodaya University of Ceylon, do hereby certify that this is a true copy of the relevant extracts from the report of the Office Assistant, Mr. N.P.S. Sumasekera, submitted to the Vice Chancellor in February 1961.

30

Sgd: D.J. Kumarage
10.10.61.

No.5K

EXTRACT FROM REPORT OF THE OFFICE
ASSISTANT FOR MARCH 1961

March 1961

Confidential

In the
Supreme Court

No.5K

Extract from
Report of the
Office Assistant
for March 1961.
31st March 1961

The Venerable The Vice Chancellor,
Vidyodaya University,
Colombo.

Venerable Sir,

10 In my report for February 1961, I pointed
out how the work of this office suffered for
lack of interest on the part of the Head of
the Department.

Now that I have been here for almost two
months, I am in a position to state that not
only the work of the office but also the work
of the Department as a whole suffers for the
following reasons :-

20 1. The professor in charge of the depart-
ment does not call here regularly.

2. He often keeps away for several days
at a stretch without any intimation to me. I
am therefore unable to answer inquiries as to
when he will be in office.

3. He fixes appointments with students
and others to meet him here on particular days
and hours, but rarely turns up to keep the
appointment.

4. He rarely gives specific instructions.

30 5. He often leaves letters submitted to
him without making minutes on them.

6. He has the habit of giving oral
instructions even where written instructions

In the
Supreme Court

No.5K

Extract from
Report of the
Office Assistant
for March 1961.
31st March 1961

are necessary.

7. Sometimes he takes away letters, which are never returned to the office to be replied or filed.

8. His initials appear in the Time-Table against the lecture on Economic History, but so far he has not given it. In his place, Mr. K.T.R. de Silva lectures.

9. According to the bulletin of this department, the Professor is a Master of Business Administration of an American University, but he does not lecture in his speciality. Mr. N. Rajaratnam, a visiting lecturer, who is not a M.B.A., lectures on Business Administration.

10

From the foregoing it is quite clear that the Professor's interest in the work of this Department is not what it should be.

Lectures.

Lectures are normally given according to the Time Table except in the case of the Professor. When a lecture is missed, it is made up subsequently.

20

Dharmasastronnatikami.

Sgd: N.P.S. Sumanasekera.

Office Assistant,

Dept. of Economics.

31.3.61.

I, D.J. Kumarage, Registrar of the Vidyalaya University of Ceylon, do hereby certify that this is a true copy of the relevant extracts from the report of the Office Assistant, Mr. N.P.S. Sumanasekera, submitted to the Vice-Chancellor in March 1961.

30

Sgd: D.J. Kumarage.

10.10.61.

NO.5L

EXTRACT FROM REPORT OF THE OFFICE
ASSISTANT FOR MAY 1961

In the
Supreme Court

No.5L

May 1961

Confidential.

Extract from
Report of the
Office
Assistant for
May 1961.
31st May 1961

The Venerable The Vice-Chancellor,
Vidyodaya University,
Colombo.

Venerable Sir,

10

The position detailed in my report for March 1961, as far as the Head of this Department is concerned remains the same, except for the fact that towards the end of this month he called here more than he did before. But, as usual, he spent only a few minutes on each occasion.

Dharmasastronnatikami,

Sgd: N.P.S. Sumasekera,

Office Assistant,

20

Dept. of Economics.

31.5.61.

I, D.J. Kumarage, Registrar of the Vidyodaya University of Ceylon, do hereby certify that this is a true copy of the relevant extracts from the report of the Office Assistant, Mr.N.P.S. Sumanasekera, submitted to the Vice-Chancellor in May 1961.

Sgd: D.J.Kumarage

10.10.61.

In the
Supreme Court

NO.5M

EXTRACT FROM REPORT OF THE OFFICE
ASSISTANT FOR JUNE 1961

No.5M

Extract from
Report of the
Office
Assistant for
June 1961.
30th June 1961

June 1961

Confidential

The Venerable The Vice-Chancellor,
Vidyodaya University,
Colombo.

Venerable Sir,

Officers of the Auditor-General's Department visited here twice.

10

During this month the Professor came here on several days to make arrangements for the new Time Table and the holding of classes at Thurstan College. He addressed the staff and students on the day of the opening of classes. Towards the end of this month his visits became more frequent.

He asked me to not to allow Mr. Munasinghe, the research assistant, Mr. Nanayakkara, the translator, and Mr. Leelaratne, the Library Assistant, to come to the office. He said that information had leaked out from the office. If anybody wanted information, he said, he should seek it from the Head of the Department by prior appointment, and not from me. I was asked not to give information to the audit or anybody else. He asked me for the keys of the steel cabinet, but I did not give them. He said that even if the Vice-Chancellor or the Registrar were to ask me for information I must not give it. He suggested an excuse, and that was to say that the keys were with him. He also said that no letter whatsoever should leave his office without his initials, nor should I open any letter received in this office from the Head Office.

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30

He has arranged a Time Table to take four lectures a week with the only student in 1st year Hons. Econ. Class. Still the lecture continues to be given by Mr. K.T.R. de Silva. The Professor has so far not given such lectures.

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However, in fairness to him, it must be stated that one day he devoted about 15 minutes for a discussion with his only student.

In the
Supreme Court

No.5M

Last week a telephone was installed in the Professor's room upstairs. This room is always kept locked. Thus the telephone has become useless. It should have been installed in this office and an extension given to the Professor.

Extract from
Report of the
Office
Assistant for
June 1961.
30th June 1961.

10 30.6.61. Dharmasastronnatikami,

Sgd: N.P.S. Sumanasekera
Office Assistant, Dept.
of Economics.

I, D.J. Kumarage, Registrar of the Vidyodaya University of Ceylon, do hereby certify that this is a true copy of the relevant extracts from the report of the office Assistant, Mr. N.P.S. Sumanasekera, submitted to the Vice-Chancellor in June 1961.

20 Sgd: D.J.Kumarage.
10.10.61.

NO.5N.

No.5N

LETTER AUDIT OFFICER TO REGISTRAR

Reference Note No.P-10(SA)27/60
30th June, 1961.

Letter Audit
Officer to
Registrar
30th June 1961

The Registrar,
Vidyodaya University,
Colombo.

30 Department of Economics, Business
Administration & Public Administration.

It is observed that Professor Linus Silva is expected to deliver 4 lectures a week to the B.A.Econ.(Hons.) Class. However, from the records produced for inspection, it is noted

In the
Supreme Court

No.5N

Letter Audit
Officer to
Registrar
30th June 1961
continued

that he has not given a single lecture in February, 1961.

Please state whether the necessary approval has been given for this arrangement.

2. It is also observed that Mr.K.T.R.de Silva has been called upon several times to cover the lectures allocated to Professor Silva. A sum of Rs.235/50 has been paid to Mr.K.T.R. de Silva for the additional lectures he has given in this respect during the month of February, 1961.

10

Please state whether the Council is made aware of the payments of this nature.

3. Please also state whether the Council is aware of Professor Linus Silva's appointment to the People's Bank. The above particulars are necessary for the information of the Auditor-General.

Sgd:

Audit Officer.

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This matter was placed before the Council meeting on 4.7.61, and as Mr. Linus Silva's services were terminated the sum of Rs.235/50 was deducted from the three months' salary paid to him.

Intld: D.J.K.

5.7.61.

I, D.J.Kumarage, Registrar of the Vidyo-daya University of Ceylon, do hereby certify that this is a true copy of the Audit query dated 30th June 1961 addressed to the Registrar.

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Sgd: D.J.Kumarage

10.10.61.

NO.5.0

LETTER - K.T.R. DE SILVA to
VICE CHANCELLOR

VIDYODAYA UNIVERSITY OF CEYLON.

July 1st, 1961.

The Ven. The Vice-Chancellor,
Vidyodaya University.

Ven. Sir,

10 Reference the request made to me by the Registrar, I have to state prior to my appointment as an Assistant Lecturer in the Department of Economics, Business Administration and Public Administration, I was a Visiting Lecturer there. In January and February, 1961, I lectured on Economic History in place of Mr. Linus Silva, the Head of the Department, at his request, and was paid at the rate of Rs. 15/- per lecture and Rs.18/50 per tutorial. From 20 the 1st of March 1961 when I was appointed a permanent assistant lecturer, I continued to lecture on Economic History on which subject Mr. Linus Silva, as Professor, was due to lecture.

Yours faithfully,

Sgd: K.T.R. de Silva.

I, D.J.Kumarage, Registrar of the Vidyodaya University of Ceylon, do hereby certify that this is a true copy of the letter dated 1st July 1961 addressed to the Vice-Chancellor by Mr. K.T.R. de Silva.

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Sgd: D.J.Kumarage.

10.10.61.

In the
Supreme Court

No.5.0

Letter K.T.R.
De Silva to
Vice Chancellor
1st July 1961

In the
Supreme Court

No.5P

NO.5P

EXTRACT FROM MINUTES OF SENATE
MEETING

Extracts from
Minutes of
Senate Meeting
28th February
1961

In the course of the discussion to examine the possibilities of conducting the Department of Business and Public Administration Classes at Maligakanda the Ven. Vice-Chancellor, Ven. Palannoruwe Wimaladhamma, Rev. Galapata Khemananda, Mr.C.D.A. Gunawardhana, Mr. Linus Silva, Dr. Ananda Guruge and the Registrar expressed their views at length.

10

The Registrar pointed out that the Administration had given the fullest cooperation regarding the activities of this Department. At the end of the discussion Rev. Galapata Khemananda proposed that a sub-committee be appointed to investigate and report on further measures with a view to improve the work of this Department. This was seconded by Sir Lalita Rajapaksa.

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Accordingly the following were appointed to the sub-committee: - Ven. Palannoruwe Wimaladhamma, Rev. Galapata Khemananda, Mr. C.D.A. Gunawardhana, Mr. Linus Silva, Prof. K.P. Mukerji and the Administrative Assistant Dr. Ananda W.P.Guruge.

Translated by:

Sgd.....

Sworn Translator

District Court, Colombo.

30

I, D.J. Kumarage, Registrar of the Vidya University of Ceylon, do hereby certify that this is a true copy of an extract from the minutes of the Senate meeting of 28th February, 1961.

Sgd: D.J.Kumarage

10.10.61.

NO.5QMEMORANDUM SUBMITTED TO UNIVERSITY
COUNCIL BY REGISTRARIn the
Supreme CourtNo.5Q

Ven. Vice-Chancellor,
Rev. Sirs,
and Gentlemen:

Memorandum
submitted to
University
Council by
Registrar
4th July 1961

10 1. It has become necessary to place before the Council some relevant data regarding the incapacity and conduct of Mr. Linus Silva who has been the Professor of the Department of Business and Public Administration since 1st October, 1960. The Department of Business and Public Administration was inaugurated on 20th December, 1960, and was located at 3/1, Race-course Avenue, Colombo 7.

20 2. Although the Department commenced work with much fanfare it showed signs of deterioration within a few weeks of its establishment. In the month of January, 1961, itself, it was obvious that the Head of the Department has lost interest in it and or was incapable of fulfilling the duties entrusted to him.

Neglect of Duties

30 1. Early in February, 1961, the students of the final year class of the Department of Economics interviewed the Administrative Assistant to the Ven. Vice-Chancellor and submitted an Aide-memoire on the work of the Professor. The main allegations of the students were :-

- i. That lectures were not conducted regularly.
- ii. That the Professor rejected the Students' plea with the comment - "What you need is a Certificate. I will guarantee that."
- iii. That he discouraged the students of his department from following the compulsory lectures in Sinhala Buddhist Culture.

2. On these submissions Mr. Linus Silva was asked to rectify the position and as a further

In the
Supreme Court

No.5Q

Memorandum
submitted to
University
Council by
Registrar
4th July 1961
continued

check the Office Assistant was ordered to send to the Ven. Vice-Chancellor monthly reports of the progress of the Department. The following excerpts from the monthly reports of the Office Assistant reveal that Mr. Linus Silva does not perform his duties in a satisfactory manner :-

Monthly Report of O.A. - February, 1961.

1. "I regret to have to state that the day to day work of this office suffers for lack of proper instructions. Letters addressed to the Head of the Department often await for days. As Office Assistant, I have no authority to open letters addressed to him as Head of the Department. Even if I am so authorised, I cannot take independent decisions on academic matters. I can only reply to routine letters." 10

Monthly report of O.A. - March, 1961.

1. "In my report for February, 1961, I pointed out how the work of this office suffered for lack of interest on the part of the Head of the Department." 20

Now that I have been here for almost two months, I am in a position to state that not only the work of the office but also the work of the Department as a whole suffers for the following reasons :-

1. The Professor in charge of the Department does not call here regularly. 30
2. He often keeps away for several days at a stretch without any intimation to me. I am therefore unable to answer inquiries as to when he will be in office.
3. He fixes appointments with students and others to meet him here on particular days and hours, but rarely turns up to keep the appointments.
4. He rarely gives specific instructions.
5. He often leaves letters submitted to him 40

without making minutes on them.

In the
Supreme Court

No.5Q

Memorandum
submitted to
University
Council by
Registrar
4th July 1961
continued

6. He has the habit of giving oral instructions even where written instructions are necessary.

7. Sometimes he takes away letters which are never returned to the office to be replied or filed.

10 8. His initials appear in the Time-Table against the lecture on Economic History, but so far as he has not given it. In his place, Mr. K.T.R. de Silva lectures.

9. According to the bulletin of the Department, the Professor is a Master of Business Administration of an American University, but he does not lecture in his speciality. Mr. N. Rajaratnam, a visiting lecturer, who is not a M.B.A. lectures on Business Administration."

