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கிலங்கை மனித உரிமைகள் ஆணைக்குழு  
HUMAN RIGHTS COMMISSION OF SRI LANKA

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My No. }

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உமது இல.  
Your No. }

දිනය  
திகதி  
Date. } 2025.05.05

U. L. Farsath,  
No 129, New Road,  
Sammanthurai

**Petitioner**

**Complaint No: HRC/KL/111/2023**

1. Vice Chancellor  
Sabaragamuwa University of Sri Lanka
2. Dean,  
Faculty of Applied Sciences  
Sabaragamuwa University of Sri Lanka
3. Head of the Department  
Department of Sport Sciences and Physical Education  
Sabaragamuwa University of Sri Lanka
4. Senior Assistant Registrar  
Sabaragamuwa University of Sri Lanka
5. Mr S Sriharan  
Senior Lecturer  
Department of Sport Sciences and Physical Education  
Sabaragamuwa University of Sri Lanka

**Respondents**

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பிரதான அலுவலகம்  
Head Office }

අංක 14, ආර්. ඒ. ද මෙල් මාවත කොළඹ -04.  
இல. 14, ஆர்.ஏ.த.மெல் மாவத்தை, கொழும்பு -04.  
No. 14, R.A.De Mel Mawatha, Colombo -04.

කතෘපති  
தவிசாளர்  
Chairman }

011- 2505451

ෆැක්ස්

தொலைநகல்  
Fax }

011- 2505541/74

ඊමේල්

மின்னஞ்சல்  
e-mail }

sechrcsl@gmail.com

දුරකථන  
தொலைபேசி  
Telephone }

94-11-2505580 / 81 /82

ලේකම්  
செயலாளர்  
Secretary }

011- 2505521

ක්ෂණික

தூரித அழப்பு  
Hotline }

1996

වෙබ්

இணையம்  
Web }

www.hrcsl.lk

### **Petitioner's Claim**

The Petitioner is an undergraduate of University of Sabaragamuwa who has followed the Bsc in Sports Science and Management. The subject "PED22103 Movement Concept, Skill Analysis, Performance and Practices in Rugby" entails both a theory and practical component. Accordingly, in the year 2020, the petitioner has sat for the theory exam on 06<sup>th</sup> March 2020.

The petitioner states that the practical exam has been conducted in two phases; the first phase on 16<sup>th</sup> September 2020 and the second on 25<sup>th</sup> September 2020. The second phase has been conducted, since 8 – 9 students including the petitioner were unable to participate for the practical exam on 16<sup>th</sup> September as they all had a cricket match to participate on the same day.

The petitioner states that he undertook the practical exam on 25<sup>th</sup> September 2020 along with other 8-9 students. However, when the results for the exam were released, the final result sheet indicated that the petitioner and three others were absent for the practical exam. The four students including the petitioner have then immediately informed 5<sup>th</sup> respondent (S Sriharan, subject lecturer) regarding the error made in the results sheet to which he has promised to intervene and rectify the error. Consequently, the results of the other students have been updated except the petitioner's results. As a result, the petitioner has not been allowed to graduate and participate in the convocation stating that the petitioner is not eligible to participate in the convocation as he has failed to complete all the mandatory exams.

The petitioner has brought the issue to the attention of the Senior Assistant Registrar, Head of the Department and the Dean, Faculty of Applied Sciences. However, all parties have requested for more time and has failed to provide any relief to the petitioner.

The petitioner has submitted three affidavits dated 04<sup>th</sup> September 2024, through which three other students who undertook the rugby practical exam on 25<sup>th</sup> September 2020 attesting that the petitioner undertook the practical exam along with them on 25<sup>th</sup> September 2020. Out of the three affidavits submitted, only one affidavit is relevant and admissible for the case at hand.

Nevertheless, the Petitioner, at the inquiry held at the HRCSL, agreed to proceed with a settlement and proposed the University to allocate him a grade for the practical exam through a scientific calculation based on his theory exam results.

