

~~GLI 62~~

Judgment
47/1964

IN THE PRIVY COUNCIL

No. 42 of 1962

O N A P P E A L

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

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

78687

- | | | | |
|----|-------------|--|-------------------|
| 10 | (1) | THE UNIVERSITY COUNCIL OF THE VIDYODAYA UNIVERSITY OF CEYLON | |
| | (2) | VENERABLE WELIWITEYE SIRI SORATHA NAYAKE THERO (deceased) | |
| | (3) | VENERABLE PALANNARUWE WIMALADHAMMA NAYAKE THERO | |
| | (4) | VENERABLE KALUKONDAYAWA 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) | |
| 20 | (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 | |
| 30 | (17) | WIMALA DHARMA HEWAVITARNE | |
| | (18) | ANDREW MARTIN SAMARASINGHE (deceased) | |
| | (19) | MUDALIYAR EGODAGE ALFRED ABYESEKERE | |
| | (20) | PAULUS EDWARD PETRIS 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) | |
| 40 | (24) | DR. ATUKORALAGE DON PETER ALBERT WIJAYA GUNAWARDENE (appointed in place of the deceased 18th Respondent—Appellant) | |
| | ... | ... (Respondents) | <u>APPELLANTS</u> |
| | | - and - | |
| | LINUS SILVA | ... (Petitioner) | <u>RESPONDENT</u> |

CASE FOR THE RESPONDENT

Record

1. This is an appeal from an order, dated the

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22nd November, 1961, of the Supreme Court of Ceylon (Fernando, J.) quashing an order made by the first Appellants on the 4th July, 1961 terminating the Respondent's appointment as from that day. The first Appellants are the executive body of the Vidyodaya University of Ceylon, which is a corporation established by the Vidyodaya University and Vidyalankara University Act, No.45 of 1958 (hereinafter called "the Act"). The second to the twentieth Appellants were the members of the University Council (the first Appellants) on the 4th July, 1961. The second Appellant has also been at all material times the Vice-Chancellor of the University. 10

p.37
pp.9,10

2. The Respondent was appointed Lecturer Grade I in the Department of Economics in the University, and Head of that Department, in May, 1959. The Second Appellant made this appointment in exercise of powers conferred upon him by section 62(2) of the Act. On the 1st September, 1960, the second Appellant wrote to the Respondent that, in pursuance of a decision of the first Appellants, he was pleased to promote the Respondent to the post of Professor and Head of the Departments of Economics and Business Administration in the University with effect from the 1st October, 1960. He set out in the letter certain terms of this post. By a letter dated the 2nd September, 1960 to the second Appellant, the Respondent accepted this post. 20 30

pp.10,11

pp.12,13

3. The first Appellants' decision of the 4th July, 1961 was conveyed to the Respondent by a letter of that date from the second Appellant. The letter stated that the first Appellants had unanimously resolved to terminate the Respondent's appointment as from that date. It also stated that the first Appellants had decided to pay the Respondent the equivalent of three months' salary, less certain sums allegedly due by him, and a cheque was enclosed with the letter. The tutorial staff of the Respondent's department protested against this decision. In an answering letter dated the 13th July, 1961 to Dr. W.M. Tilakaratne, one of the signatories of the protest, the second Appellant stated that the termination of the services of the Respondent had been decided upon in terms of Section 18(e) of the Act on adequate evidence placed before the first Appellants. 40

pp.13,15

p.16

4. The Act provides, inter alia, as follows:

2.(1) There shall be established, in accordance with the provisions of this Act, a University with the name of "The Vidodaya University of Ceylon" and a University with the name of "The Vidyalankara University of Ceylon".

10 (2) The Chancellor, Pro-Chancellor and Vice-Chancellor and the members for the time being of the Court, the Council and the Senate of each University specified in sub-section (1), duly nominated, appointed or elected by or in accordance with the provisions of this Act, shall be a body corporate (hereafter in this Act referred to as the "Corporation") with perpetual succession and with the same name as that assigned to that University by sub-section (1), and shall have power in such name -

(a) to sue and be sued in all courts;

20 11.(5) The Vice-Chancellor shall give effect to the decisions of the Council regarding the appointment, dismissal or suspension of the officers and teachers of the University, and shall exercise general supervision over the educational arrangements of the University.