20 ii. Lectures are normally given according to the Time-Table except in the case of the Professor.

iii. It was decided to allow students to answer papers in the language in which the lectures were delivered.

Monthly Report of O.A. - May, 1961.

30 1. "The position detailed in my report for March, 1961, as far as the Head of the Department is concerned, remains the same, except for the fact that towards the end of this month he called here more than he did before. But, as usual, he spent only a few minutes on such occasion."

Monthly Report of O.A. - June, 1961.

i. "There was a meeting of the teaching staff on 19.6.61. I was told that my presence there was unnecessary.

ii. During this month the Professor came here on several days to make arrangements for the new Time-Table and the holding of classes at

In the
Supreme Court

No.5Q

Memorandum
submitted to
University
Council by
Regiatarar
4th July 1961
continued

Thurstan College. He addressed the staff and students on the day of the opening of classes. Towards the end of this month his visits became more frequent.

- iii. He asked me not to allow Mr. Munasinghe, the Research Assistant, Mr. Nanayakkara, the Translator and Mr. Leelaratne, the Library Assistant, to come to the office. He said that information has leaked from the office. If anybody wanted information, he said, he should seek it from the Head of the Department by prior appointment and not from me. I was asked, not to give information to the Audit or anybody else. He asked me for the keys of the steel cabinet but I did not give them. He said that even if the Vice-Chancellor or the Registrar were to ask me for information I must not give it. He suggested an excuse and that was to say that the keys were with him. He also said that no letters whatsoever should leave the office without his initials nor should I open any letter received in this office from the Head Office. 10
- iv. He has arranged a Time Table to take four lectures a week with the only student in the 1st year Econ. Hons. Class. Still the lecture continues to be given by Mr. K.T.R. de Silva. The Professor has so far not given such lectures. However, in fairness to him, it must be said that one day he devoted about 15 minutes for a discussion with his only student." In this connection I have to draw your attention to Rule No.19 issued by the Ven. the Vice-Chancellor to the entire staff of the University according to which the Head of a Department is required to spend at least 2 hours a day in the University in addition to his teaching hours so that he may be available to the students and the staff. 20 30 40

The Ven'ble the Vice-Chancellor himself paid several surprise visits to the Economic Department at 3/1, Racecourse Avenue, Colombo 7 and found Mr. Linus Silva absent on all those occasions.

Financial Irregularities.In the
Supreme Court

No.5Q

1. In addition to the above lapses of Mr. Linus Silva, the Audit has brought to my notice the following :-

"Reference Note No. P-10(S.A.) 27/60

30th June 1961.

Memorandum
submitted to
University
Council by
Registrar
4th July 1961
continued

10

1. "It is observed that Professor Linus Silva is expected to deliver 4 lectures a week to the B.A. Econ. (Hons.) Class. However, from the records produced for inspection it is noted that he has not given a single lecture in February 1961. Please state whether the necessary approval has been given for this arrangement.

20

2. It is also observed that Mr. K.T.R. de Silva has been called upon several times to cover the lectures allocated to Professor Silva. A sum of Rs.235/50 has been paid to Mr. K.T.R. de Silva for the additional lectures he has given in this respect, during the month of February 1961.

Please state whether the Council is made aware of the payments of this nature.

3. Please also state whether the Council is aware of Professor Linus Silva's appointment to the People's Bank.

30

The above particulars are necessary for the information of the Auditor-General."

II. Besides he has also asked the Petty Cash of the Department for purely private purposes. Thus on 21st June 1961, he sent out telegrams to the members of the staff asking them to attend a meeting to support his motion at the University Staff Association.

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III. The official telephone of the Department of Business and Public Administration is not available to the office. It is locked up in his room which is not opened due to his

In the
Supreme Court

No.5Q

Memorandum
submitted to
University
Council by
Registrar
4th July 1961
continued

prolonged absence. As a result of this the purpose of the installing of the telephone at University expense is defeated. The Ven. Vice-Chancellor or the Registrar is not able to contact the Department on very urgent matters.

- IV. It has been reported that on one occasion the fan and the lights of his room were on for four days and nights as a result of neglect of Mr. Linus Silva.

10

Conduct in the University and in University meetings.

1. Mr. Linus Silva's conduct at University meetings had been very unbecoming. He was rude to the Ven. Palannuruwe Wimaladharmā Nayaka Thero. He makes false allegations against members of the University authorities, particularly the Registrar.

2. As most of the members of the Council are also members of the authorities in which Mr. Linus Silva is a member, they are fully aware of the manner in which he conducts himself at these meetings. Therefore no further details need be given here.

20

3. There are many complaints from the office staff about the manner in which Mr. Linus Silva treats them. I quote from a representation from the accounts clerk of the general office.

"On 2.2.61 while I was working with Mr. Abey-sundera, the Accountant, after usual office hours, Professor Linus Silva came into the office at about 6.30 p.m. and asked me to give him a cheque for the tabulation of marks and translations for which he has billed in a statement submitted by him earlier which is attached Vr. No.739 of 19.1.61. I informed him that the Administrative Assistant to the Ven. Vice-Chancellor has requested me not to pay the amount in question without obtaining Council approval. Vide His minute on 10.1.61. He then questioned the propriety of the A.A. in an ill-tempered manner and went to the Registrar and brought the papers annexed to Vr. No.845. with the endorsement "Pay". I then pointed out that the orders of the A.A. and Registrar conveyed

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conflicting orders and I therefore said that I would wish to make payment on the following day after obtaining an order from the A.A. reversing his earlier order. He became enraged at this stage and asked the Registrar whether he was allowing clerks to run this office. He also turned on me and called me a "rascal" and threatened to have me removed from office with Council approval. The Registrar and Accountant were present when this happened. The Registrar also said that he wished to consult the A.A. and make the payment on the following day. As Mr. Linus Silva was in a bad mood, the Accountant also explained to him that what I told was correct and told him there was no cause for annoyance in the matter. In spite of all these, Mr. Silva went with threats and even went to the extent of stating that he would give publicity to these matters through the Press."

In the
Supreme Court

No.5Q

Memorandum
submitted to
University
Council by
Registrar
4th July 1961
continued

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Disregarding the authority of the Ven. Vice-Chancellor.

1. Mr. Linus Silva resents supervision by the Ven. Vice-Chancellor of his Department. He has ordered the Office Assistant of his Department not to divulge any information to the Registrar, Audit or even the Vice-Chancellor.

30

2. In fact he brought a motion at the University Staff Association that the Hon. Prime Minister should investigate the recent happenings at the University. When the other members of the Association insisted that convention demanded that the motion should be addressed to the Vice-Chancellor and not to the Hon. Prime Minister, he persisted in getting his motion passed but was not supported by the majority of the members.

Vidyodaya University of Ceylon, Registrar
Colombo 10.
4th July 1961.

40

I, D.J. Kumarage, Registrar of the Vidyodaya University of Ceylon, do hereby certify that this is a true copy of a memorandum submitted by me to the Council of the University and dated 4th July 1961.

Sgd: D.J.Kumarage.
10.10.61.

In the
Supreme Court

NO.5R

No.5R

JOINT AFFIDAVIT of 3,4,5,7,8,10,12,
14,15,16,17, 19 & 20 (Respondents)-
Appellants

Joint
Affidavit of
3,4,5,7,8,10,
12,14,15,16,
17, 19 & 20
(Respondents)
Appellants
10th October
1961

IN THE HONOURABLE THE SUPREME COURT OF
THE ISLAND OF CEYLON.

In the matter of an application for
the grant and issue of Mandates in
the nature of Writs of Certiorari
and Mandamus in terms of Section 42
of the Courts Ordinance (Chapt.6)
of the Revised Legislative Enact-
ments of Ceylon

10

LINUS SILVA

Petitioner

S.C.
Application
No. 378

VS

THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON.

Respondents

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TO: His Lordship the Honourable the Chief
Justice and to their Lordships the
Honourable the Puisne Judges of the
Honourable the Supreme Court of the
Island of Ceylon.

We, Venerable Palannoruwa Wimaladhamma
Nayake Thero; Venerable Kalukondayawe Pannasekera
Nayake Thero; Venerable Parawahera Wajiranana
Nayake Thero, Pandit Gabriel Perera Wickremaarat-
chi, Norman Edward Weerasooria, Ananda Welihena
Palliya Guruge, Lekamwasam Liyanage Kanakeratne
Gunatunga, Chandra Datta Abheysiri Gunewardene,
Gamini Jayasuriya, Christopher William Wijekoon
Kannangara, Wimala Dharma Hewavitarne, and
Mudaliyar Egodage Alfred Abeysekere, members of
the Council of the Vidyodaya University of Ceylon,
Maligakanda Road, Colombo being Buddhists do

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hereby solemnly sincerely and truly declare and affirm as follows, and I Paulus Edward Peiris Deraniyagala, a member of the Council of the Vidyo daya University of Ceylon, Maligakanda Road, Colombo not being a Christian do hereby solemnly sincerely and truly declare and affirm as follows :-

In the
Supreme Court

No.5R

Joint
Affidavit of
3,4,5,7,8,10,
12,14,15,16,
17, 19 & 20
(Respondents)
Appellants
10th October
1961
continued

10 1. We are the 3rd, 4th, 5th, 7th, 8th, 10th, 12th, 14th, 15th, 16th, 17th, 19th and 20th Respondents abovenamed respectively. We are members of the Council of the Vidyodaya University of Ceylon.

2. We were some of the members present at the meeting of the Council held on the 4th of July 1961 at which the question of the continuance of the Petitioner in the service of the University was taken up for consideration.

20 3. We considered a Memorandum from the Registrar to which were annexed the documents marked R8 and R13 annexed to the 2nd Respondent's affidavit. We also considered the representations made by the Students of the Economics Department marked R7. The Memorandum is hereto annexed marked R15.

30 4. We also considered the statements made to us by the 2nd Respondent, the Vice Chancellor of the University with regard to the Petitioner's failure to deliver lectures and attend office, and also his conduct as an employee of the Vidyo-daya University.

5. We all and each and every one of us both from our knowledge of the conduct of the Petitioner as revealed by the documents R8 to R13 and the irrefutable evidence from the books of the University were satisfied that the Petitioner's conduct was such that he was unfit to continue in the employment of the University.

40 6. We were satisfied that the best interests of the University and the noble object with which it had been established would be served only by the immediate removal of the Petitioner from the post of Professor and the termination of his services with the University.

7. We accordingly unanimously resolved that

In the
Supreme Court

No.5R

Joint
Affidavit of
3,4,5;7,8,10,
12,14,15,16,
17, 19 & 20
(Respondents)
Appellants
10th October
1961
continued

the conduct of the Petitioner had "rendered him unfit to be a teacher of the University" as that was the opinion of all and each and every one of us and we therefore resolved to terminate his appointment in the University forthwith and to pay him a sum equivalent to three months salary.

8. We emphatically deny that our action in terminating the services of the Petitioner was malicious, unlawful or for reasons extraneous to those contained in Section 18(e) of the Vidyo-
daya and Vidyalankara Universities Act 45 of 1958.

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9. We deny that we acted wrongfully or unlawfully or in violation of any Rule of natural justice as would be applicable in the circumstances of this particular case.

10. We deny that the action taken by us was in excess of the Powers vested in the Council of the Vidiodaya University by law.

20

11. We further state that in all our actions as members of the University Council our first consideration was the future welfare of the University and we acted bona-fide and in the bona-fide belief that we were acting in its best interest.

Read over signed) Sgd: P. Wimaladhamma
and affirmed to) Sgd: (in Sinhala);K.Pannasekera.
at Colombo on) Sgd: P. Vajiranana
this 10th day of) Sgd: G.P. Wickramaaratchi
October 1961.) Sgd: A.W.P. Guruge
Sgd: L.L.K. Gunatunga
Sgd: C.D.A.Gunawardene
Sgd: G. Jayasuriya
Sgd: C.W.W.Kannangara
Sgd: W.D.Hewavitarne
Sgd: E.A. Abeysekera
Sgd: P. Deraniyagala

30

Before me,
Sgd: M.Vincent Perera
J.P.

40

Read over signed and af-)
firmed to at Kotte on) Sgd: N.E.Weerasooria
this tenth day of)
October 1961.)

Before me,
Sgd: H.J. Wijesinghe
J.P.

NO.6

JOINT AFFIDAVIT OF THE 6TH &
18TH (RESPONDENTS) APPELLANTS

In the
Supreme Court

No.6

IN THE HONOURABLE THE SUPREME COURT OF
THE ISLAND OF CEYLON

Joint Affidavit
of 6th & 18th
(Respondents)
Appellants
13th October
1961

In the matter of an application for
the grant and issue of Mandates in
the nature of Writs of Certiorari and
Mandamus in terms of Section 42 of
the Courts Ordinance (Chapt.6) of the
Revised Legislative Enactments of
Ceylon.

10

LINUS SILVA

Petitioner

VS

S.C.Application
No.378.

THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON
and 19 OTHERS

Respondents

20 TO: His Lordship the Honourable the Chief Justice
and to their Lordships the Honourable the
Puisne Judges of the Honourable the Supreme
Court of the Island of Ceylon.

We, Stephen Frederick de Silva and Andrew
Martin Samarasinghe, members of the Council of
the Vidyodaya University of Ceylon, Maligakanda
Road, Colombo, being Buddhists do hereby solemnly
sincerely and truly declare and affirm as follows:-

30

1. We are the 6th and 18th Respondents
abovenamed respectively. We are members of the
Council of the Vidyodaya University of Ceylon.

2. We, together with all the other signa-
tories to the affidavit marked "B" filed of
record in the above case, were present at the
meeting of the Council held on the 4th of July
1961 at which the question of the continuance of

In the
Supreme Court

No.6

Joint Affidavit
of 6th & 18th
(Respondents)
Appellants
13th October
1961
continued

the Petitioner in the service of the University was taken up for consideration.