## **Respondents' Contentions**

The Vice-Chancellor of the University of Sabaragamuwa upon receiving the complaint of the Petitioner, has established a Sub-Committee to investigate into the matter. The findings of the Committee are as follows;

1. As per the Examination Timetable, the exam was originally scheduled to be held in March/April 2020. However due to COVID-19 pandemic, the examination was conducted in two phases – in March (theory) and September (practical) 2020.
2. Based on the documents available to the Department, the practical component of the exam was held only on one day as opposed to the two phases as stated by the Petitioner.
3. Subject lecturer Mr Sriharan has amended the theory marks of seven students and practical marks of four students (which excluded the petitioner and two others)
4. As per the final results sheet, the student has been absent for the exam.
5. As per UGC Circular No 978, the student has to apply for re-scrutiny within 14 days of publication of the results. However, the petitioner has not applied for re-scrutiny within the given time period and has made the complaint after two years of the date of publication of the results.

For the reasons enumerated above, the respondents state that the petitioner is not eligible to graduate and participate in the Convocation ceremony.

Nevertheless, the Head of Department of Sports Science and Physical Education, Faculty of Applied Sciences, Sabaragamuwa University of Sri Lanka representing the Vice Chancellor of Sabaragamuwa University of Sri Lanka, contended during the inquiry held on 31<sup>st</sup> May 2024 at the HRCSL, that the practical exam was held on two dates and the exam was held on the second date specifically for nine students who were absent on 16<sup>th</sup> September 2020. He also added that out of the 9 students who were absent on 16<sup>th</sup> September 2020, 8 students were awarded marks for the practical exam after conducting the practical exam on 25<sup>th</sup> September 2020.

Upon inquiring whether the second practical exam was scheduled and held with the approval of the Head of the Department, the Dean of the Faculty of Applied Sciences and Vice Chancellor of Sabaragamuwa University of Sri Lanka, the 3<sup>rd</sup> Respondent admitted that the second practical exam was held without obtaining the approval of the relevant authorities.

The 3<sup>rd</sup> respondent at the inquiry held at the HRCSL, agreed to proceed with a settlement and proposed to make special arrangements for the Petitioner to do the exam for the relevant subject.

A special examination (theory and practical) was scheduled on 30<sup>th</sup> June 2024 for the Petitioner. However, the Petitioner has not attended the exam on that day.

### **Observations**

The Commission took cognizance of the petitioner's claims and the respondents' contentions. Accordingly, it is conclusively observed by the commission that, as agreed by both parties the subject "PED22103 Movement Concept, Skill Analysis, Performance and Practices in Rugby" has two examination components namely the theory exam and the practical exam and both exams should be mandatorily completed by the student to be eligible for graduation.

The commission also observes that the rugby practical exam has been held on two dates; 16<sup>th</sup> September 2020 and 25<sup>th</sup> September 2020. This is evident through;

1. The admissible affidavit submitted by one of the students who undertook the practical exam on 25<sup>th</sup> September 2020 and successfully graduated by participating at the convocation ceremony.
2. The statement made by the 3<sup>rd</sup> respondent during the inquiry held at the commission that the second practical exam was held without obtaining the requisite approval from the relevant authorities.

Based on the admission made by the 3<sup>rd</sup> respondent that the second practical exam was held without obtaining the requisite approval, the commission also observes that the failure to follow due process in conducting the exam is an administrative omission on the part of the respondents.

Additionally, the commission observes the failure of the 5<sup>th</sup> respondent to sign the admission cards of the students who undertook the rugby practical exam is also as an administrative omission and examination malpractice. Examination admission cards issued to students are primary evidence to prove the details of the exams a student has undertaken. It is a pivotal document with evidentiary value in addition to being part of examination protocol.

Moreover, it is observed that the University Administration has also not maintained any attendance records of the students who undertook the practical exams on either 16<sup>th</sup>

September 2020 or 25<sup>th</sup> September 2020 (or any other day). Had the University Administration maintained proper documentation, related to core functions of the University such as examinations, the uncertainty surrounding the attendance of the Petitioner for the exam could have been fully avoided and in extension prevented the prejudice caused to the petitioner. Thus, it is concluded that the failure to maintain attendance records during exams is an administrative malpractice.