17.(1) The University Council shall be the executive body of the University.

30 18. Subject to the provisions of this Act and of the Statutes, Regulations and Rules, the Council shall have and perform the following powers and duties:-

.....

40 (e) to appoint officers whose appointment is not otherwise provided for, and 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;

(f) to appoint, and to suspend, dismiss or otherwise punish persons in the employ of the University other than officers and teachers;

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24.(1) Subject to the provisions of this Act, Statutes may be made providing for all or any of the following matters:

.....

- (c) the conditions of appointment, and emoluments, of the officers and teachers of the University, and their powers and duties;

31. Every appointment to a post of Professor or Lecturer in the University shall be made by the Council after considering the recommendation of a Board of Selection, 10

33.(1) Every appointment of a teacher, Registrar or Librarian shall be upon an agreement in writing between the Corporation and such teacher, Registrar or Librarian. Such agreement shall -

- (a) in the case of experienced persons who have already gained distinction in their subjects, be for such period and on such terms as the Council may resolve, and 20
- (b) in other cases, be for a probationary period of three years which may be extended by the Council by resolution for a further period not exceeding one year, if the Council thinks fit.

(2) In the case of agreements entered into by the Corporation under sub-section (1)(b), any renewal thereof upon the expiration of the probationary period shall be expressed to be and remain in force, subject to the reservations hereinafter referred to, until the teacher, Registrar or Librarian appointed thereby has completed his sixtieth year, or, if he completes his sixtieth year in the course of an academic year until the last day of such academic year, and in any such agreement there shall be expressly reserved - 30

- (a) a right for the Corporation to annul the agreement on any ground on which it shall be lawful for the Council, under the provisions of section 18(e), to dismiss a teacher, Registrar or Librarian; and 40
- (b) a right for the teacher, Registrar or

Librarian to terminate the agreement at any time upon three months' notice in writing to the Vice-Chancellor.

61. In this Act, unless the context otherwise requires -

.....

"officer" means the Vice-Chancellor, the Registrar, the Dean of any Faculty, the Librarian, or the holder of any office created by Statute;

.....

10 "teacher" includes Professor, Lecturer and any other person imparting instruction in the University and who is in receipt of an annual salary, or, in the case of a Bhikkhu, an allowance;

.....

20 62.(2) It shall be lawful for the first Vice Chancellor appointed in accordance with the provisions of sub-section (1), subject to the existence of financial provision therefor, to make such appointments and to take such action as he may think necessary, consistent, so far as may be, with the provisions of this Act and of the Statutes contained in the Schedule to this Act, for the purpose of bringing the University into being or for the purpose of the issue of any Order under section 1; and, for such purposes, he may exercise any power which, by this Act or by the Statutes aforesaid, is conferred on the Corporation or the University or on any officer or Authority of the University.

30 5. The application to the Supreme Court of Ceylon was made by a Petition of the Respondent dated the 8th August, 1961. This Petition was supported by an affidavit of the Respondent, which was also dated the 8th August, 1961. In the Petition and affidavit the Respondent stated that he was, at all material times, a teacher in the University. He related his appointment in May, 1959, his promotion in October, 1960, and his activities in organising the Department of Economics and Business Administration. He then described disturbances which had arisen in the University, as a result of which he had proposed, at a meeting of the Vidyodaya University Teachers'