3. We, together with the other signatories to the said affidavit marked "B" considered a Memorandum from the Registrar to which were annexed the documents marked R8 to R13 annexed to the 2nd Respondent's affidavit. We also considered the representations made by the Students of the Economics Department marked R7.

4. We also considered the statements made to us by the 2nd Respondent, the Vice Chancellor of the University with regard to the Petitioner's failure to deliver lectures and attend office, and also his conduct as an employee of the Vidyodaya University. 10

5. We all and each and every one of us both from our knowledge of the conduct of the Petitioner as revealed by the documents R8 to R13 and the irrefutable evidence from the books of the University were satisfied that the Petitioner's conduct was such that he was unfit to continue in the employment of the University. 20

6. We were satisfied that the best interests of the University and the noble object with which it had been established would be served only by the immediate removal of the Petitioner from the post of Professor and the termination of his services with the University.

7. We accordingly unanimously resolved that the conduct of the Petitioner had "rendered him unfit to be a teacher of the University" as that was the opinion of all and each and every one of us and we therefore resolved to terminate his appointment in the University forthwith and to pay him a sum equivalent to three months salary. 30

8. We emphatically deny that our action in terminating the services of the Petitioner was malicious, unlawful or for reasons extraneous to those contained in Section 18(e) of the Vidyodaya and Vidyalankara Universities Act 45 of 1958. 40

9. We deny that we acted wrongfully or unlawfully or in violation of any Rule of natural justice as would be applicable in the circumstances of this particular case.

In the
Supreme Court

No.6

10. We deny that the action taken by us was in excess of the Powers vested in the Council of the Vidyodaya University by law.

Joint Affidavit
of 6th & 18th
(Respondents)
Appellants
13th October
1961
continued

10

11. We further state that in all our actions as members of the University Council our first consideration was the future welfare of the University and we acted bona-fide and in the bona-fide belief that we were acting in its best interests.

12. Due to a prior engagement we were not in Colombo and were not able to be present at the time when the joint affidavit marked "B" was affirmed to, and in the circumstances we are now affirming this affidavit.

20

Read over signed and affirmed)
to at Colombo on this 13th) Sgd: S.F.de
day of October, 1961.) Silva.

Before me,

Sgd: M. Vincent Perera
J.P.

30

Read over signed and affirmed)
to at Colombo on this 13th) Sgd: A.M.
day of October, 1961.) Samarasinghe.

Before me,

Sgd:
J.P.



In the
Supreme Court

NO.7

COUNTER AFFIDAVIT OF LINUS SILVA

No.7

IN THE HONOURABLE THE SUPREME COURT OF
THE ISLAND OF CEYLON

Counter
Affidavit of
Linus Silva
16th October
1961

In the matter of an application for
the grant and issue of Mandates in
the nature of Writs of Certiorari
and Mandamus in terms of Section 42
of the Courts Ordinance (Chapt.6)
of the Revised Legislative Enactments
of Ceylon.

10

LINUS SILVA

Petitioner

VS

THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON
AND 19 OTHERS

Respondents

I, Linus Silva of No.214, High Level Road,
Kirillapone, Colombo 6, not being a Christian
do hereby solemnly sincerely and truly declare
and affirm as follows:-

20

1. I am the Petitioner abovenamed.

2. I have read the Affidavit dated 11th
October, 1961, of the 2nd Respondent abovenamed
which was served on me with the objections and
the affidavit of the other Respondents above-
named.

3. The 9th, 11th and 13th Respondents have
not filed papers.

4. I admit the averments contained para-
graph one (1) of the affidavit.

30

5. Referring to paragraph 4 of the
Affidavit I state that I was appointed on or
about 15th May 1959 as Lecturer Grade I and the

Head of the Dept. of Economics by the Vice-Chancellor under Section 62(2) of the said Act. Thereafter on or about 1st September 1960 I was promoted to the Post of Professor and Head of the Dept. of Economics which appointment was duly approved by the Council on the 28th September 1960.

6. I admit the averments in paragraph 5(a) of the affidavit.

In the
Supreme Court

No.7

Counter
Affidavit of
Linus Silva
16th October
1961
continued

10

7. Referring to paragraph 5(b), 5(c) and 5(d) I state I was duly appointed by letter of appointment dated 1st September 1960 marked "A" and I accepted the appointment by letter dated 2nd September 1960 marked "B" and this appointment was duly confirmed by the Council. I am advised that the letters marked "A" and "B" do constitute in law a valid agreement relating to my appointment as Professor of the said University. I deny that a draft agreement in writing marked "R2" was presented to me for signature. I verily believe that this agreement was not in existence during the time material to this action.

20

8. Replying to paragraph 6 of the affidavit I state that on my suggestion to expand the Dept. of Economics by introducing 2 new courses in Business Administration & Public Administration the 2nd Respondent requested me to submit a scheme and syllabus which I submitted and which was duly approved by the 2nd Respondent.

30

9. Answering paragraph 7 I state that at all times I diligently attended to my duties as Professor and Head of the Dept.

10. Answering paragraphs 8, 9 & 10(a) and (b) of the affidavit I state that the averments in paragraphs 8, 9 and 11 of my original affidavit are relevant in as much as they relate to a train of events that culminated in the Respondent Council unlawfully and maliciously terminating my services.

40

11. Replying to paragraph 11 I state that a copy of the Resolution referred to was handed over to the 2nd Respondent immediately after the meeting of the Vidyodaya University Teachers Association.

In the
Supreme Court

No.7

Counter
Affidavit of
Linus Silva
16th October
1961
continued

12. In answer to paragraph 13 of the affidavit I state that Dr. Ananda Guruge was drawing the allowances referred to for the period of about 4 months when he was away in America on a Scholarship.

13. Answering paragraph 14 I state that I am unaware of the contents of the letters marked "R3" and "R5" and the extracts of the minutes of the University Council marked "R4".

14. Replying to paragraph 15 I state that the letter by Dr. Guruge is relevant for the purpose of this application in as much as it clearly shows that the decision of the Council in which Dr. Guruge who was biased against me actively participated was done maliciously unlawfully and for reasons extraneous to those contained in Section 18(e) of the Vidyodaya and Vidyalankara Universities Act.

10

15. In answer to paragraph 16 of the Affidavit I state that the Professor Mukerjie referred to in the said paragraph resigned from his capacity as Professor of Politics and refused to accept the post of the Head of the Dept. of Economics as a protest against the most unwarranted unjust and summary termination of my services in the University by the Council, I herewith annex marked "H" a copy of the letter of resignation and refusal sent by Professor Mukerjie dated 6th July 1961.

20

16. Replying to paragraph 17 I verily believe that Dr. Guruge who participated in the meeting of the Council on the 4th July 1961 was biased against me for the reasons set out in the several averments in the original affidavit and influenced the Council to make this unlawful and wrongful decision.

30

17(a) Answering paragraph 20 of the affidavit I admit that the Dept. of Business Administration and Public Administration was inaugurated on the 20th December 1960 by the Hon'ble Mr. T.B. Illangaratne Minister of Commerce, Trade, Food & Shipping and was located at 3/1 Race Course Avenue, Colombo 7. I emphatically deny that I did not take any interest in my Dept. under my control. I state that I had to run the new Dept. under very great hardship and personal sacrifice. I had not only to organise day to day work regularly but also to find the minimum requirements for the setting up of the classes at 3/1 Race Course Avenue. I herewith

40

annex copy of letter dated 20th January 1961 sent to the Registrar marked "I" wherein all material facts in relation to my work after the inauguration were set out.

In the
Supreme Court

No.7

10 17(b) I am unaware of the alleged representations made to the 2nd Respondent and to the Administrative Assistant by the Students. I further state that students in my Dept. were so satisfied with the work I was doing that when my services were wrongfully and unlawfully terminated, they vehemently protested against my summary dismissal and called upon the Council to reinstate me. I annex herewith a copy of the letter marked "J" signed by 147 students in my Dept. and sent to the Vice-Chancellor and the Prime Minister requesting my reinstatement

Counter
Affidavit of
Linus Silva
16th October
1961
continued

(c) I deny having received letter marked "R6" and that I gave any assurance to Dr. Guruge.

20 18. Answering paragraph 21 I was never informed of the contents of "R7". I verily believe that the said document "R7" is a fabrication in as much as that the document is undated and does not disclose the names of the signatories and even purported minute by the Administrative Assistant to the Vice-Chancellor bears no date. In any event the contents of this document is inadmissible to these proceedings.

30 (b) I am unaware of the report R8, R9, R10 and R11 purported to have been sent by Mr. Sumanasekera. I deny that the said Sumanasekera was detailed to supervise the work of the said Dept. of Business Administration and further state that he was appointed in response to my letter dated 24.11.60 addressed to the Registrar regarding the appointment of Departmental Staff. I herewith annex marked "K" copy of the said letter. I further state that he was working
40 under my control and the duties were assigned by me and in the circumstances he had no authority nor was it his duty to send reports. I verily believe that these purported reports were made maliciously and baselessly with the sole purpose of justifying the unlawful action terminating my services. I herewith annex copy of letter dated 8th February 1961, by the Vice-Chancellor

In the
Supreme Court

No.7

Counter
Affidavit of
Linus Silva
16th October
1961
continued

addressed to me regarding his appointment and nature of duties marked "L".

19. Answering to paragraph 22nd I deny that the averments contained therein and further state that the telephone was installed in my Dept. at Race Course Avenue, only a few days before my services were wrongfully terminated.

20. Answering to paragraph 23(a) I was unaware of the purported Audit query of 30th June 1961 and I deny the correctness of the contents therein. I state that I had delivered lectures that I was due to lecture in the month of February alone I have had as many as 15 lectures and discussion classes. I deny that Mr.K.T.R. de Silva was called upon to cover my lectures and state that the sum of Rs. 235/50 which the Council deducted from my salary was wrongful. I state this purported audit query was never brought to my notice and I was not given an opportunity of proving the incorrectness of the said allegation.

10

20

20(b) I was not personally aware of the contents of "R13" of the 1st July 1961. I state that Mr. K.T.R. de Silva was appointed as a Visiting Lecturer by the Vice-Chancellor and I assigned him certain lecturers in Economics History. I deny that Mr. K.T.R. de Silva was ever called upon to deliver or in fact delivered any lectures due to be given by me. I state that for the academic year starting from January 1961 I was due to take lectures for the Honours Degree in Economic History which lectures I duly delivered. I herewith annex an extract marked "M" from the record of lectures and discussion classes maintained in proof of same.

30

21. Answering paragraph 24 I state that my office assistant was responsible for handling all petty cash of the Department. I further state that I instructed my Office Assistant to inform the members of the staff to attend a meeting of the University Teachers Association I state that this was expenditure of an official nature and the cost of these telegrams was only Rs.5/50.

40

22. Replying to paragraph 25 I deny the

several averments contained therein and state that the keys of my Department and Office were in the custody of my office assistant.

In the
Supreme Court

No.7

23. Replying to paragraph 26 I state that I was aware of the said rule 19 of instructions to Deans and Professors but deny that I did not comply with the directions. I further state that I devoted more time to my work in the University than was expected of me.

Counter
Affidavit of
Linus Silva
16th October
1961
continued

10 24. Answering Paragraph 27 I admit that I was present at a meeting of the Senate held on 28th February 1961, but I am unaware of the conduct referred to. I am surprised to read of an allegation that I conducted myself at the meeting in a manner detrimental to the interests of the University. In reply to the further averments I state that at the said meeting it was decided to appoint a Sub-Committee to assist the Dept. of Business Administration and help
20 it to expand further in appreciation of the spontaneous response from the public for the new courses of studies which I introduced, I deny that I prevented the committee from conducting its affairs and doing the work entrusted to it. I state that the English Translation of "R14" does not convey the correct meaning of the original Sinhalese Document.

30 25. Replying to paragraph 29 I state that I was not aware of the meeting of the Council referred to in the said paragraph held on July 4th 1961. I state that the letter marked "E" was delivered at my residence at about 8.30 p.m. on the same day. Further answering I deny that the Council had any valid or proper material before it which would entitle the Council to terminate my services. I deny that the documents "R7" to "R13" contain any evidence or material
40 on which the Council could have decided to terminate my services. In any event I state that an obligation was cast on the Council to inform me of the alleged incapacity and conduct so that I would have had an opportunity of meeting those charges which I state are without any foundation at all. I respectfully state that the decision of the Council in so terminating my services without giving me an opportunity of being heard was illegal and contrary to all principles of

In the
Supreme Court

No.7

Counter
Affidavit of
Linus Silva
16th October
1961
continued

natural justice.

26. Replying to paragraph 30 I deny that I had acquiesced in the terminating of my services and that my conduct estopped me from challenging same. I further state that I wrote to the Vice-Chancellor on the same day my services were terminated informing him that I was appealing to the Chancellor of the said University against the decision of the Council terminating my services summarily. I annex herewith a copy of the letter marked "N" sent to the Vice-Chancellor.

10

27. Replying to paragraph 31 I deny that if I were to be re-employed in the University the progress in the University and particularly the Department of Economics and Business Administration would be seriously impaired. I am unaware of the other averments contained therein.

28. Replying to paragraph 32 I deny that the 2nd Respondent acted bona-fide and in the best interests of the University.

20

29. Replying to paragraph 33 I am advised.

(a) that the Council of the Vidyodaya University of Ceylon is a body created by statute and it should act within the ambit of the statute and the purpose for which it is created.