Attention is then drawn to the contention made by the respondents on the re-scrutiny of the results. The respondents contend that as per UGC Circular No: 978, the petitioner should apply for re-scrutiny of the results within 14 days from the date of publication of the results. In the absence it is deemed that the candidates are in agreement with the published results. Since the Petitioner did not apply for re-scrutiny the respondents position is that the petitioner was in acceptance of the results.

However, it is observed that the respondent's contention regarding the applicability of the UGC Circular No: 978 cannot sustain for the following reasons;

- a. The Circular directs the Universities to incorporate the policies/guidelines enumerated in the Circular to the University Examination-by-laws.
- b. The SUSL By-Law No.03 of 1996 pertaining to examinations has not been amended as per UGC Circular No: 978
- c. The University Handbook, which enumerates all procedures to be followed by students also does not mention regarding the requirements in the UGC Circular mentioned above.

In addition, the Petitioner claims that the Petitioner along with three others have brought to the attention of the subject lecturer regarding the absenteeism reflected on the results sheet. Consequent to which the subject lecturer has amended the results of the three others excluding the Petitioner. Therefore, it is observed that the petitioner in this case has communicated that he was not in acceptance of the results on the same date the results were published and the contention made by the respondent that the petitioner was in acceptance of the results cannot sustain.

Furthermore, it should be noted, if it is to be accepted that the established procedure to communicate non-acceptance is through an application of re-scrutiny of results, it raises the question as to why the University has not conducted any investigation or held the subject lecturer accountable for committing an unlawful act of amending the exam results of the

other two students based on a verbal request and not consequent to receiving an application for re-scrutiny of results. Yet another administrative malpractice on the part of the respondents.

At the inquiry held at the commission on 31<sup>st</sup> of March 2024, the 3<sup>rd</sup> respondent agreed to inform the commission of their intended settlement regarding the complaint. However, without notifying to the commission, the respondents directly communicated via email that a practical exam for the petitioner would be held on 30<sup>th</sup> June 2024. It is observed that the petitioner had not participated in the practical exam, since this communication was not made through the commission.

### **Legal Analysis**

The present case warrants the determination whether the petitioner's right to equality as guaranteed by the Constitution of Sri Lanka and international human rights obligations of the State has been violated.

**Article 12 (1)** of the Constitution states – All persons are **equal before the law** and are entitled to the **equal protection of the law**.

Article 7 of the UDHR states – All are equal before the law and are entitled without any discrimination to equal protection of the law

Article 26 of ICCPR states – All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all person equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

It is settled law in the equality jurisprudence of Sri Lanka that 'law' mentioned in Article 12(1) includes administrative action. This position was clearly held in the case of *Jayanetti v. The Land Reform Commission*<sup>1</sup> in which Wanasundara J held that; "The word 'the law' in Article 12(1) refers not only to legislation but also to executive or administrative action. To confine it to legislation alone would be to emasculate the equality clause".

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<sup>1</sup> [1984] 2 Sri LR 172, 184

Further elaborating the above position, it was held in the case of *Wickrematunga v Anuruddha Ratwatte*<sup>2</sup> that “‘law’ in Article 12 includes regulations, rules, directions, principles, guidelines and schemes that are designed to regulate public authorities in their conduct”

Drawing parallels between Article 12 of the Constitution of Sri Lanka and Article 14 of the Indian Constitution, it is pertinent to draw attention to the position held in the case of *Bidi Supply Co. v Union of India*<sup>3</sup> in which the Indian Supreme Court clarified that “the guarantee of equal protection extends to purely executive or administrative order of government, unsupported by any statute”

Accordingly, in the present case, maintaining attendance registers of the candidates undertaking an exam, whether it is theory or practical and placing the signature of the candidate and the relevant invigilator in each candidate’s examination admission card is considered ‘law’ as such practice is a well-established regulation and guideline followed as part of examination protocol. A practice that has been clearly prescribed in the examination by laws of the Sabaragamuwa University in relation to theory exams and one that has been rightly followed by subject lecturers/invigilators in charge of other practical examinations as reflected in the student admission cards. Therefore, it is concluded that the failure of the SUSL to maintain attendance registers of examination candidates and to obtain requisite signatures in the student admission cards with regard to the rugby practical exam is an administrative omission/inaction.