pp. 1,16
pp.17,24
p.2,11.22-24
p.2, 1.25
p.3, 1.21
p.3, 1.22
p.4,

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- p.4, 1.41-
p.5, 1.30 Association on the 17th June, 1961, that the Prime Minister should be requested to institute inquiries. He next referred to a decision of the Government in June, 1961 that employees of the Ministry of Education should not hold appointments at the Vidyodaya and Vidyalankara Universities. A certain Dr. Guruge, who was Assistant Secretary to the Ministry of Education and in June, 1961, had also been administrative assistant to the second Appellant and visiting Professor and Head of the Department of Sanskrit in the University, had been adversely affected by this decision, and had suspected the Respondent of having induced the Government to make it. On or about the 30th June, 1961, Dr. Guruge had written to a Minister a letter, set out in the Petition and the affidavit, complaining of the Respondent. On the 4th July, 1961 the Respondent had received the second Appellant's letter informing him of the termination of his appointment. The Respondent then referred to the protest of the teaching staff of his department and the second Appellant's answer of the 13th July, 1961. He asserted that, in ordering his dismissal under s.18E of the Act, the first Appellants had acted unlawfully and in violation of the rules of natural justice, because they had not made him aware of the nature of the accusations against him and had not given him any opportunity of being heard in his defence. He also asserted that the first Appellants had acted unlawfully on other grounds. The Respondent sought from the Supreme Court, amongst other relief, mandates in the nature of writs of certiorari and mandamus to quash the order of the 4th July, 1961 and to direct the Appellants to recognize him as Professor and Head of the Department of Economics and Business Administration.
- p.5, 1.31-
p.6, 1.42
- p.7, 11.1-10
- p.7, 11.11-29
- p.7, 1.43-
p.8, 1.5
- p.7, 11.30-42
- p.8, 11.25-41
- pp.25-27
6. On the 11th October, 1961 the Appellants filed a Statement of Objections to the Respondent's Petition. In it they alleged that the first Appellants, although the executive body of the University, were not a judicial or a quasi judicial body nor a body against which certiorari or mandamus might issue; also, that the Respondent was an employee of the University and the first Appellants' decision to terminate his employment could not be reviewed by way of certiorari. They further contended that this was not a case in which either certiorari or mandamus ought to issue, because there was no necessity or legal obligation upon the Appellants to advise the Respondent of the grounds for the termination of his services,

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since the Appellants had acted as the chief executive and administrative body of the University and were fully aware of the Respondent's unfitness to be a member of the University's teaching staff; further, because the Respondent had the alternative remedies of bringing an action or applying to a Labour Tribunal.

- 10 7. The statement of Objections was supported by an affidavit by the second Appellant (the Vice-Chancellor), a joint affidavit by the 3rd, 4th, 5th, 7th, 10th, 12th, 14th, 15th, 16th, 17th, 19th and 20th Appellants, and a joint affidavit of the 6th and 18th Appellants. The two joint affidavits stated that the deponents had attended the meeting of the Council on the 4th July, 1961 and had there considered certain documents, and statements made by the second Appellant, concerning the Respondent. By these documents and their own knowledge of the Respondent's conduct they had, they said, been satisfied that the Respondent's conduct was such as unfitted him to "continue in the employment of the University", so they had resolved to terminate the Respondent's appointment forthwith. They denied that they had acted maliciously or unlawfully. No affidavits were filed by the 9th, 11th or 13th Appellants, but the Vice-Chancellor, in his affidavit, deposed that these Appellants had not been present at the 4th July 1961 meeting. The 8th Appellant did not in fact depose to any affidavit, although the affidavit of the 3rd to the 20th Appellants stated that he was a deponent thereto.
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- pp.27-56
pp.64-66
- pp.67-69
- p.35, l.15.
- pp.66,67
8. The second Appellant (the Vice-Chancellor) stated in his affidavit that the Respondent was at all material times a servant or employee of the University. He admitted the appointment of the Respondent in May, 1959. He said that he had "purported to promote" the Respondent in September, 1960, and the first Appellants had "purported to confirm" this, but he denied that the letters of the 1st and 2nd September, 1960, constituted a valid agreement in writing as required by section 33 of the Act. If those letters did constitute a valid agreement, they themselves, he contended, formed the contract of employment. The Respondent had been given a "draft agreement in writing in the usual form", but he had failed to sign it. A copy of the usual form of agreement was annexed to the affidavit: it contains the following:
- p.28, l.27
- p.29, ll.1-18
- p.29, ll.26-33
- p.29, l.18
- p.39

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"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....

