

Prof. C Ellankumaran v. University of Jaffna

RTIC Appeal(In-Person) /233/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 12.06.2018

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr Selvy Thiruchandran
Justice Rohini Walgama
Present: Director-General Piyathissa Ranasinghe

Appellant: Prof. C Ellankumaran
Notice Issued to: Designated Officer, University of Jaffna

Appearance/ Represented by:

Appellant - Prof. C Ellankumaran
Public Authority - Mr N Rajavisahar, Deputy Registrar, University of Jaffna

RTI Request filed on	12.05.2017 and 17.07.2017
IO responded on	08.09.2017
First Appeal to DO filed on	29.09.2017
DO responded on	No Response
Appeal to RTIC filed on	01.02.2018

Brief Background Facts

The Appellant had requested the following items of information, by information requests dated 12.05.2017 and 17.07.2017

1. Reason for the provisions of PA 6/2004, regarding the ‘Effective date (One year from the date of Charge sheet) of Full Salary and Compulsory Leave’ not being correctly implemented after the reinstatement took place on 01.01.2015, without break of service of 01.10.2013
2. Reasons for not implementing the provisions of the Establishment Code for University Grants Commission and Higher Education Institutes which clearly stipulated in paragraph 14:2 of Chapter X, regarding placing on Special Leave instead of long term Compulsory Leave
3. Reasons for the continuation to impose of out of bounds (Against Rules of Natural Justice/Rules against Bias/Against Fundamental Rights) for about 3 years and 8 months
4. Reason for allowing Prof. V. Tharmaratnam to take part in the Appellants’ matters at the council against the rules of natural justice and against the principles of Administrative Law as he was an offender in the Appellants’ promotion process and he was identified

and removed by the Senate and Council for malicious under marking in the Appellant's promotion process

Prior to making the second information request, the Appellant received a response from the Vice Chancellor by a letter dated 20.05.2017 stating that since the outcome on the formal inquiry against the Appellant and his case in the Court of Appeal were pending, the requested information could not be provided.

The Appellant received a response from the IO by letter dated 08.09.2017 stating item 2 of the request with regard to the provision of leave could be provided. Dissatisfied with the information provided, the Appellant appealed to the DO on 29.09.2017. As the DO failed to respond, the Appellant preferred an appeal to the Commission on 01.02.2018

Matters Arising During the Hearing

On questioning the PA with regard to the DO's failure to respond, the PA submitted that the Appellant was requesting for the reasoning behind the PA's decisions and not information per se. The Commission responded stating that section 35 of the Act places a duty on the PA to provide reasons and an ongoing case at the Court of Appeal is not a ground to deny the provision of requested information.

Order

Section 35 of the Right to Information Act No.12 of 2016 places a duty on the PA to give reasons with regard to decisions made.

Section 35 of the Act states as follows;

"Every officer in any public authority giving a decision which affects any person in any way, shall be required on request made in that behalf by the person concerned, to disclose to that person in writing the reasons for arriving at such decision."

The PA is directed to examine the information request and file written submissions explaining the reasons for denying the Appellant the requested information.

The Appeal is adjourned.

Next date of hearing: 31.07.2018

.....

RTIC Appeal (In-Person) /233/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure)* – heard as part of a formal meeting of the Commission on 31.07.2018

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr Selvy Thiruchandran

Present: Director-General Piyathissa Ranasinghe

Appellant: Prof. C Ellankumaran
Notice Issued to: Designated Officer, University of Jaffna

Appearance/ Represented by:

Appellant -Prof. C Ellankumaran
Public Authority -Ms. Sugatha Kamaleswaran, Assistant Registrar, University of Jaffna

Order:

The Public Authority is directed to respond to the following queries of the Appellant i.e. queries 1, 2 and 3 of the information request:

1. *Why the provision of PAC 6/2004, regarding the Effective date (one year from the date of the charge sheet) of full salary and compulsory leave” were not correctly implemented after the reinstatement took place on 01.01.2015, without break of service from 01.10.2013*
2. *Why the provisions of the Establishment Code for UGC and HEIs, clearly stipulated in paragraph 14:2 of chapter X regarding placing on Special Leave instead of long term Compulsory Leave, were not implemented?*
3. *Why the imposition of out of bounds continued (Against Rules of Natural Justice/ Rules Against Bias/ Against Fundamental Rights) for about 3 year and 8 months?*

The Appeal is adjourned.

RTIC Appeal (In-Person) /233/2018 - *Order under Section 32 (1) of the Right to Information Act, No 12 of 2016 and Record of Proceedings under Rule 28 of the Right to Information Rules of 2017 (Fees and Appeal Procedure) – heard as part of a formal meeting of the Commission on 11.09.2018*

Chairperson: Mahinda Gammampila
Commission Members: Kishali Pinto-Jayawardena
S.G. Punchihewa
Dr Selvy Thiruchandran

Director-General: Piyathissa Ranasinghe

Appellant: Prof. C Ellankumaran
Notice Issued to: Designated Officer, University of Jaffna

Appearance/ Represented by:

Appellant -Prof. C Ellankumaran
Public Authority -Ms. Sugatha Kamaleswaran, Assistant Registrar, University of Jaffna

Matters Arising During the Course of the Hearing:

The Designated Officer had responded to the said questions as directed on the previous occasion by response dated 20.08.2018. The Appellant responded on 23.08.2018 indicating his dissatisfaction with the response provided, claiming that the reasoning provided is flawed and requesting the Commission to instruct the PA to be present and submit proper written submissions on 11.09.2018.

The Commission questioned the rationale of the Public Authority in failing to respond to Question No. 2 of the Appellant regarding:

Why the provisions of the Establishment Code for UGC and HEIs, clearly stipulated in paragraph 14:2 of chapter X regarding placing on Special Leave instead of long-term Compulsory Leave, were not implemented?

The Commission observed that the refusal of the University Council to arrive at a decision with regard to the inquiry report owing to the Writ Case (88/2018) filed by the Appellant in which there is an active stay order is unacceptable as the said stay order does not deal with the matters referred to in his RTI request and thus cannot be brought within the relevant exemption.

The error in the Written Submission of the PA citing Section 14.2 as opposed to Section 14.1. of the Establishment Code was corrected.

The responses provided by the PA to Item Nos. 2 and 3 were deemed to be satisfactory. With respect to the Appellant's concerns regarding the validity/correctness of the responses given, this Commission cannot compel the PA to alter the reasoning however flawed it may be and that the Commission is only authorized to order the disclosure of the reasoning in existence. Further the decision taken by the PA can be disclosed while the merits of such a decision cannot be inquired into before the Right to Information Commission and may be raised before different for a with competence to consider the matter.

With regard to items 1 and 4, the release of the relevant portions of the Minutes of the Meeting including and limited to the information requested by the Appellant is directed in accordance with Section 6 of the RTI Act. Section 6 of the RTI Act states as follows;

Where a request for information is refused on any of the grounds referred to in section 5, access shall nevertheless be given to that part of any record or document which contains any information that is not exempted from being disclosed under that section, and which can reasonably be severed from any part that contains information exempted from being disclosed.

The PA is directed to provide the Minutes of the Meeting severing all information except that which will provide the reasons sought by the Appellant's information request with a copy to the Commission.

Next hearing on: 13.11.2018