(b) that being a statutory body a clear obligation is cast on it by law to inform me of the grounds for the termination of my services and giving me an opportunity of meeting any allegation of incapacity and conduct made against me before terminating my services.

30

30. I further declare and affirm that as Professor and Head of the Department of Economics and Business Administration my duties were not merely confined to giving lectures only. I state that within a very brief period of a few months I was able to organise a new Department which has more than half the entire University Student population. In addition I introduced two new courses of studies namely Business Administration and Public Administration which are of practical value to the country. I was engaged in doing research work translating of English Books in Economics into

40

Sinhala, drawing up syllabuses and Time-Tables for all these new courses. I have arranged field work for students doing subject such as Sociology, Transport, Insurance, Accounting etc. On my own initiative obtained about 15 Scholarships and Prizes for these courses from various institutions and individuals.

In the
Supreme Court

No.7

Counter
Affidavit of
Linus Silva
16th October
1961
continued

10 I annex herewith marked "O" copy of the Bulletin of Information of the Vidyodaya University of Ceylon which contains the details of all these activities referred to above.

Signed and affirmed)
at Colombo on this)
16th day of October) Sgd: Linus Silva.
1962.)

Before me,
Sgd: A.V.Pushpadevi Joseph.
J.P.

TRUE COPY.

20 Sgd: Charles Vethecan
Proctor for Petitioner.

NO.7A

No.7A

LETTER - K.P. MUKERJIE
TO VICE CHANCELLOR

Letter K.P.
Mukerjie to
Vice Chancellor
6th July 1961

7 Police Park Avenue,
Colombo 5.

6th July 1961.

TO:-

30 The Ven.Vice-Chancellor.
Vidyodaya University of Ceylon.
Colombo 10.

Venerable Sir,

Yesterday I requested you through a letter

In the
Supreme Court

No.7A

Letter K.P.
Mukerjee to
Vice Chancellor
6th July 1961
continued

to give me some time to consider the offer of the Headship of the Department of Economics, Business and Public Administration made through your letter of 4th July 1961, I have considered very carefully the background in which the offer has been made and the implications of accepting it. I regret having to inform you that various considerations, moral, professional and emotional will not permit me to accept it even for a day.

10

I further regret to convey to you and through you the University Council my inability to continue further to serve this University even in the capacity of the Professor of Politics after the most unwarrantable, unjust and summary termination of the services of my former pupil and colleague Mr. Linus Silva whose services to this University deserve to be commemorated with a marble statue in his life time. I have no doubt, future generation of educationists will erect this at the very spot where the document to terminate his services was signed.

20

Please therefore be good enough to relieve me of my duties with immediate effect or as soon as the rules would permit.

I remain, Venerable Sir,

Yours Faithfully,

K.P. Mukerjee,

Professor of Politics,

Vidyodaya University.

30

TRUE COPY

Sgd: Charles Vethecan

Proctor for Petitioner.

NO.7BLETTER - LINUS SILVA TO REGISTRARIn the
Supreme CourtNo.7B

The Registrar,
Vidyodaya University of Ceylon,
Colombo 10.

Letter -
Linus Silva
to Registrar
20th January
1961

Dear Sir,

10 On the 24th November 1960 I wrote to you a letter itemising our minimum requirements for the New Department at 3/1 Race Course Avenue, Colombo 7. I did so after discussing this matter with you personally. However to this day I have had no reply to this letter. On the 24th day of December 1960 I received a letter signed by the Ven. Vice-Chancellor requesting me to send your necessary action. I have had no reply so far.

20 In the meantime I have been running from place to place collecting chairs, benches, tables, bulbs, nails, nibs, paper, pins, clips, blackboards, filing cabinets, typewriters, books, files, etc., etc., which were very urgently needed in order to conduct day to day lectures. As a result of this I have been able to carry on the lectures at Race Course Avenue, regularly, although with very great difficulty and sacrifice. Now I have come to a situation where it is impossible to carry on this type of work any longer without your willing co-operation and assistance.

30 As this is a national service I have completely gone out of my way and done all this work outside my duties in the best interests of the Institution. I shall thank you to let me know whether I should suspend these lectures till such time as you are able to give the minimum requirements to conduct the lectures.

40 I am very grateful to you for telling me repeatedly that I have undertaken work which is more than I can chew. I appreciate that you have told this to me in the best interests of the Institution and perhaps in my own interest.

In the
Supreme Court

No.7B

Letter -
Linus Silva
to Registrar
20th January
1961
continued

Your remark that this work of our Department can bring either credit or discredit to the Institution is very apt in this context, I am very thankful to you and the University organisation for whatever assistance I have been given so far and shall thank you to send me an early reply.

Yours faithfully,
Sgd: Linus Silva
Head of the Department.

TRUE COPY.

10

Sgd: Charles Vethecan
Proctor for Petitioner.

No.7C

Letter -
Students of
Department
of Economics
10th July 1961

LETTER STUDENTS OF DEPARTMENT OF
ECONOMICS TO VICE CHANCELLOR

Vidyodaya University of Ceylon,
Dept. of Economics, Business &
Public Administration.
3/1 Race Course Avenue,
Colombo 7.
10th July 1961

20

The Ven. Vice-Chancellor,
Vidyodaya University of Ceylon,
Colombo 10.

Dear Sir,

Dismissal of Prof.Linus Silva.

We, the undersigned students of the Department of Economics, Business and Public Administration of the Vidyodaya University of Ceylon, vehemently protest against the decision of the University Council to terminate the services of Prof. Linus Silva and demand the immediate interest, welfare, and prestige of the Institution as a whole and of the aforesaid department in particular.

30

We regrettably note the abrupt termination

Prof. Silva's services at this juncture, who is the sole creator or founder of this venture, without giving a single reason for this summary dismissal and failing to hold a proper investigation before the decision of the Council.

In the
Supreme Court

—————
No.7C

Letter -
Students of
Department
of Economics
10th July 1961
continued

10

We sincerely thank Dr. Mukerjje for his straight forward action in this connection and we repeat his utterances that Prof. Silva's services to this University deserve to be commemorated with a marble statue in his life time.

20

With the most unwarrantable, unjust and summary termination of the services of Prof. Silva it has been compelled for Dr. Mukerjje to refuse not only his new appointment but also the Professorship of Political Science which he held for a time. This will no doubt automatically lead to the resignation of the entire staff and fortunate consequences of the decision taken by the Council will finally bring to a close down of newly opened Dept. with serious repercussion to the students population well over 550 both internal as well as external.

It is now clear as crystal from protest made by the educated sector etc. of the Island that the rash decision taken by the University Council is unfair and unjust without any inquiry.

30

In these circumstances, we respectfully urge and appeal to you, Ven. Sir, to cause your good offices for the reinstatement of Mr. Linus Silva and to persuade Dr. Mukerjje to withdraw his resignation.

Yours respectfully,

Sgd: Students of the Dept. of
Economics, Business & Public
Administration.

Copies to: The Chancellor
The Pro. Chancellor
The Prime Minister.

40

TRUE COPY.

Sgd: Charles Vethecan
Proctor for Petitioner.

In the
Supreme Court

NO.7D

LETTER - LINUS SILVA TO REGISTRAR

No.7D

24th November 1960.

Letter -
Linus Silva
to Registrar
re Depart-
mental Office
Staff
24th November
1960

The Registrar,
Vidyodaya University,
Colombo 10.

Dear Sir,

Departmental Office Staff.

Further to my recent discussion with you on the above subject, I shall thank you to give your immediate attention to the following appointments for the Departmental Office at 3/1 Race Course Avenue, Colombo 7. 10

One Office Assistant: This employee will be in charge of the office work in general. He will function as a Chief Clerk. We have used the designation O.A. in order to attract a better type of man.

He should be an all round experienced man in office work with a great deal of tact in dealing with the other office employees, students and lecturers (salary according to experience and qualification). Knowledge of Sinhalese essential. 20

One Library Assistant: A person with experience in Library work and Office Routine should have a good knowledge of Sinhala and preferably a graduate in Economics or Intermediate in Economics.

One English Typist with experience, one Sinhalese Typist with experience, one Office Peon, one Watcher and one Deliver Boy with experience. The Watcher should keep security. 30

The above persons are immediately required.

Please take necessary action.

Yours faithfully,

Linus Silva

Head of the Dept.of Economics
Business Administration
&
Public Administration.

TRUE COPY

Sgd: Charles Vethecan
Proctor for Petitioner.

In the
Supreme Court

No.7D

Letter -
Linus Silva
to Registrar
re Depart-
mental Office
Staff
24th November
1960
continued

10

NO.7E

No.7E

LETTER - VICE CHANCELLOR TO LINUS SILVA

VIDYODAYA UNIVERSITY.

Colombo, 10.

8th February 1961.

Prof.Linus Silva,

Dear Sir,

I have to inform you that Mr.N.P.S.Sumana-
sekera has been appointed Office Assistant
attached to the office of the Department of
Economics and Business Administration with
effect from 9th February 1961.

You are kindly requested to assign his
duties. He should take the financial respon-
sibility of running the branch and of controll-
ing the Minor staff. He should be responsible
to the Registrar.

Dharmasastronnatikami

Vice-Chancellor.

TRUE COPY

Sgd: Charles Vethecan.
Proctor for Petitioner.

30

Letter - Vice
Chancellor to
Linus Silva
8th February
1961

In the
Supreme Court

No. 7F

No. 7F

EXTRACT FROM RECORD OF LECTURES
AND DISCUSSION CLASSES

Extract from
Record of
Lectures and
Discussion
Classes

February 2nd 1961	- Foreign Trade continued, Subjects for tutorial discussed	
" 3rd 1961	- Agriculture in the 16th century.	
" 4th 1961	- Agriculture continued.	
" 7th 1961	- Causes of the Agri- cultural revolution in the 16th Century.	10
" 9th 1961	- Discussion for a tutorial on Agricultural Revolution in the 16th Century.	
" 10th 1961	- Discussion of the causes and the results of the Agricultural revolution in detail.	20
" 11th 1961	- Mercantilism Discussion Classes. Points of the Lectures delivered by our Robert Silva	
" 14th 1961	- Agricultural revolution of the 18th Century. Points discussed on the lectures given by our Robert Silva.	
" 16th 1961	- Agricultural revolution of 18th Century Outline of various points covering the Lectures by Robert Silva.	30
" 17th 1961	- Tutorial discussed. Likely subjects for tutorials.	

February 18th 1961	- Discussion Class.	In the <u>Supreme Court</u>
" 21st 1961	- Discussion Class.	No.7F
" 23rd 1961	- Agricultural Revolution continued.	Extract from Record of Lectures and Discussion Classes continued
" 25th 1961	- Industrial Revolution.	
" 28th 1961	- Discussion Class.	

TRUE COPY.

Sgd. Charles Vethecan
Proctor for Petitioner.

86.

In the
Supreme Court

NO.7G

LETTER - LINUS SILVA TO VICE
CHANCELLOR

No.7G
Letter -
Linus Silva
to Vice
Chancellor
4th July
1961

214 High Level Road,
Kirillapone,
Colombo 6.

4th July 1961.

The Ven. Vice-Chancellor,
Vidyodaya University of Ceylon,
Colombo.

10

Ven. Sir,

I am in receipt of your letter of even date summarily terminating my services without giving any reason.

In these circumstances I am appealing to the Chancellor to have the order rescinded.

Yours faithfully,

Sgd: Linus Silva.

TRUE COPY

Sgd: Charles Vethecan
Proctor for Petitioner.

20

JUDGMENT OF THE SUPREME COURT

S.C. Application No. 378 of 1961

No. 8
Judgment of the
Supreme Court
of Ceylon.

20th November,
1961.

IN THE MATTER of an APPLICATION for the issue of
mandates in the nature of a Writ of Certiorari
and a Writ of Mandamus in terms of Section 42 of
the Courts Ordinance (Cap.6)

Parties: LINUS SILVA ... Petitioner

Vs.

10

THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY and 19
Others. ... Respondents

Present: T.S. Fernando J.

Counsel: H.V. Perera, Q.C., (with him,
M. Tiruchelvam, Q.C., M.L. de Silva,
T. Devarajah, U.B. Weerasekera and
A. Wijasekera) for the Petitioner;
H.W. Jayewardene, Q.C., (with him, D.S.
Wijeyewardene and Ranjit Dheeraratne)
for the Respondents.

20

Argued on: 16th and 17th October 1961

Decided on: 20th November 1961.

T.S. FERNANDO J.

30

The Vidyodaya University and the Vidyalankara
University Act, No.45 of 1958, which became law on
December 19, 1958 provided for the establishment,
inter alia, of a University called the Vidyodaya
University of Ceylon. Part III of that Act relates
to the constitution of the University Authorities,
and section 13 thereof declares that the Authori-
ties of the University shall be the Court, the
Council, the Senate, the Faculties, the General
Board of Studies and Research, and such other
bodies as may be prescribed by Statute as authori-
ties of the University. Section 17(2) describes
the persons who shall constitute the membership of
the Council, while by section 17(1) the University

In the
Supreme Court

No. 8

Judgment of the
Supreme Court
of Ceylon.

20th November,
1961

- continued.

Council is declared to be the executive body of the University. The 2nd to the 20th respondents to the application before me were the members of the Council at all times relevant thereto. The 1st respondent is the Council itself.

Section 31 of the Act provides that the appointment of a Professor or Lecturer in the University shall be made by the Council. The petitioner claims that on May 15, 1959 he was appointed by the Council as Lecturer, Grade I, and as Head of the Department of Economics. He claims further that on October 1, 1960 he was promoted as Professor and Head of the Department of Economics and Business Administration. He relies on two documents, "A" and "B" attached to his petition as evidencing his appointment. These documents are reproduced below:

10

Document "A"

VIDYODAYA UNIVERSITY OF CEYLON

Colombo 10,

1st September, 1960.