Attention is also drawn to the procedure adopted by the subject lecturer in scheduling the second phase of the practical exam on 25<sup>th</sup> September 2020. It is a mandatory requirement for a University to publish the dates of an examination by way of an examination timetable or notice for the reference of the students and the relevant authorities even if it is a rescheduled date. As it is an essential component to ensure transparency, fairness and equality to all candidates, especially in higher education institutes, in which examinations are a vital component essential to successfully graduate from the programme. However, in the present instance it is observed as discussed in the previous section, that the University has no records to prove the second phase of the practical exam. This includes the absence of any document of obtaining approval from the relevant officers, and notices sent/published to inform the students of the date and time of the examination. Therefore, it is concluded that, the second

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<sup>2</sup> [1998] 1 SLR 201, 230

<sup>3</sup> AIR 1956 SC 479

phase of the practical exam has been held in an arbitrary manner without following due process.

In light of the two circumstances mentioned above, it is concluded that administrative omissions and the failure to follow due process has led to a situation where the attendance of the petitioner on the 25<sup>th</sup> September 2020 for the rugby practical exam cannot be legitimately ascertained. Such uncertainty has resulted in the petitioner being marked as absent for the practical exam which in extension has deprived the petitioner from graduating along with his batch mates. Thus, it is concluded that the prejudice caused to the petitioner by no fault of his own but purely because of administrative acts and omissions, amounts to a violation of the petitioner's fundamental right to equality as guaranteed by Article 12(1) of the Constitution of Sri Lanka.

Based on all of the above, the Commission conclusively observes;

1. Examination protocol is considered as 'law' in terms of Article 12 (1) of the Constitution of Sri Lanka
2. The failure of the 5<sup>th</sup> respondent (subject lecturer) to follow due process in re-scheduling the second date of the practical exam and maintaining relevant documents including attendance sheets and admission cards of students is an administrative malpractice, which amounts to a violation of the petitioners fundamental right to be '*equal before the law*' as guaranteed by Article 12 (1) of the Constitution of Sri Lanka.
3. As the 'equal protection of the law' as envisaged in Article 12(1) of the Constitution does not warrant equal treatment in the performance of unlawful acts, the petitioner cannot be allowed to graduate without undertaking the rugby practical exam, merely on the basis that the other students who were similarly circumstanced graduation.

### **Recommendations**

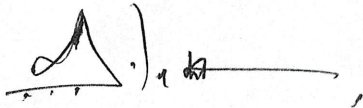
In terms of section 15(3) (c) and (4) of the HRCSL Act, the following recommendations are made to the University of Sabaragamuwa.

1. The University of Sabaragamuwa to provide the opportunity to the Petitioner to undertake only the practical exam at the earliest possible date. An independent examiner, who is not from the University of Sabaragamuwa, but who is well

acquainted with the examination requirements, should be appointed to invigilate and award marks for such practical exam. The marks of the theory exam that was undertaken by the petitioner on 6<sup>th</sup> March 2020 shall be used in computing final results.

2. Make arrangements for the petitioner to graduate at the earliest Convocation Ceremony that is scheduled next.
3. Conduct an inquiry against the 5<sup>th</sup> respondent, subject lecturer Mr Sriharan, for the failure to follow mandatory examination protocols which includes;
  - a. Not maintaining an attendance register of the students who undertook the practical exams
  - b. Failure to ensure the students undertaking the practical exam sign their respective admission cards
  - c. Not providing the department with relevant documentation of the examination dates (In particular dates that are not in the examination time table) and also obtaining requisite approval prior to conducting exams
  - d. Amending the marks of students in an arbitrary manner

As per section 15(7) of the HRCSL Act, the respondents are also requested to report to the Commission on the progress made on implementing the above recommendations on or before 08.07.2025.



Justice L.T.B Dehideniya  
Chairman  
Human Rights Commission of Sri Lanka

Justice L.T.B. Dehideniya  
Judge of the Supreme Court (Retired)  
Chairman  
Human Rights Commission of Sri Lanka



Nimal G. Punchihewa  
Commissioner  
Human Rights Commission of Sri Lanka

Nimal G. Punchihewa  
Senior Counsel  
Commissioner  
Human Rights Commission of Sri Lanka

CC: Minister, Ministry of Higher Education and Highways

