

**JINASENA
VS
UNIVERSITY OF COLOMBO AND OTHERS**

SUPREME COURT.
S. N. SILVA, CJ.
DISSANAYAKE, J AND
AMARATUNGA, J.
SC APPEAL 37A./2005.
CA NO. 1329/2000.
15TH SEPTEMBER, 2005.

Writ of Certiorari – Termination of services of a university officer - Lack of sufficient material - Participation of University Council Members at the preliminary inquiry -Validity of termination.

The petitioner was acting Registrar of the University of Colombo, appointed by the University Grants Commission. The Council of the University held a

domestic inquiry against the petitioner and on the basis that the available material established a *prima facie* case, interdicted the petitioner by document P8, served a charge sheet P9, and terminated his services by document P10.

HELD:

1. There was no consideration of the material on which the charge sheet was made. The Attorney-General who was consulted advised that due to insufficiency of material, he was unable to advise on specific charges.
2. The 6th, 7th and 11th respondents, members of the Council were witnesses at the domestic inquiry; hence the termination of services following the charge sheet P9 was *ultra vires* and void for contravention of the rules of natural justice.
3. The Court of Appeal erred in holding that there was no requirement that the charge sheet should be approved by the Council.
4. The petitioner was entitled to a writ of certiorari quashing the documents P8, P9 and P 10, as the Court of Appeal had failed to consider the serious consequences to the petitioner by refusing the writ.

APPEAL from the judgment of the Court of Appeal.

R. Chula Bandara with Kushani Harasgama for appellant.

Anil Gunaratne, Deputy Solicitor General for 1st and 3rd to 15th respondents.

Cur.adv.vult.

15th September, 2005.

S. N. SILVA CJ.

This is an appeal from the judgment of the Court of Appeal dated 13.05.2003. The matter was considered at the time special leave to appeal application was supported and the Court granted special leave to appeal on the following three questions :

- (a) In view of the contention in the 2nd paragraph found in the charge sheet (P9) issued by the 2nd Respondent and in the absence of any minute to support such decision of the Governing Council of the 1st Respondent, did the Court of Appeal err in coming to the

conclusion that there was no requirement for the charge sheet (P9) to be approved by the Governing Council and accordingly the issuance of the charge sheet (P9) by the 2nd Respondent was within the lawful authority and the powers and functions of the 2nd Respondent?

- (b) Did the Court of Appeal misdirect itself in coming to the conclusion that there was no breach of the rules of natural justice although the 6th, 7th and 11th Respondents who were witnesses were also members of the Council that made the decision set out in P 10?
- (c) Did the Court of Appeal misdirect itself by considering extraneous matters disregarding serious consequences to the Petitioner?

The Petitioner joined the University of Peradeniya as a Temporary Assistant Lecturer on 28.12.1970 and continued in that capacity till 31.10.1972. On 16.11.1972 he was appointed as Administrative Assistant in the University Registry. On 15.12.1986 he was appointed as Deputy Registrar. Thereafter he has acted on numerous occasions as the Registrar. He was appointed as Deputy Registrar by the University Grants Commission. Whilst serving as Acting Registrar attached to the University of Colombo, the Petitioner was interdicted from service by document P8 dated 09.08.1999. A charge sheet was issued on him on 24.09.1999 (document marked P9) After inquiry his services were terminated on 19.09.2000 (by document P10). The Petitioner has filed the application in the Court of Appeal to quash the said three decisions as contained in documents P8 to P10.

The Petitioner has challenged the validity of documents P8 and P 9 on the basis that although these documents issued by the Vice Chancellor refer to decisions made by the Council of the University, in fact there were no such decisions. The Petitioner has urged this ground belatedly since he was unaware of the absence of any decision until the matter came up at the disciplinary inquiry. It is conceded by the Deputy Solicitor General that the only minute of the Council is document P11. The genuineness of P 11 has been challenged by the Petitioner on the basis that it is not pasted in the Minutes Book of the minutes of the Council and that it was found in the form of two loose sheets. A formal minute of the Council appears in the manner as seen in the document P19 which gives *inter alia* the persons who were present at the meeting including their designations.