20

Linus Silva Esq.,
Head of the Dept., of Economics,
Colombo.

POST OF PROFESSOR AND HEAD OF THE DEPT. OF
ECONOMICS & BUSINESS ADMINISTRATION.

In pursuance of the decision of the Council to establish a Dept., of Business Administration in order to widen the scope of the Dept., of Economics, I am pleased to promote you to the Post of Professor and Head of the Depts. of Economics and Business Administration with effect from 1st October, 1960. The salary scale attached to the post is Rs.15,000/- 4 of Rs.600/- and 4 of Rs.900/- Rs.21,000/-. You will be entitled to cost of living special living and rent allowances according to Government Rates. You will continue to be a contributor to the University Provident Fund.

30

This promotion is, however, subject to the passage of the University Budget for 1960/61.

Please acknowledge receipt of this letter. I shall be glad if you will please undertake the re-organisation of the Departments immediately so that the two Departments will commence academic work for the beginning of the Third Academic Year.

40

Sgd. Dharmasastronnatiakami
Vice-Chancellor.

Document "B"

Room 250, Bank of Ceylon Building,
Colombo 1.
2.9.60.

The Ven. Vice-Chancellor,
Vidyodaya University of Ceylon,
Maligakanda, Colombo 10.

Ven'ble Sir,

10 POST OF PROFESSOR & HEAD OF THE DEPT. OF
 ECONOMICS & BUSINESS ADMINISTRATION.

I acknowledge with thanks your favour of the 1st September, 1960, and I am pleased to accept the above appointment with effect from 1st October, 1960.

Yours faithfully,
Sgd. LINUS SILVA,
Head of the Department of Economics.

20 The Vice-Chancellor, the 2nd respondent, who has signed document "A" is by virtue of section 11(3) of the Act Chairman of the Council. It is his statutory duty to convene all meetings of the Council, to secure that the provisions of the Act and of the Statutes, Regulations and Rules are duly observed, to give effect to the decisions of the Council regarding the appointment, dismissal or suspension of the officers and teachers of the University and to exercise general supervision over the educational arrangements of the University.

30 It is not disputed that after the letters "A" and "B" had passed between the 2nd respondent and the petitioner the latter did function as Professor and Head of the Department of Economics and Business Administration. On July 4, 1961, the 2nd respondent, as Vice-Chancellor addressed the letter "E" to the petitioner informing him that the Council at a meeting held that day had unanimously resolved to terminate his appointment in the University as from that day. That letter is reproduced below:-

In the
Supreme Court

No. 8

Judgment of the
Supreme Court
of Ceylon.

20th November,
1961

- continued.

In the
Supreme Court

Document "E"

VIDYODAYA UNIVERSITY OF CEYLON

No. 8

Colombo 10.

Judgment of the
Supreme Court
of Ceylon.

20th November,
1961

- continued.

Mr. Linus Silva,
P.O. Box 1342,
Colombo 1.

Dear Sir,

4th July 1961.

Termination of Appointment.

You are hereby informed that the Council at its meeting held on the 4th of July 1961 has unani-
mously resolved to terminate your appointment in
the University as from today. 10

The Council has also decided to pay a sum equivalent to three month's salary less whatever amounts are due from you. The total now due is Rs.1151.15, as shown in the Schedule hereunder.

I am hereby conveying to you the decision of the Council. I enclose the cheque No. D/9 207613 for Rs.3346.15 (Three thousand three hundred and forty six Rupees and Cents Fifteen only); being the balance due to you in terms of the decision of the Council. 20

Any books, answer scripts or other property of the University now in your custody should be returned by you.

Sgd. Dharmasastronnathakami.
VICE-CHANCELLOR.

Schedule referred to:-

Allowance as Head of Department overpaid since appointment as Professor, Oct. '60 to June '61	Rs.900.00	30
Cost of Telegrams, paid from Petty Cash			5.65	
Due on account of sale of Publications			10.00	
Lectures delivered by Mr.K.T.R.de Silva in Feb. 1961	<u>235.50</u>	
Total due			<u>Rs.1151.15</u>	

The petitioner contends that in terminating his appointment the respondents have acted wrongfully and unlawfully and also in violation of the rules of natural justice by not making the petitioner aware of the nature of the accusations against him and also by not affording him an opportunity of being heard in his defence. Various allegations, e.g. of bias have been included in the petition and affidavit presented to this Court by the petitioner, and some of these have been refuted by affidavits presented by the respondents. It does not become necessary to examine and consider any of the allegations on the present application except that which is designed to show that the order embodied in letter "E" was made in violation of the rules of natural justice. Learned counsel appearing for the respondents admitted that the petitioner was not informed of the accusations against him and was not afforded any opportunity of defending himself against them. He contended however that the violation of natural justice, the non-observance of the audi alteram partem rule, is irrelevant in the present case where the respondents in dismissing the petitioner were acting not in a judicial or quasi-judicial capacity but purely in an administrative capacity. He submitted, for that reason that their action was not liable to be canvassed by way of certiorari. Learned counsel for the petitioner, while not disputing that in deciding whether the petitioner was unfit to be a teacher of the University the Council acts in an administrative capacity argued that in making that administrative decision as to unfitness the relevant law required the Council to ascertain the existence of certain facts objectively, and that in the ascertainment of these facts the Council was required to act judicially. It can hardly be doubted that, if in the process of arriving at a decision as to unfitness of the petitioner to remain as a teacher the Council is throughout acting in an administrative capacity, there is no room for the requirement of the observance of the rules of natural justice. The application therefore turns on the question whether at any stage in arriving at the administrative or subjective decision as to unfitness the Council is required to consider certain matters judicially. If so, the Council would be amenable to certiorari. If not, this application must fail.

The general principle which forms the basis of the jurisdiction of this Court to grant the remedy of certiorari is best stated in the oft-quoted words of Atkin L.J. in Rex v. Electricity Commissioners;

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Ex parte London Electricity Joint Committee:-¹

"But the operation of the writs (of prohibition and certiorari) has extended to control the proceedings of bodies which do not claim to be and would not be recognised as courts of justice. Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

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Before a body of persons may be made amenable to this remedy, it has to be shown not only that such body has legal authority to determine questions affecting the rights of subjects but it must also be shown that the body is required to act judicially. Where these two conditions can be shown to exist, the legal authority of the body attracts to itself the duty to observe the rules of natural justice and a non-observance thereof constitutes one method of exceeding its jurisdiction. That the Council of the University has legal authority to determine questions affecting the rights of subjects is undeniable. Is it required to act judicially in determining such questions?

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The circumstances in which a person or body of persons is required to act judicially came to be examined by the Queen's Bench Division in R. v. Manchester Legal Aid Committee² where Parker J. (as he then was) reading the judgment of the Court stated:-

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"The true view, as it seems to us, is that the duty to act judicially may arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to attempt to define exhaustively. Where the decision is that of a court then, unless as in a case, for instance, of justices granting excise licences, it is acting in a purely ministerial capacity, it is clearly under a duty to act judicially. When, on the other hand, the decision is that of an administrative body and is actuated in whole or in part by questions of policy, the duty to act judicially may arise in the course of arriving at that decision. Thus, if in order to arrive

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at the decision, the body concerned has to consider proposals and objections and consider evidence, then there is a duty to act judicially in the course of that inquiry."

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Again, in relation to a matter to which I shall advert later, at page 490:-

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"If, on the other hand, an administrative body in arriving at its decision at no stage has before it any form of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially: compare Franklin v. Minister of Town and Country Planning."

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The relevant section - section 18 of the Vidyodaya University and the Vidyalandkara University Act, No.45 of 1958, empowers the Council "to suspend or dismiss any officer or teacher on the grounds of incapacity or conduct which, in the opinion of not less than two-thirds of the members of the Council, renders him unfit to be an officer or teacher of the University." Whether the extent of the incapacity or misconduct reaches that stage at which the required majority of the members of the Court considers the officer or teacher in question unfit is a question to be determined solely by the members of the Council in their discretion. But whether incapacity or misconduct is established - whatever be its extent - appears to me no more than the

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ascertainment of an objective fact.

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It is submitted on behalf of the petitioner that he was (and in law still is) a teacher of the University within the meaning of the expression "teacher" appearing in the interpretation section 61 of the Act. He was employed and paid by the University, although in accordance with the procedure laid down by Statute (Section 31) he is appointed by the Council which is but one of the authorities of the University. The submission that the petitioner was a teacher is disputed by the respondents, but for reasons which will be indicated by me later in connection with another argument on behalf of the respondents I am satisfied that the submission is well founded.

The question whether the Council is at any stage of the decision as to unfitness required to

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act judicially must ultimately rest on the construction of the relevant words of the Statute reproduced by me above, but, however considered, the power to dismiss an officer or teacher on grounds of incapacity or misconduct can never, in my opinion be construed as implying a power to dismiss merely on allegations of incapacity or misconduct. There must be proof of incapacity or misconduct, or at any rate some incapacity or misconduct must exist, although the members of the Council are constituted the judges both of their existence and of their sufficiency. Mr. Perera referred me to certain observations made by Lord Cohen in the course of the opinion he delivered in the House of Lords in Vine v. National Dock Labour Board,⁴ a case in which also the question arose whether in exercising a particular power conferred by virtue of a statute a certain body was acting in an administrative as opposed to a judicial capacity. In reaching a conclusion that the body concerned in that particular case was acting in a judicial capacity that learned judge, in stating one of his reasons for that conclusion, observed:-

"The significant language is, I think, as follows:- (a) In cl. 15(1) and (2) the words 'without adequate cause'. The determination of whether there is adequate cause seems essentially a proper matter for decision judicially."

In the case of De Verteuil v. Knaggs⁵, where power was given in an ordinance to the Governor of Trinidad "on sufficient ground shown to his satisfaction" to transfer the indenture of immigrants from one employer to another, the Privy Council expressed the opinion that although no special form of procedure was prescribed there was, apart from special circumstances, a duty of giving to any person against whom a complaint was made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.

Certain local cases also bear on the question that calls for decision on the present application. The situation that must arise when the University Council is considering an exercise of the power of

suspension or dismissal is not in essence different from the situation in which a Minister is placed in exercising his powers of dissolution of a Council or removal of a Chairman or members of a local authority under either section 197 of the Town Councils Ordinance, No.3 of 1946, or section 61 of the Village Communities Ordinance. The relevant words of the sections in these Ordinances were:-

10 "If at any time the Minister is satisfied that there is sufficient proof of, the Minister may by Order published in the Gazette, remove the Chairman from office."

As Gunasekera J., in Subramaniam v. Minister of Local Government and Cultural Affairs,⁶ in rejecting an argument that because in the exercise of his discretion to make an Order under the provision of law referred to above the Minister may take into account considerations of policy and expediency and therefore certiorari does not lie to review such an

20 Order, stated, "before the Minister can make an Order in the exercise of his discretion he must decide on evidence whether there is proof of the necessary facts, and at that stage he has a duty to act judicially." Then again, in the case of The University of Ceylon v. Fernando⁷ where the ex-

30 pression that came on for interpretation was "where the Vice-Chancellor is satisfied that any candidate for an examination has acquired knowledge of the nature or substance of any question or the content of any paper before the date and time of the examination, or has attempted or conspired to obtain such knowledge, the Vice-Chancellor may suspend the candidate", the Supreme Court, reversing the view taken by the District Judge, held that the Vice-Chancellor's functions were not administrative but quasi-judicial. At the appeal taken to the Privy Council from the decision of the Supreme

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Court, the appellant's counsel disclaimed the contention that the Vice-Chancellor's functions under clause 8 were administrative and not quasi-judicial. In Sugathadasa v. Jayasinghe and The Minister of Local Government,⁸ where three judges of this Court were called upon to decide whether, in exercising his powers of dissolution of a Municipal Council, the Minister under section 277(1) of the Municipal Councils Ordinance, No.29 of 1947, was required to act judicially or quasi-judicially, the Court observed that "the ultimate test is, what did the legislature really intend by the language used. It may be stated as a general rule that words such as "where it appears to", or "if it appears to the satisfaction of", or "if the considers it expedient that", or "if the is satisfied that" standing by themselves without other words or circumstances of qualification, exclude a duty to act judicially." In the case before me the power of the Council to determine the unfitness of an officer or teacher is qualified by the words "on the grounds of incapacity or conduct" and, it seems to me, that the power can be exercised only where incapacity or misconduct exists whatever be the extent of that incapacity or misconduct. Therefore, although the Council is the judge of the extent of the incapacity or misconduct, in deciding whether incapacity or misconduct exists the Council is required to act not administratively, but judicially.