5. The appointment shall continue subject to this agreement until the 2nd 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.

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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."

p.32, 11.11-
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He admitted writing the letter of the 13th July 1961 to Doctor Tilakaratne, stating that the termination of the services of the Respondent was decided upon in terms of section 18(e) of the University Act. He stated further that this letter expressed the decision of the first Appellants.

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pp.30-35

9. The second Appellant referred in his affidavit to the disturbances in the University and the incident of Dr. Guruge. He made certain allegations of misconduct against the Respondent, and documents which were supposed to substantiate those allegations were annexed to the affidavit. He said that at the meeting of the Council held on the 4th July, 1961 these allegations and documents were "carefully considered", and he himself informed those present of 'facts' within his own knowledge. It had been resolved unanimously that the Respondent's conduct rendered him unfit to be a member of the University and his services should be terminated forthwith.

p.35, 11.14-
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p.35, 1.44 -
p.36, 1.5

The second Appellant contended that the Respondent was estopped from challenging this termination, because he had accepted the cheque sent by the second Appellant with his letter of the 4th July, 1961.

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p.70-77

11.5-7

pp.71,75

10. The Respondent filed an affidavit, dated the 16th October 1961, in reply to that of the second Appellant. He stated that his promotion to be Professor had been approved by the first Appellants on the 28th September, 1960. He said he had at all times diligently attended to his

duties. He denied that the draft agreement in writing was ever presented to him for signature and expressed his belief that at the material time no draft agreement existed. Having answered the allegations made by the second Appellant, he referred to the meeting of the Council held on the 4th July, 1961, and went on:

p.71, 1.19

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"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 "R.7" to "R.13" (i.e. the documents considered, according to the second Appellant, by the Council) "contain any evidence or material 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".

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He further denied that he had acquiesced in the termination of his appointment. He asserted that the Council, as a statutory body, ought to act only within the ambit of the Statutes creating it: further, that, as a statutory body, it was bound to advise him of the grounds for termination of his services and give him an opportunity of meeting any allegation of incapacity or misconduct made against him.

p.76, 11.2-11
p.76, 11.21-31

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11. The matter came before Fernando, J. on the 16th and 17th October, 1961, and the learned Judge gave judgment on the 20th November, 1961. He said it was not disputed, that after the letters of the 1st and 2nd September 1960 had passed between the second Appellant and the Respondent, the latter did function as Professor and Head of the Department of Economics and Business Administration. He said:

pp.87-104

p.87, 11.29,33

p.91, 11.7,48

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"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" (i.e. the

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letter of the 4th July, 1961)" 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..... The application therefore turns on the question whether at any stage in arriving at the administrative or subjective decision as to unfitness of the Petitioner to remain as a teacher the Council is required to consider certain matters judicially. If so, the Council would be amenable to certiorari. If not, this application must fail".

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p.92, 11.22-
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The first Appellants had legal authority to determine questions affecting the rights of subjects, and the question whether, in considering unfitness, the Council was at any stage required to act judicially must rest ultimately on the words of the Act. He went on:

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p.93, 1.45
p.94, 1.1.

p.94, 11.3-12

"...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 members of the Council are constituted the Judges both of their existence and of their sufficiency."

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pp.94-99
p.99, 11.19-
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The learned Judge then considered various authorities, and held that the Council was under a duty to act judicially at the stage of ascertaining objectively the facts as to incapacity or misconduct. Non-observance of the rules of natural justice being admitted by the Appellants, the Respondent was entitled to a mandate in the nature of a writ of certiorari, subject to the consideration of other objections raised by the Appellants.

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p.99, 1.33
p.100, 1.2

12. The other objections raised by the Appellants were:

a) the Respondent must be considered to have been dismissed under the power vested in the Council by section 18(f) of the Act;

b) the Respondent had acquiesced in the discontinuance of his services; and

c) certiorari ought not to issue because other remedies were available to the Respondent.