P 11 does not contain any such particulars. In any event, the relevant portion of P11 which comes under the heading "Sub Committee Report" records that a report had been sent to the Attorney General who has indicated that there was a *prima facie* case for interdiction. The advice of the Attorney General is contained in the letter dated 05.07.1999 (P12) which only states that the Attorney General is of the view that the evidence discloses irregularities which concern the Petitioner but that he is unable to advise on the specific charges for the reason that the disciplinary rules applicable to the University and the entirety of the evidence has not been made available. It appears that thereafter the advice of the Attorney General has not been sought on the matter. In the circumstances, to say the least, the statement in P 11 that the Attorney General indicated that there is a *prima facie* case which warranted interdiction is not correct.

Furthermore, the document P9 being the charge sheet commences with a paragraph which reads as follows: "The Council having considered all relevant material and the findings consequent upon investigations, has now decided to issue you with the statement of charges to direct you to show cause why disciplinary action should not be taken against you...", is basically without foundation since even in the disputed minute the Council has not made a decision to frame charges against the Petitioner. It merely records that the Petitioner be placed under interdiction and "that the legal procedure required in this connection should be followed". The Council could not have approved any charges that were not submitted to it.

In the circumstances, we are of the view that the statements in P 9 and P10 as to approval by the Council are not supported by the available material. The Council is the proper disciplinary authority in terms of the second proviso to section 75 of the Universities Act No. 16 of 1970 (A). The Petitioner has adduced evidence to establish that a previous delegation of such disciplinary authority to the Vice Chancellor had been withdrawn by the Council. This evidence is not disputed. In the circumstances, we are of the view that the Petitioner has established that the decisions in P8 and P9 have not flowed from proper authority namely, the Council of the University and as such are *ultra vires* and liable to be quashed by a Writ of Certiorari.

We have next to consider the validity of the termination as contained in document P 10. The termination has in fact been done on a decision of the

Council. The Petitioner challenges the validity of the termination on the ground that three members of the Council who were present at the time the decision was made and in fact took part in that decision were also witnesses at the preliminary and/or the domestic inquiry against the Petitioner. The 6th and 7th Respondents being members of the Council in fact gave evidence at the domestic inquiry. The 4th, 9th and 11th Respondents who were also members of the Council and took part in the relevant decision had made statements at the preliminary inquiry. The Petitioner has therefore challenged the decision P 10 on the basis that it is *ultra vires* and in contravention of the principles of natural justice since the witnesses themselves have in fact finally been party to the decision to terminate the Petitioner's services. The Court of Appeal has sought to justify such a course of action on the basis that the decision of the Council has been unanimous and that there is no evidence that the 6th, 7th and 11th Respondents in any way influenced that decision to be made against the Petitioner. However, we are of the view that it is unnecessary for the Petitioner to adduce such evidence which would not be within his control, having not been present at the meeting. The decision *per se* is tainted by the fact that persons who were witnesses at the inquiry were finally party to the decision to terminate the services. Accordingly the decision P 10 is liable to be quashed by a Writ of Certiorari on the ground that it is contrary to the principles of natural justice.

For the reasons stated above, we allow the appeal and set aside the judgment of the Court of Appeal dated 13.05.2003, the findings are based on questions (a) and (b) stated above on which leave has been granted. We direct the issue of a Writ of Certiorari as prayed for in paragraph (b), (c), and (d) of the prayer to the petition dated 15.11.2000 filed in the Court of Appeal. There will be no order for costs in the Court of Appeal and in this Court.

N. E. DISSANAYAKE, J. – *I agree.*

N. G. AMARATUNGA, J. – *I agree.*

Appeal Allowed.