Mr. Jayewardene, for the respondents, sought to find principally in certain observations of Canekeratne J. in Suriyawansa v. The Local Government Service Commission⁹ as well as in the opinion of the Board of the Judicial Committee of the Privy Council in Nakkuda Ali v. Jayaratne¹⁰ support for

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his contention that the respondents were throughout acting in an administrative capacity and nothing more. There is point in Mr. Perera's suggestion that the observations of Canekeratne J. went beyond the necessities of that particular case, and it must not be overlooked that the correctness of the view taken in Suriyawansa's case (supra) was doubted by Nagalingham J. in the case of Abeygunasekera v. Local Government Service Commission,¹¹ although the observations of Nagalingham J. in this case last-mentioned were themselves obiter. The decision in Nakkuda Ali's case (supra) has itself been the subject of no little controversy, but it is necessary to remember that the decision followed the view expressed by Their Lordships that when the Controller is cancelling a licence he is not determining a question, but is taking executive action to withdraw a privilege because he believes and has reasonable grounds to believe that the holder is unfit to retain it. These cases are not, in my opinion, of real assistance in the actual controversy that arises on the present application. Nor do I think that two other cases - English cases - cited by Mr. Jayewardene assist in the determination of the question whether the Council was throughout acting administratively. They were relied on for the proposition that where disciplinary action is taken against a person, the validity of that action cannot be questioned by way of certiorari. In R. v. Metropolitan Police Commissioner, ex parte Parker,¹² which relates to the case of a cab driver who had his licence revoked by the proper police authority, the decision appears to me to have rested - as is seen in the judgment of Donovan J. at page 721 - on the ground that the revocation of a licence is a

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purely administrative act. In the other case relied on, ex parte Fry,¹³ a writ of certiorari had been applied for to quash an order of a caution to be administered to a person in the service of a fire-brigade. There Lord Goddard C.J. in the Queen's Bench Division stated that it seemed to him impossible to say that where a chief officer of a force which is governed by discipline, as is a fire-brigade, is exercising disciplinary authority over a member of the force, that he is acting judicially or quasi-judicially. While it is not easy to find an analogy between the case of a dismissal of a University professor on grounds of incapacity or misconduct and that of a caution administered to a member of a fire-brigade service merely because both are in a sense examples of disciplinary action, it is necessary to remember that in the Court of Appeal Singleton L.J., with whom two other judges agreed, decided against the issue of a writ of certiorari not on the ground that the writ does not lie, but that the remedy is discretionary and should not be granted in the particular case. 10 20

I should now revert to the question to which I have made some reference earlier, viz. the existence at some stage of a lis before the Council which attracts to it the duty on the part of the Council to act judicially. Where the administrative process and the quasi-judicial process are so intermingled that the product is, as one eminent English judge has stated, a hybrid operation, it may not be easy to make a strict demarcation of the points at which the administrative process is stayed, the judicial process is brought on, and thereafter the administrative process is resumed; it is nevertheless not difficult to envisage at the stage of deciding the existence of incapacity or misconduct the arising of a process in the nature of a prosecution or 30

proposition which requires for its consideration something in the nature respectively of a defence or a refutation or negation thereof. If lis in this context is to be given the very strict and technical meaning it bears in court litigation, it will be difficult to discover the existence of such a lis in the processes considered in the cases of (1) R. v. Postmaster-General; ex parte Carmichael¹⁴ and (2) R. v. Boycott; ex parte Kennedy¹⁵, cases dealing with the issue of medical certificates, in both of which the process was held to be in the nature of a judicial act. Whatever name be given to the process, the operation involved cannot be performed without a consideration of matters not only in support of the proposition but also of those against it. The latter cannot properly be considered without an opportunity being afforded for their presentation.

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For the reasons which I have endeavoured to set out above, I am of opinion that the Council was under a duty to act judicially at the stage of ascertaining objectively the facts as to incapacity or misconduct. The non-observance of the rules of natural justice being admitted by the respondents in this case, the petitioner is in my opinion, entitled to a grant of a mandate in the nature of a writ of certiorari to quash the order of discontinuance of his services as a teacher, subject however to a consideration of other objections raised on behalf of the respondents to such a grant. I shall therefore now address myself to these other objections. These objections were three-fold in character:-

(a) that the petitioner must in law be considered to have been appointed under the power vested in the Council by clause (f) of section 18 of the Act, (b) that the petitioner has by his conduct acquiesced in the order of discontinuance of his services and is therefore not entitled to the remedy sought, and

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(c) that this remedy is not available where other remedies can be shown to be available.

In regard to the first objection, my attention has been drawn to section 33 of the Act which requires every appointment of a teacher to be upon agreement in writing between the University and the teacher. If the process of suspension or dismissal of a teacher can be said to attract at some stage the duty to act judicially (section 18(e)), it has been contended that no such duty arises in the case of suspension or dismissal of persons in the employ of the University other than officers or teachers (section 18(f)). The distinction between clauses (e) and (f) in section 18 is itself significant as indicative of a distinction in rank or status between officers and teachers as defined in section 61 and ordinary employees. In the case of the latter suspension or dismissal can be effected presumably on any ground, while in the case of the former that can be done only on grounds of incapacity or misconduct. On behalf of the respondents it has been submitted that there is a special form of agreement teachers are required to enter into and that the petitioner has failed and neglected to sign that form of agreement. The petitioner denies knowledge of any request made to him by the University authorities to sign such a form of agreement. It is unnecessary for me to decide between the parties on the question of the request to sign the special form of agreement because, in my opinion, not only is there in existence a sufficient agreement in writing in relation to the appointment of the petitioner, but also I am satisfied that the respondents cannot, having regard to their conduct, now be heard to say that the petitioner was dismissed by virtue of the power vested in the Council by clause (f) of section 18. Document "A" and "B" reproduced earlier in this judgment provide in this case, in my opinion, a sufficient agreement within the meaning of section 33. Not only is it not denied that the petitioner has in fact functioned as Professor and Head of a Faculty in the University after "A" and "B" passed between the Vice-Chancellor and the petitioner, it is also quite apparent from the Council's own reply to certain members of the Tutorial Staff of the Faculty concerned that the Council itself considered that action was taken in this case in terms of clause (e) of section 18. This reply which is the document "G" attached to the petitioner's affidavit is reproduced below, and the statement contained therein that "the termination of

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services of Mr. Linus Silva was decided upon in terms of section 18E of the University Act on adequate evidence placed before it" is itself revealing in regard to the process followed, viz, the hearing of evidence placed before the Council and a consideration of its adequacy, a process during which a lis in the sense indicated earlier had, in my opinion, arisen.

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Document "G"

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VIDYODAYA UNIVERSITY OF CEYLON,
Colombo 10.

July, 13th, 1961.

Dr. W.M. Tilakaratne,
Central Bank of Ceylon,
Colombo.

Dear Sir,

The Council at its meeting on 12.7.61 considered your letters of the 6.7.61 and of 11.7.61.

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I am directed by the Council to inform you that the termination of the services of Mr. Linus Silva was decided upon in terms of Section 18E of the University Act on adequate evidence placed before it. The Council therefore regrets its inability to vary its decisions.

With regard to Prof. Mukerji, the Council unanimously decided to request Prof. Mukerji to reconsider his decision. A copy of a letter addressed to him is annexed for your information.

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I shall be thankful if you will bring this letter to the notice of the other signatories.

Dharmasastronnatikami
Vice-Chancellor.

The first objection must therefore fail.

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In regard to the second objection, it was argued that the petitioner has accepted the balance salary due to him as computed in the manner indicated in letter "E" of 4th July 1961, and has therefore acquiesced in the termination of his services. It is pointed out that the cheque for Rs.3346/15 sent to him with that letter has been credited by

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the petitioner to his bank account. I am unable to see any substance in this objection where the petitioner claims his services have been terminated otherwise than as provided by law. Where his position is that he is still lawfully in the service of the University, he is quite entitled to utilize the salary paid to him.

The third objection is that the remedy by way of certiorari is not available where other remedies are open to the petitioner and it has not been shown that he has availed himself of these. It is contended that the relationship between the University and the petitioner was that between employer and employee and that therefore he must seek his remedy at common law which is an action for damages for wrongful dismissal. Mr. Perera's reply to this contention was that it is not open to the petitioner to obtain a reinstatement in service by recourse to the common law remedy which is confined to an award of damages. I agree with Mr. Perera's submission that to disentitle a petitioner to the remedy by certiorari the alternative remedy must be an adequate remedy. If a person can establish that he has been wrongfully dismissed there may well be many cases where damages can never form an adequate remedy. Moreover, as Gratiaen J. pointed out in Sirisena v. Kotawera-Udagama Co-operative Stores Ltd.,¹⁶ the alternative remedy rule is not a rigid one. In regard to this third objection to the granting of this application, Mr. Perera relied strongly on the House of Lords decision in Vine v. National Dock Labour Board (supra) which dealt with the question whether damages were an adequate remedy in the case of the dismissal of a dock worker registered in the reserve pool by the National Dock Labour Board under a scheme set up by a Statutory Order. The dismissed worker claimed damages for wrongful dismissal and a declaration that his purported dismissal was illegal, ultra vires and invalid. The Queen's Bench Division granted him damages and the declaration, but on an appeal by the National Board to the Court of Appeal the declaration was struck out. On the worker taking an appeal to the House of Lords, the House, while observing that the granting of a declaration was discretionary, nevertheless granted it because Their Lordships were of opinion that the award of damages in that case was not an adequate remedy. In the course of his opinion expressed in that case Lord Keith observed that the relationship between the National Board and the

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worker in that case was not a straightforward relationship of master and servant, and Mr. Perera argued that in the case of the petitioner too it was not the ordinary relationship between employer and employee. I do not feel called upon to discuss this matter at any length as I am satisfied that in the case of a dismissal of a person in the situation of the petitioner the common law remedy is not an adequate remedy.

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10 Mr. Jayewardene, however, has contended that, apart from the common law remedy, it is open to the petitioner to take his grievance to a Labour Tribunal established under section 31A of the Industrial Disputes Act, No.43 of 1950, as amended by the (Amendment) Act, No. 62 of 1957. Under section 31B of that Act, it is open to a workman to make an application to a Labour Tribunal for relief or redress in respect of the termination of his services and it is not doubted that the Labour Tribunal has a power to order reinstatement of a workman. Mr. Jayewardene contended that the definition of "workman" in the Industrial Disputes Act is wide enough to cover the case of the petitioner, while Mr. Perera argued that the workmen contemplated in the Act were persons under a contract of service as opposed to a contract for services. It is unnecessary to decide that question here because, even if it is assumed that the petitioner is a workman within the meaning of that Act, I am satisfied that the remedy by way of an application to a Labour Tribunal with its procedure of appeal to this Court is not as convenient, speedy and effective a remedy as that which the petitioner has already invoked - see R. v. Wandsworth Justices¹⁷. If I may adopt respectfully the language of Humphreys J. in that case, substituting "dismissal" for "conviction", "I think that the appellant is perfectly entitled to come to this Court and say, upon precedent and authority, I was dismissed as the result of a denial of justice, and I ask for justice, which can only be done by the quashing of that order".

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Lastly, interference by way of certiorari being a discretionary remedy, should it be granted in this case? In R. v. Manchester Legal Aid Committee (supra), the Court granted the writ ex debito justitiae because the applicant was a person aggrieved. The principle to be followed is that indicated by Blackburn J. in The Queen v. Justices of Surrey¹⁸ which is that where the applicant has

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by reason of his local situation a peculiar grievance of his own, and is not merely applying as one of the public, he is entitled to the writ ex debito justitiae.

All the objections to the application for interference by way of certiorari therefore fail, and the order of discontinuance calls to be quashed. There remains the application for an order in the nature of a mandamus. Mandamus is applied for as being consequential to a quashing of the order of discontinuance. If the petitioner was wrongly discontinued, it seems to follow that he must be considered to be still a teacher at the University. Before the question of dismissal or discontinuance can be finally determined it seems but reasonable that the authorities should have a right in the nature of an interdiction of the petitioner, but on that matter as well one has to be guided by the Statute (Section 18(e)) where not only dismissal but even suspension is conditioned by the existence of misconduct or incapacity. The question whether the petitioner is the holder of an office of a public nature as would entitle him in the circumstances of the present case to the grant of an order by way of mandamus was not specifically argued before me. The fact that the petitioner has de facto ceased to be a teacher of the University after the service on him of the letter "E" of 4th July 1961 and that he has no actual possession of his post of Professor and Head of a Faculty may be due to the circumstance that the respondents honestly believed that their order of 4th July 1961 was lawful. Now that this Court has pronounced on the validity of this order, I have no reason to think that the respondents who are a responsible body of men will not take action that is lawful and appropriate. I do not therefore consider it essential that I should now explore here whether the petitioner is the holder of an office of a public nature. Mandamus is itself a discretionary remedy, and it will be sufficient for the present if I make no order in respect of the prayer relating to a mandamus.

The order of the University Council of 4th July 1961 terminating the petitioner's appointment as from that date is hereby quashed. The respondents are ordered to pay to the petitioner the taxed costs of this application.

(Sgd.) T.S. Fernando
Puisne Justice.

1. (1924) 1. K.B. at 205.
2. (1952) 1. A.E.R. 480 at 489

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- 3. (1947) 2. A.E.R. at 289
- 4. (1956) 3. A.E.R. at 947
- 5. (1918) A.C. 557
- 6. (1957) 59 N.L.R. 254 at 260
- 7. (1960) 61 N.L.R. 505 at 512
- 8. (1958) 59 N.L.R. 457 at 471
- 9. (1947) 48 N.L.R. at 438
- 10. (1950) 51 N.L.R. at 457
- 11. (1949) 51 N.L.R. at 8
- 10 12. (1953) 2 A.E.R. at 717
- 13. (1954) 2 A.E.R. at 118
- 14. (1928) 1 K.B. at 291
- 15. (1939) 2 K.B. at 651
- 16. (1949) 51 N.L.R. at 263
- 17. (1942) 1 A.E.R. at 56
- 18. (1870) L.R. 5 Q.B. at 466.

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No. 9

ORDER OF THE SUPREME COURT

S.C. Application No. 378

No. 9

Order of the
Supreme Court.

22nd November,
1961.

20 ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER
OTHER REALMS AND TERRITORIES, HEAD OF THE
COMMONWEALTH.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

IN THE MATTER of an APPLICATION for the grant and
issue of Mandates in the nature of Writs of
Certiorari and Mandamus in terms of Section 42
of the Courts Ordinance (Cap.6).

LINUS SILVA ... Petitioner

Vs.