10 13. As regards the first objection, the Appellants had argued that no duty to act judicially arose in the dismissal, under s.18(f) of the Act, of a person other than an officer or teacher, and the Respondent had not signed the formal agreement required of teachers. On this point the learned Judge held that the letters of the 1st and 2nd September, 1960, constituted sufficient agreement in writing, within the meaning of section 33. He held further that in any event the Appellants, in view of their conduct, could not be heard to say the Respondent was not a "teacher": it was not denied that the Respondent had functioned as Professor and Head of the Departments, and moreover the Appellants had shown and it was quite apparent from the letter of the 13th July, 1961, to Doctor Tilakaratne, that the Appellants' decision was taken in terms of section 18(e).

p.100, 11.3-33

p.100, 1.34

p.101, 1.33

20 14. As regards the second objections, the learned Judge pointed out that the Petitioner claimed still to be in the service of the University. This being so it was quite consistent for him to accept his salary because, on his view, it was due to him. As regards the third objection, the learned Judge held that the alternative remedies suggested were not adequate for a person occupying the position of the Respondent.

p.101-103

p.103, 1.42

30 15. Finally Fernando J. held, in his discretion, that certiorari ought to issue to quash the order of the first Appellant of the 4th July, 1961, but no order should be made in respect of the prayer for mandamus.

p.104, 1.42

40 16. The Respondent respectfully submits that the decision of Fernando, J. was right. The Respondent could be dismissed only upon the grounds set out in s.18(e) of the Act. In deciding whether such grounds existed, the appellants were obliged to act judicially and, therefore, to observe the rules of natural justice. Alternatively, the obligation to observe these rules arose from the very nature of the power of dismissal conferred upon the Appellants by s.18(e). Upon either view, the

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admitted failure of the Appellants to inform the Respondent of the allegations against him or to give him any opportunity of being heard in his defence rendered them amenable to certiorari.

17. The Respondent respectfully submits that it is clear, from the position which he held and the duties which he admittedly performed, that he was a "teacher" in the meaning given to that term by s.61 of the Act. (This would be so whether or not the Appellants, in appointing him, observed all the formalities prescribed by the Act; but, in the Respondent's respectful submission, his appointment was in fact made in accordance with s.33). The Respondent could therefore be dismissed only under s.18(e). It was under s.18(e) that the Appellants purported to dismiss him, and the Respondent respectfully submits that Fernando, J. was right in holding that they cannot now be heard to say that they acted under s.18(f).

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18. Alternatively, the Respondent respectfully submits that he was entitled, whatever the nature of his employment by the University, to be informed of the allegations against him, and to be heard in his defence.

19. It is further submitted that the learned Judge was right in holding that the Respondent never acquiesced in the termination of his appointments, and the other courses suggested to be open to him (which, in any event, would have to be taken against a quite different body) did not present an adequate alternative to the remedy by way of certiorari.

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R E A S O N S

- (1) BECAUSE in considering whether the Respondent ought to be dismissed under s.18(e) of the Act the Appellants were obliged to observe the rules of natural justice:
- (2) BECAUSE the Appellants violated those rules:
- (3) BECAUSE the Respondent was (and is) a "teacher" as defined in the Act, and so could not be dismissed except under s.18(e) of the Act:

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- (4) BECAUSE the Appellants purported to dismiss the Respondent under s.18(e) of the Act, and cannot be heard to contend that they acted under any other power:
 - (5) BECAUSE the Respondent, whatever the nature of his employment under the Act, was entitled to be advised of the allegations against him and given an opportunity to defend himself:
 - (6) BECAUSE the Respondent never acquiesced in the termination of his appointment:
 - (7) BECAUSE no satisfactory remedy other than certiorari was available to the Respondent:
 - (8) BECAUSE of the other reasons set out in the judgment of Fernando, J..

J.G. Le QUESNE

GERALD DAVIES

No.42 of 1962

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF
CEYLON

B E T W E E N :-

THE UNIVERSITY COUNCIL
OF THE VIDYODAYA
UNIVERSITY OF CEYLON
and others.

... (Respondents)
APPELLANTS

- and -

LINUS SILVA (Petitioner)
... RESPONDENT

CASE FOR THE RESPONDENT

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