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இலங்கை மனித உரிமைகள் ஆணைக்குழு  
HUMAN RIGHTS COMMISSION OF SRI LANKA

06.01.2021

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My No. }

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உமது இல. }  
Your No. }

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திகதி }  
Date }

Complainant : K.U Pushpakumara  
90/5, Sapumal Uyana,  
Pitakotte.

Respondent : Prof. Mohan de Silva  
Chairperson  
University Grants Commission  
20, Ward Place,  
Colombo 07.

**Complaint No: HRC/1631/15**

By letter dated 11.06.2014, the complainant of this matter was appointed to the Council of University of Moratuwa for a period of two years, with effect from 01.06.2014.

The complainant states that, Prof. Mohan de Silva, Chairman of the University Grants Commission, by letter dated 09.03.2015 asked him to resign, stating that the newly constituted Council had taken a decision to call upon all existing Council members to resign in order to facilitate the reorganization plan of the Government and the aforesaid decision was taken at a meeting held on 09.03.2015. Complainant by an e-mail informed Prof. Mohan de Silva, the Chairman that he will not resign as called upon.

An inter partes inquiry was held by the Human Rights Commission into this matter, and attention was drawn to the letter dated 21.07.2015 on observations submitted by Prof. Mohan de Silva regarding Section 44(3) of the Universities Act. He states that "in terms of the said provision it is clear that any appointed or elected member of the Council can be removed from office. Power of the removal is vested with the appointing authority in terms of Interpretation Ordinance".

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14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04.  
14, R. A. De Mel Mawatha, Colombo - 04.

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Chairperson }  
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செயலாளர் }  
Secretary }

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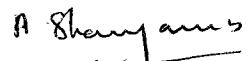
Through the aforesaid letter dated 09.03.2015, Council members were requested to resign from the Council membership which amounts to voluntarily leaving the position. Whereas the Section 44(3) provides for **removed from office**.

Therefore, Commission finds that the letter dated 09.03.2015 by Prof. Mohan de Silva, calling upon Complainant to tender his resignation is wrongful, illegal and arbitrary and violating fundamental rights guaranteed under Article 12(1) of the Constitution. The Commission is intrigued as to on how the Chairman of the University Grants Commission interpreted the Section 44(3) of the Universities Act and called the Complainant to tender his resignation.

The Commission would like to draw attention to the following reported cases. In *Abeywickrama v. Pathirana and others* 1986 1 SLR 120 it was stated that " A public officer cannot plead his own breach of duty as *proprio vigore* terminating his employment, until the state chooses to serve notice of vacation of post the official continues in the eye of the law in employment. Article 55(5) of the Constitution does not protect orders or decisions of a public office which are nullities or ultra vires from judicial review. It was stated in *Athula Chandraguptha Thenuwara & six others v. Chamal Rajapakse & others* S.C Application No. 665/2012(FR), 666/2012(FR), 667/2012(FR), 672/2012(FR) " no court, tribunal or other body (by whatever name it is called) has authority to make a finding or a decision affecting rights of a person unless such court, tribunal or body has the power conferred on it by law to make such finding or decision.

In conclusion, the Commission finds that the complainant's fundamental rights have been violated and thereby recommends the complainant to be paid sum of Rs. 50,000/=

  
M.H. Nimal Karunasiri  
Commissioner  
Human Rights Commission of Sri Lanka

  
Anusuya Shanmuganathan  
Commissioner  
Human Rights Commission of Sri Lanka

M.H. Nimal Karunasiri  
Commissioner  
Human Rights Commission of Sri Lanka

Ms. Anusuya Shanmuganathan  
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