30 THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON,
and 19 Others ... Respondents

This matter coming on for final disposal before
the Honourable Thusew Samuel Fernando, Q.C., Puisne
Justice on the 16th and 17th October, 1961, and on
reading the Petition and Affidavit of the aforesaid
Petitioner and hearing H.V. Perera, Esquire, Q.C.,
with M. Tiruchelvam, Esquire, Q.C., M.L. de Silva,

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Esquire, T. Devarajah, Esquire, U.B. Weerasekera, Esquire and A. Wijesekera, Esquire, Advocates for the Petitioner and H.W. Jayewardene, Esquire, Q.C.; with D.S. Wijeyewardene, Esquire and Ranjit Dheeraratne, Esquire, Advocates for the Respondents.

It is ordered and directed by the Judgment of this Court, a copy of which is annexed, that the order of the University Council of 4th July, 1961, terminating the Petitioner's appointment as from that day be quashed.

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It is further ordered that the Respondents do pay to the Petitioner the taxed costs of this application.

Witness the Honourable Hema Henry Basnayake, Q.C., Chief Justice at Colombo this 22nd day of November in the year one thousand nine hundred and sixty-one and of Our Reign the Tenth.

(Sgd.) B.F. Perera
Deputy Registrar of the Supreme Court.

No. 10

Application
for Condi-
tional Leave
to Appeal to
the Privy
Council -
Petition of
2-20
(Respondents)
Appellants.

15th December,
1961.

No. 10

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO
THE PRIVY COUNCIL - Petition of 2 - 20
(Respondents) Appellants.

IN THE HONOURABLE SUPREME COURT OF THE ISLAND OF
CEYLON

IN THE MATTER of an APPLICATION for Conditional
Leave to Appeal to Her Majesty-in-Council in
terms of the Appeals (Privy Council) Ordinance
Chapter 100 of the Revised Legislative Enact-
ments of Ceylon (1956) in S.C. Application
No. 378 of 1961.

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Application No. 378 of 1961.

THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON
and 19 Others Respondents-Petitioners

Vs.

LINUS SILVA Petitioner-Respondent

To: HIS LORDSHIP THE HONOURABLE THE CHIEF JUSTICE
AND TO THEIR LORDSHIPS THE HONOURABLE THE
PUISNE JUDGES OF THE HONOURABLE THE SUPREME
COURT OF THE ISLAND OF CEYLON.

In the
Supreme Court

No. 10

On this 15th day of December, 1961

Application
for Condi-
tional Leave
to Appeal to
the Privy
Council -
Petition of
2-20
(Respondents)
Appellants.
15th December,
1961
- continued.

10 The Petition of the 2nd to 20th Respondents-
Petitioners above-named appearing by M. Herman
Perera and Noel Wijenaike practising in partnership
under the name style and firm of Perera & Wijenaike,
their Proctors, states as follows:-

1. That feeling aggrieved by the Judgment of
Your Lordships' Court pronounced on the 20th day of
November 1961, the 2nd to 20th Respondents-Petition-
ers abovenamed are desirous of appealing therefrom
to Her Majesty the Queen-in-Council.

20 2. The said Judgment is a Final Judgment and
the matter in dispute in the Appeal is far in excess
of the value of Rupees Five Thousand (Rs.5,000/-)
and involves directly or indirectly some claim or
question to or respecting some civil right amounting
to or in excess of the value of Rupees Five Thousand
(Rs.5,000/-). Alternatively the 2nd to 20th
Respondents-Petitioners submit that the questions
involved in the Appeal are questions which by reason
of their great general or public importance or
otherwise ought to be submitted to Her Majesty the
Queen-in-Council for decision.

30 3. Argument on the Application for the grant
and issue of Mandates in the nature of Writs of
Certiorari and Mandamus on the 1st to 20th Respond-
ents-Petitioners abovenamed was concluded on the
17th day of October 1961 when Your Lordships' Court
reserved its Order thereon and the said Order of
Your Lordships Court was delivered as aforesaid on
the 20th day of November 1961.

40 4. Notice of the intended application for leave
to Appeal was given to the Petitioner-Respondent in
terms of Rule (2) of the Rules in the Schedule to
the Appeals (Privy Council) Ordinance (Chapter 100)
by personal service on 20th November 1961 and by
sending Notices under Registered Cover and Ordinary
Post with proof of posting on the 22nd and 25th
days of November 1961.

WHEREFORE the 2nd to 20th Respondents-
Petitioners pray:-

(a) that Your Lordships' Court be pleased to

In the
Supreme Court

No. 10

Application
for Condi-
tional Leave
to Appeal to
the Privy
Council -
Petition of
2-20
(Respondents)
Appellants.
15th December,
1961
- continued.

grant Conditional Leave to Appeal from the
said Judgment of Your Lordships' Court
dated the 20th day of November 1961 to Her
Majesty the Queen-in-Council, and

(b) for such other and further relief as to
Your Lordships' Court shall seem meet.

(Sgd.) PERERA & WIJENAIKE
Proctors for 2nd to 20th
Respondents-Petitioners.

Settled by :-

D.S. Wijewardene Advocate

H.W. Jayawardene Q.C.

10

No.10A

Application
for Condi-
tional Leave
to Appeal to
the Privy
Council -
Affidavit of
the Venerable
W.S.S.N. Thero.
14th December,
1961.

No.10A

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO
THE PRIVY COUNCIL. - Affidavit of Venerable
WELIWITIYE SIRI SORATHA NAYAKA THERO.

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND
OF CEYLON

IN THE MATTER of an APPLICATION for Conditional
Leave to Appeal to Her Majesty-in-Council in
terms of the Appeals (Privy Council) Ordinance
Chapter 100 of the Revised Legislative Enact-
ments of Ceylon (1956) in S.C. Application
No. 378 of 1961.

20

Application No.378 of 1961.

THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON
and 19 Others Respondents-Petitioners

Vs.

LINUS SILVA Petitioner-Respondent

30

I, VENERABLE WELIWITIYE SIRI SORATHA NAYAKE
THERO, of the Vidyodaya University of Ceylon, do
hereby solemnly sincerely and truly declare and
affirm as follows:-

1. I am the 2nd Respondent-Petitioner abovenamed and together with the 3rd to 20th Respondents-Petitioners abovenamed, constitute the University Council of the Vidyodaya University of Ceylon.

In the
Supreme Court

—
No.10A

2. I have personal and particular knowledge of the facts and matters as affirmed to hereafter by me in this affidavit which I affirm to from that personal and particular knowledge.

Application
for Condi-
tional Leave
to Appeal to
the Privy
Council -
Affidavit of
the Venerable
W.S.S.N.Thero.

14th December,
1961

- continued.

10 3. Feeling aggrieved by the Judgment of Your Lordships' Court pronounced on the 20th day of November 1961, I, together with the 3rd to 20th Respondents-Petitioners abovenamed, am desirous of appealing therefrom to Her Majesty the Queen-in-Council and have duly instructed Messrs. Perera & Wijenaike, Proctors.

20 4. The said Judgment is a Final Judgment and the matter in dispute in the appeal is far in excess of the value of Rupees Five Thousand and involves directly or indirectly some claim or question to or respecting some civil right amounting to or in excess of the value of Rupees Five Thousand. Alternatively I submit that the questions involved in the appeals are questions which by reason of their great general or public importance or otherwise ought to be submitted to Her Majesty the Queen-in-Council, for decision.

30 5. Argument on the Application for the grant and issue of Mandates in the nature of Writs of Certiorari and Mandamus on the 1st to 20th Respondents-Petitioners abovenamed was concluded on the 17th day of October 1961 when Your Lordships' Court reserved its Order thereon and the said Order of Your Lordships' Court was delivered as aforesaid on the 20th day of November 1961.

40 6. Notice of the intended application for leave to appeal was given to the Petitioner-Respondent in terms of Rule (2) of the Rules in the Schedule to the Appeals (Privy Council) Ordinance (Chapter 100), by personal service on 20th November 1961 and by sending Notices under Registered Cover and Ordinance Post with proof of posting, on the 22nd and 25th days of November 1961, as evidenced by the affidavits of Mudaliyar Egodage Alfred

In the
Supreme Court

No.10A

Application
for Condi-
tional Leave
to Appeal to
the Privy
Council -
Affidavit of
the Venerable
W.S.S.N.Thero.

14th December,
1961
- continued.

Abeyesekera the 19th Respondent-Petitioner above-
named and Muhandirange Don Pirminus, clerk to
Messrs. Perera & Wijenaike, the Proctors for 2nd to
20th Respondents-Petitioners and marked 'A' and 'B'
respectively.

7. In proof of the service of the aforesaid
Notices on the Petitioner-Respondent abovenamed by
Registered Post and Ordinary Post, I produce here-
with the receipts issued by the Postal authorities
for the said Registered articles and letters,
marked 'C', 'D', 'E', 'F', 'G', 'H', 'I' and 'J'
respectively.

10

8. The said Notice was also served on the
Petitioner-Respondent personally by and on behalf
of the 2nd to 20th Respondents-Petitioners above-
named, by Mudaliyar Egodage Alfred Abeyesekere, the
19th Respondent-Petitioner abovenamed, on the 20th
day of November 1961.

Read over signed and affirmed) (Sgd.) (in Sinhala)
to at Colombo on this 14th day } WELIWITIYE SORATHA
of December 1961 } STHIVIRA.

20

Before me,

Sgd. illegibly

J.P.

(M. Vincent Perera,
Justice of Peace).

No.10B

In the
Supreme Court

APPLICATION FOR CONDITIONAL LEAVE TO APPEAL TO
THE PRIVY COUNCIL - Affidavit of VENERABLE
WELIWITIYE SRI SORATHA NAYAKA THERO.

No.10B

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND
OF CEYLON

Application
for Condi-
tional Leave
to Appeal to
the Privy
Council -
Affidavit of
the Venerable
W.S.S.N.Thero.

10

IN THE MATTER of an APPLICATION for Conditional
Leave to Appeal to Her Majesty-in-Council in
terms of the Appeals (Privy Council) Ordinance
Chapter 100 of the Revised Legislative Enact-
ments of Ceylon (1956) in S.C. Application
No. 378 of 1961.

14th March,
1962.

Application No. 378 of 1961

Application for Conditional Leave No. 576

THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON
and 19 Others Respondents-Petitioners

Vs.

LINUS SILVA Petitioner-Respondent

20

I, Venerable Weliwitiye Siri Soratha Nayake
Thero of Vidyodaya University of Ceylon, do hereby
solemnly sincerely and truly declare and affirm as
follows:-

1. I am the 2nd Respondent-Petitioner above-
named and together with the 3rd to 20th Respondents-
Petitioners abovenamed constitute the University
Council of the Vidyodaya University of Ceylon.

30

2. I have personal and particular knowledge of
the facts and matters as affirmed to hereafter by
me in this affidavit which I affirm to from that
personal and particular knowledge.

3. On the 1st September 1960, I purported to
promote the Petitioner-Respondent to the post of
Professor and Head of the Department of Economics
and business administration with effect from 1st
October 1960 and Petitioner-Respondent accepted the
said appointment.

In the
Supreme Court

No.10B

Application
for Condi-
tional Leave
to Appeal to
the Privy
Council -
Affidavit of
the Venerable
W.S.S.N.Thero.

14th March,
1962
- continued.

4. On the 4th July 1961 the services of the Petitioner-Respondent as an employee of the Vidyodaya University of Ceylon was terminated and on the date of the said termination he was in receipt of a salary of Rs. 1599/10 per mensem. The Petitioner-Respondent was paid the equivalent of 3 months salary less Rs.115/15 being the amount due from him to the University.

5. The Petitioner-Respondent in this application inter alia asked for Mandamus directing the Respondents-Petitioners including myself to recognise him as professor and Head of the Department of Economics and Business Administration.

10

6. I state that the value of the right which the Petitioner-Respondent claims to be entitled to is far in excess of Rs. 5000/- and that the appeal to Her Majesty in Council involves directly or indirectly a claim or question to or respecting a Civil right exceeding in value a sum of Rs.5,000/-.

7. I am further advised and state that the question involved in appeal to Her Majesty in Council relates to the powers and functions of the University Council of the Vidyodaya University of Ceylon and a decision on the question will affect also powers and functions of the Vidyalankara University of Ceylon and of the University of Ceylon established by the Ceylon University Ordinance 20 of 1942.

20

8. The decision of Your Lordships' Court from which the University Council seeks to appeal to Her Majesty in Council, I am advised and state, affects not merely the rights and functions of the authorities of the three aforesaid Universities established by statute and maintained out of public funds but also the rights of the members of the staff of the said Universities.

30

Read over signed and affirmed to at Colombo on this 14th day of March 1962) Signed in Sinhala - WELIWITIYE SORATHA STHIVIRA.

Before me

40

Sgd. G.H.D. Kumaradasa
J.P.

(In Sinhala) Vaidiyasiromani
G.H.D. Kumaradasa
Justice of Peace,
62, Panchikawatta Road, Colombo.

No. 11

JUDGMENT OF THE SUPREME COURT GRANTING
CONDITIONAL LEAVE TO APPEAL TO THE
PRIVY COUNCIL

In the
Supreme Court

No. 11

Application for conditional leave to appeal to the
Privy Council in S.C. Application No. 378 of 1961
(Application No. 576)

Judgment of the
Supreme Court
granting
Conditional
Leave to Appeal
to the Privy
Council.

6th April, 1962.

Present: Herat J., and Abeyesundere, A.J.

Counsel: H.W. Jayawardene, Q.C., with D.S.
Wijewardene for Respondents-Petitioners.
H.V. Perera, Q.C. with M. Tiruchelvam,
Q.C., M.L. de Silva and K. Thevarajah
for Petitioner-Respondent.

