

THE OPEN UNIVERSITY OF SRI LANKA
LL.B. DEGREE PROGRAMME – LEVEL 5
FINAL EXAMINATION – 2008



ADMINISTRATIVE LAW – LWU 3311

DURATION - THREE HOURS

Date: 02nd April 2008 Time 9.30 a.m.- 12.30 p.m.

Illegible handwriting will be penalized

Answer Five Questions only

1. 'Discretion' means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion. - H.W.D.Wade & C.F.Forsyth., *Administrative Law*. 7th edition pg 387.

Do you agree with this statement? Discuss with reference to judicial control of administrative action.

- 2 Robert is a constable in the Dakota Police Station in Ruritania. The Assistant Superintendent of Police (ASP) of Dakota initiated a preliminary investigation into an allegation that Robert has taken a bribe from an illicit brewer of liquor. As the evidence forwarded at the inquiry was not satisfactory to prove Robert's guilt, the ASP warned him and discharged him from the allegation. Subsequently Robert was caught red handed by the same ASP while accepting a bribe. The ASP interdicted Robert and referred the matter to the Police Service Commission which had been statutorily empowered to promote and transfer police officers, take disciplinary actions against them etc.

The Police Commission conducted an inquiry. The ASP of Dakota chaired the panel of inquiry. A charge sheet was issued on Robert one day before the inquiry. Robert requested that he be given another date to appear for the inquiry. The chairman of the panel of inquiry said that the inquiry could not be postponed as he was due to leave the country on the following day on a two year scholarship. Robert was permitted to question all the witnesses but his request to retain a lawyer was turned down by the panel of inquiry. After one week Robert was informed by the Chairman of the Police Commission that he was dismissed from service with immediate effect.

Robert wishes to challenge the decision. Advise him.

3. "It is settled law now that a decision of an inferior tribunal, which is based on an error of law ... on the face of the record is one of the grounds for the issue of a writ of certiorari quashing the decision". - Weerasuriya S.P.J. in *Hayleys Ltd. v. de Silva* (1962) 64 N.L.R. 130 at 137

Do you agree with this dictum? Give reasons for your answer with reference to decided cases.

4. The Minister of Commerce and Internal Trade has the authority under the Food Act to entertain applications for the issue of trade licenses to manufactures of food items. The Act had provided for the Minister to appoint a committee consisting of quality controllers of the Department of Commerce and Internal Trade to test the samples of food items from manufactures. Based on the recommendation of the Committee, the Minister was required to issue trade license to manufacture if he 'deemed fit to do so'.

Suranimal who was a well known manufacturer of food items made an application for a license for his milk products which included packeted milk, bottled milk and yoghurt with different flavors. The Minister without referring the samples to the committee, refused to issue the license for milk products submitted by Suranimal on the ground that his products were not upto the standard. However Suranimal found later that the Minister had issued a license to another manufacturer of milk products who happened to be a son in law of Minister's sister, without obtaining the recommendation from the committee. Suranimal maintains that the prices of his products are cheap and of high quality compared to the other milk products available in the market. He further claims that as he has taken a Bank loan for this business, the rejection of his application has caused him much financial difficulties.

Discuss the issues with reference to relevant principles developed by courts in the area of Administrative Law.

5. 'The importance of declaratory order as an effective tool to question administrative action has been diminished by the controversy over the forum which has jurisdiction to issue the remedy.'

Discuss this statement with reference to the jurisdictional problem in regard to the issue of the order of declaration.

6. The Urban council of 'Sivapuri' is empowered by a statute to maintain roads, by lanes, grounds to ensure disposal of garbage and river banks and to take other actions to maintain clean environment of the area and to provide public utilities such as free sanitary service, boat service, water and electricity. An Automobile Cleaning Service Centre has been discharging their waste including used engine oil and waste water to the river for the past few months. These activities created a big nuisance for the villagers

especially for the people who used the river for transport of goods, drawing water for cultivation and for bathing and household purposes. The village children fell ill as a result of the contamination of river water with waste products. Though the villagers made several complaints in writing to the chairperson of Sivapuri urban council regarding health haphazard they face as a result of the activities of the Automobile Cleaning Service, no fruitful action was taken to stop the said activities.

The residents of Sivapuri seek your advice as to whether they have any remedy. Advise the residents.

7. Britannica Electricity Board (BEB) is a statutory body established under a Parliament Act of Britannica. The BEB introduced a critical illness package to its employee. According to the above package a permanent employee who has completed the service of five years is entitled to claim the finance assistance from the Board if he suffers from any disease mentioned in the list prepared by the Board. Section 3 of the Act states that "the decision of the Board on any matter shall be final and conclusive and shall not be questioned in any court of Law".

John was an Assistant General Manager of BEB who had rendered a service of more than 12 years. He had to undergo a surgery for coronary Artery disease, which was a listed illness and therefore applied for financial assistance. But his application was rejected by the BEB on the ground that he need no financial assistance from the Board as he was getting a good salary. When he met the chairman of the Board and inquired about this decision, the chairman said that his decision as the chairman of the board was final. John consults you as to whether he could challenge the decision of BEB in a court of Law.

Assuming that the law in Britannica is similar to that of Sri Lanka, advise John.

8. 'Delegated legislation are essential for the smooth functioning of administrative machinery in modern times. However they need to be subject to some control in order to safeguard the interests of the citizen.'

Discuss this statement with reference to judicial control of delegated legislation.