10

Argued & decided on: April 6, 1962.

Abeyesundere, A.J. :-

The petitioners, who were the respondents on
S.C. Application No. 378 of 1961 on which the pres-
ent respondent was the petitioner, seek the leave of
the Supreme Court to appeal to the Privy Council
from the order of the Supreme Court on that Applica-
tion. It is submitted by the petitioners inter alia
that the proposed appeal involves a question which
by reason of its great general or public importance
ought to be submitted to Her Majesty in Council for
decision. The question referred to is whether the
Council of the Vidyodaya University of Ceylon has,
in any circumstances, the right to dismiss a teacher
without giving him an opportunity of being heard.
This question affects two other universities, name-
ly the University of Ceylon and the Vidyalankara
University of Ceylon, as the constitution of both
these Universities is similar to that of the Vidyodaya
University of Ceylon. We hold that the afore-
said question is one which by reason of its great
public importance ought to be submitted to Her
Majesty in Council for decision. The application
of the petitioners is therefore allowed, with costs,
on the usual terms and conditions.

20

30

(Sgd.) A.W.H. Abeyesundere
ACTING PUISNE JUSTICE

40

Herat, J.

I agree.

(Sgd.) Kingsley Herat
PUISNE JUSTICE

In the
Supreme Court

No. 12

No. 12

APPLICATION FOR FINAL LEAVE TO APPEAL TO THE
PRIVY COUNCIL

Application
for Final
Leave to
Appeal to the
Privy Council.
2nd May, 1962.

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND
OF CEYLON

IN THE MATTER of an APPLICATION for Final Leave to
Appeal under the provisions of the Appeals
(Privy Council) Ordinance (Chapter 100)

THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON
and 19 Others Respondents-Petitioners

10

Vs.

LINUS SILVA Petitioner-Respondent

Application No. S.C.576

To: THE HONOURABLE THE CHIEF JUSTICE AND OTHER
JUDGES OF THE HONOURABLE THE SUPREME COURT
OF THE ISLAND OF CEYLON

On this 2nd day of May, 1962

The humble Petition of the 2nd to 20th
Respondents-Petitioners Appellants abovenamed
appearing by M. Herman Perera and Noel Wijenaike
practising in partnership under the name and style
and firm of Perera & Wijenaike, their Proctors,
states as follows:-

20

1. The 2nd to 20th Respondents-Petitioners
Appellants abovenamed on the 6th day of April 1962
obtained Conditional Leave from this Honourable
Court to Appeal to Her Majesty the Queen-in-Council
against the Judgment of this Court pronounced on
the 20th day of November 1961.

30

2. The 2nd Respondent-Petitioner Appellant
abovenamed has in compliance with the conditions on
which such Leave was granted deposited with the
Registrar of this Court a sum of Rupees Three
Thousand (Rs.3,000/-) on the 27th day of April 1962
and has by Bond dated the 30th day of April, 1962,
mortgaged and hypothecated the said sum of Rupees
Three thousand (Rs.3,000/-) with the said Registrar.

In the
Supreme Court

—
No. 13

Kingsley Herat, Puisne Justice and the Hon. Asoka Windra Hemantha Abeyesundere, Q.C., Acting Puisne Justice of this Court, in the presence of Counsel for the 1st to 20th Respondents-Petitioners and Petitioner-Respondent.

Decree granting
Conditional
Leave to Appeal
to the Privy
Council.

4th May, 1962

- continued.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicants do within one month from this date:-

1. Deposit with the Registrar of the Supreme Court a sum of Rs.3000/- and hypothecate the same by bond or such other security as the Court in terms of Section 7(1) of the Appellate Procedure (Privy Council) Order, 1921, (Cap.85) of the Subsidiary Legislation, shall on application made after due notice to the other side approve. 10

2. Deposit in terms of provision of Section 8(a) of the said Appellate Procedure (Privy Council) Order, 1921, with the Registrar a sum of Rs.300/- in respect of fees mentioned in Section 4(2)(b) and 4(2)(c) of the Appeals (Privy Council) Ordinance (Chapter 100). 20

3. Provided that the applicants may apply in writing to the said Registrar, stating whether they intend to print the record or any parts thereof in Ceylon, for an estimate of such amounts and fees, and thereafter deposit the estimated sum with the said Registrar.

It is ordered and decreed that the Petitioner-Respondent do pay to the 1st to 20th Respondents-Petitioners the costs of this application. 30

Witness the Hon. Hema Henry Basnayake, Q.C., Chief Justice at Colombo, the 4th day of May, in the year One thousand Nine hundred and Sixty two and of Our Reign the Eleventh.

(Sgd.) B.F. Perera
Deputy Registrar, S.C.

No. 14

DECREE GRANTING FINAL LEAVE TO APPEAL TO
THE PRIVY COUNCIL

In the
Supreme Court

No. 14

S.C. Application No. 209/'62

Decree granting
Final Leave to
Appeal to the
Privy Council.

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER
OTHER REALMS AND TERRITORIES HEAD OF THE
COMMONWEALTH.

9th June, 1962.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

10 IN THE MATTER of an APPLICATION by the 1st to
20th Respondents-Petitioners dated 2nd May,
1962 for Final Leave to Appeal to Her Majesty
the Queen in Council against the Judgment and
decree of this Court dated 20th November,
1961 in S.C. Application No. 378/'61.

THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON
and 19 Others 1st to 20th Respondents-
Petitioners

- against -

20 LINUS SILVA Petitioner-Respondent

This cause coming on for hearing and determina-
tion on the 1st day of June, 1962 before the Hon.
Hugh Norman Gregory Fernando and the Hon. Kingsley
Herat, Puisne Justices, of this Court, in the pres-
ence of Counsel for the 1st to 20th Respondents-
Petitioners and Petitioner-Respondent.

It is considered and adjudged that this appli-
cation be and the same is hereby allowed.

30 Witness the Hon. Hema Henry Basnayake, Q.C., Chief
Justice at Colombo, the 9th day of June, in the year
One thousand Nine hundred and Sixty Two and of our
Reign the Eleventh.

(Sgd.) B.F. Perera
Deputy Registrar, S.C.

I certify that the foregoing is a true copy of
the record of the proceedings in Supreme Court
Application No. 378 of 1961.

J.P. Bulavughe
REGISTRAR OF THE SUPREME COURT, CEYLON

40 September 27, 1962.

SEAL.

In the
Privy Council

No. 15

ORDER IN COUNCIL GRANTING REVIVOR

No. 15

Order in
Council grant-
ing Revivor.

AT THE COURT AT WINDSOR CASTLE

The 11th day of April, 1963

11th April,
1963.

P R E S E N T

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT MR. THORNEYCROFT
MR. SECRETARY SANDYS MR. RIPPON

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 1st day of April, 1963 in the words following, viz.:- 10

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Appellants in the matter of an Appeal from the Supreme Court of Ceylon between (1) The University Council of the Vidyodaya University of Ceylon, Gangodawila, Nugegoda (2) Venerable Weliwitive Siri Soratha Nayake Thero of Vidyodaya University of Ceylon, Gangodawila, Nugegoda (3) Venerable Palannoruwe Wimaladhamma Nayake Thero of Vidyodaya University of Ceylon, Gangodwila, Nugegoda (4) Venerable Kalukondayawe Pannasekere Nayake Thero of Vidyodaya University of Ceylon, Gangodawila, Nugegoda (5) Venerable Parawahera Wajiranana Nayake Thero of No. 174 Dematagoda Road, Colombo 9 (6) Stephen Frederick de Silva of No. 33 Training School Road, Colombo 3 (7) Pandit Gabriel Perera Wickramarachchi of Gampaha (8) Normal Edward Weerasooria of Talawatugoda Road, Kotte (9) Hettiarachige Jinadasa of No. 120 Greenlands Avenue, Colombo 5 (term of office has since expired and ceased to be a member of the University Council) (10) Ananda Welihena Palliya Guruge of Nugagahakanatte Housing Scheme, Narahenpita Road, Kirillapone (11) Don Paulis Jayasekere of 46 Gregory's Road, Colombo 7 (term of office has 30 40

since expired and ceased to be member of the University Council) (12) Lekamwasa Liyanage Kanakeratne Gunatunga of No.95/5 Galkissa Road, Dehiwela (term of office has since expired and ceased to be a member of the University Council) (13) Lalitha Abhaya Rajapakse of "Lumbini", Horton Place, Colombo 7 (14) Chandra Datta Abeysiri Gunawardene of Pendennis Avenue, Colombo 3 (15) Gamini Jayasuriya of Queens Avenue, Colombo (16) Christopher William Wijekoon Kannangara of No.38 Thimibirigasyaya Road, Colombo 5 (17) Wimala Dharma Hewavitarne of "Srinagar", Galle Road, Colombo 3 (18) Andrew Martin Samarasinghe of No.104 Reid Avenue, Colombo 4 (since deceased) (19) Mudaliyar Egodage Alfred Abeyesekere of Hill Street, Dehiwela (20) Paulus Edward Peiris Deraniyagala of No. 26 Guildford Crescent, Colombo 7

(Respondents) Appellants and Linus Silva (Petitioner) Respondent (Privy Council Appeal No.42 of 1962) setting forth that the above Appeal is pending before Your Majesty in Council: that the 18th Appellant has died as appears from a Certificate from the Supreme Court of Ceylon dated 8th February 1963 which has arrived at the Privy Council Office from which it also appears that it was declared that Dr. Atukoralage Don Peter Albert Wijayagunawardene was the proper person to be substituted on the Record in the place of the deceased 18th Appellant: that the 9th 11th and 12th Appellants have undergone a change of status by virtue of the fact that their term of office as members of the University Council of the Vidyodaya University of Ceylon has expired as appears also from the aforesaid Certificate from which it also appears that it was declared that (1) Nissanka Parakrama Wijeratne (2) Mapatunga James Perera and (3) Weligama Polwatte Gallage Ariyadasa were the proper persons to be substituted on the Record in place of the 9th 11th and 12th Appellants: And humbly praying Your Majesty in Council that Dr. Atukoralage Don Peter Albert Wijayagunawardene be substituted in the Appeal for the deceased 18th Appellant and that (1) Nissanka Parakrama Wijeratne (2) Mapatunge James Perera and (3) Weligama Polwatte Gallage Ariyadasa be substituted in the Appeal for the 9th 11th and 12th Appellants and that the Appeal be revived accordingly:

In the
Privy Council

—
No. 15

Order in
Council granting
Revivor.

11th April,
1963

- continued.

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In the
Privy Council

No. 15

Order in
Council grant-
ing Revivor.

11th April,
1963

- continued.

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and the Solicitors for the Respondent having signified in writing his consent to the prayer thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that Dr. Atukoralage Don Peter Albert Wijaya Gunawardene ought to be substituted in place of the 18th Appellant deceased and (1) Nissanka Parakrama Wijeratne (2) Mapatunge James Perera and (3) Weligama Polwatte Gallage Ariyadasa ought to be substituted in place of the 9th 11th and 12th Appellants and that this Appeal ought to stand revived accordingly."

10

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

20

Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W. G. AGNEW.

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

- (1) THE UNIVERSITY COUNCIL OF THE
VIDYODAYA UNIVERSITY OF CEYLON
 - (2) VENERABLE WELIWITEYE SIRI SORATHA
NAYAKE THERO
 - (3) VENERABLE PALANNARUWE WIMALADHAMMA
NAYAKE THERO
 - (4) VENERABLE KALUKONDAYAWE PANNASEKERE
NAYAKE THERO
 - (5) VENERABLE PARAWAHERA WAJIRANANA
NAYAKE THERO
 - (6) STEPHEN FREDERICK DE SILVA
 - (7) PANDIT GABRIAL PERERA WICKREMAARATCHI
 - (8) NORMAN EDWARD WEERASOORIA
 - (9) HETTIARATCHIGE JINADASA (ceased to be
a member of the University Council)
 - (10) ANANDA WELIHENA PALLIYA GURUGE
 - (11) DON PAULIS JAYASEKERE (ceased to be
a member of the University Council)
 - (12) LEKAMWASA LIYANAGE KANAKERATNE
GUNATUNGA (ceased to be a member of
the University Council)
 - (13) LALITHA ABHAYA RAJAPAKSE
 - (14) CHANDRA DATTA ASHEYASIRI GUNAWARDENE
 - (15) GAMINI JAYASOORIYA
 - (16) CHRISTOPHER WILLIAM WIJEKON KANNANGARA
 - (17) WIMALA DHARMA HEWAVITARNE
 - (18) ANDREW MARTIN SAMARASINGHE (deceased)
 - (19) MUDALIYAR EGODAGE ALFRED ABEYESEKERE
 - (20) PAULUS EDWARD PEIRIS DERANIYAGALA
 - (21) NISSANKA PARAKRAMA WIJERATNE (appointed in
place of the 9th Respondent-Appellant)
 - (22) MAPATUNGA JAMES PERERA (appointed in place
of the 11th Respondent-Appellant)
 - (23) WELIGAMA POLWATTE GALLAGE ARIYADASA
(appointed in place of the 12th Respondent-
Appellant)
 - (24) DR. ATUKORALAGE DON PETER ALBERT WIJAYA
GUNAWARDENE (appointed in place of the
deceased 18th Respondent-Appellant)-
(Respondents) APPELLANTS
- AND
- LINUS SILVA (Petitioner) RESPONDENT
-

STEPHENSON HARWOOD & TATHAM,
Saddlers Hall,
Gutter Lane,
Cheapside, London, E.C.2.
Appellants Solicitors.

SIMMONS & SIMMONS,
1, Threadneedle Street,
London, E.C.2.
Respondent's Solicitors.