1961 *Present :* **T. S. Fernando, J.**

LINUS SILVA, Petitioner, *and* UNIVERSITY COUNCIL OF THE VIDYODAYA UNIVERSITY and others, Respondents

S. C. 378 of 1961—In the matter of an Application for the issue of mandates in the nature of a Writ of Certiorari and a Writ of Mandamus in terms of Section 42 of the Courts Ordinance (Cap. 6)

Certiorari—*Conditions necessary for issue of writ—Scope of remedy where alternative remedy is available—" Duty to act judicially "—Professor of Vidyodaya University—Dismissal from office without defence being heard—Proper remedy—Vidyodaya University and the Vidyalankara University Act, No. 45 of 1958, ss. 11 (3), 13, 17, 18, 31, 61—Industrial Disputes Act, No. 43 of 1950 (as amended by Act No. 62 of 1957), s. 31 B.*

Section 18 of the Vidyodaya University and the Vidyalankara University Act, No. 45 of 1958, empowers the Council " 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. "

Held, that the power of the Council to determine the unfitness of an officer or teacher is qualified by the words " on the grounds of incapacity or conduct ". In deciding whether incapacity or misconduct exists the Council is required to act judicially, and not administratively, at the stage of ascertaining objectively the facts as to incapacity or misconduct. Failure, therefore, to give an officer or teachor an opportunity of being heard in his defence before his appointment is terminated would render the Council amenable to a writ of *certiorari*.

Held further, (i) that when the Council purports, by its conduct, to have terminated the appointment of an officer under clause (*e*) of section 18 it cannot subsequently take up the position that the officer must in law be considered to have been dismissed by virtue of the power vested in it by clause (*f*) of section 18.

(ii) that the rule that the remedy by way of *certiorari* is not available where an alternative remedy is open to the petitioner is subject to the limitation that the alternative remedy must be an adequate remedy. Accordingly, where a Professor appointed under section 31 of the Vidyodaya University and the Vidyalankara University Act is wrongfully dismissed without his defence being heard by the Council, he may seek his remedy by way of *certiorari* although the less adequate remedies by way of an action for damages for wrongful dismissal and by way of proceedings under section 31A of the Industrial Disputes Act No.43 of 1950 (as amended by Act No. 62 of 1957) may also be available to him.

APPLICATIONS for a writ of *certiorari* and a writ of *Mandamus.*

H. V. Perera, Q.C., with *M. Tiruchelvam, Q.C.*, *M. L. de Silva*, *T. Devarajah*, *U. B. Weerasekera*, and *A. Wijesekera*, for the petitioner.

H. W. Jayewardene, Q.C., with *D. S. Wijewardene* and *Ranjit Dheeraratne*, for the respondents.

Cur. adv. vult.

November 20, 1961. T. S. FERNANDO, J.—

The Vidyodaya University and the Vidyalankara University Act, No. 45 of 1958, which became law on December 19, 1958, provided for the establishment, inter alia, of a University called the Vidyodaya University of Ceylon. Part III of that Act relates to the constitution of the University Authorities, and section 13 thereof declares that the Authorities of the University shall be the Court, the Council, the Senate, the Faculties, the General Board of Studies and Research, and such other bodies as may be prescribed by Statute as authorities of the University. Section 17 (2) describes the persons who shall constitute the membership of the Council, while by section 17 (1) the University Council is declared to be the executive body of the University. The 2nd to the 20th respondents to the application before me were the members of the Council at all times relevant thereto. The 1st respondent is the Council itself.

Section 31 of the Act provides that the appointment of a Professor or Lecturer in the University shall be made by the Council. The petitioner claims that on May 15, 1959, he was appointed by the Council as Lecturer, Grade I, and as Head of the Department of Economics. He claims further that on October 1, 1960, he was promoted as Professor and Head of the Department of Economics and Business Administration. He relies on two documents, " A " and " B " attached to his petition as evidencing his appointment. These documents are reproduced below :

Document " A "

VIDYODAYA UNIVERSITY OF CEYLON

Colombo 10,
1st September, 1960.

Linus Silva, Esq.,
Head of the Dept. of Economics,
Colombo.

POST OF PROFESSOR AND HEAD OF THE DEPT. OF ECONOMICS AND BUSINESS ADMINISTRATION

In pursuance of the decision of the Council to establish a Dept. of Business Administration in order to widen the scope of the Dept. of Economics, I am pleased to promote you to the Post of Professor and Head of the Depts. of Economics and Business Administration with effect from 1st October, 1960. The salary scale attached to the post is Rs. 15,000 4 of Rs. 600 and 4 of Rs. 900, Rs. 21,000. You will be entitled to cost of living, special living, and rent allowances according to Government Rates. You will continue to be a contributor to the University Provident Fund.

This promotion is, however, subject to the passage of the University Budget for 1960-61.

Please acknowledge receipt of this letter. I shall be glad if you will please undertake the reorganisation of the Departments immediately so that the two Departments will commence academic work for the beginning of the Third Academic Year.

Sgd. Dharmasastronnatikami,
Vice-Chancellor.

Document " B "

Room 250, Bank of Ceylon Building,
Colombo 1,
2.9.60.

The Ven. Vice-Chancellor,
Vidyodaya University of Ceylon,
Maligakanda,
Colombo 10.

Ven'ble Sir,

POST OF PROFESSOR AND HEAD OF THE DEPT. OF ECONOMICS AND BUSINESS ADMINISTRATION

I acknowledge with thanks your favour of the 1st September, 1960. and I am pleased to accept the above appointment with effect from 1st October, 1960.

Yours faithfully,

Sgd. Linus Silva,
Head of the Department of Economics.

The Vice-Chancellor, the 2nd respondent, who has signed document " A " is by virtue of section 11 (3) of the Act Chairman of the Council. It is his statutory duty to convene all meetings of the Council, to secure that the provisions of the Act and of the Statutes, Regulations and Rules are duly observed, to give effect to the decisions of the Council regarding the appointment, dismissal or suspension of the officers and teachers of the University and to exercise general supervision over the educational arrangements of the University.

It is not disputed that after the letters " A " and " B " had passed between the 2nd respondent and the petitioner the latter did function as Professor and Head of the Department of Economics and Business Administration. On July 4, 1961, the 2nd respondent, as Vice-Chancellor addressed the letter " E " to the petitioner informing him that the Council

at a meeting held that day had unanimously resolved to terminate his appointment in the University as from that day. That letter is reproduced below :—

Document " E "

VIDYODAYA UNIVERSITY OF CEYLON,
Colombo 10,
4th July, 1961.

Mr. Linus Silva,
P. O. Box 1342,
Colombo 1.

Dear Sir,

Termination of Appointment

You are hereby informed that the Council at its meeting held on the 4th of July, 1961, has unanimously resolved to terminate your appointment in the University as from today.

The Council has also decided to pay a sum equivalent to three months' salary less whatever amounts are due from you. The total now due is Rs. 1,151·15, as shown in the Schedule hereunder.

I am hereby conveying to you the decision of the Council. I enclose the cheque No. D/9 207613 for Rs. 3,346·15 (Three thousand three hundred and forty-six Rupees and Cents Fifteen only) ; being the balance due to you in terms of the decision of the Council.

Any books, answer scripts or other property of the University now in your custody should be returned by you.

(Sgd.) Dharmasastronnatikami,
Vice-Chancellor.

Schedule referred to :—

	Rs.	*c.*
Allowance as Head of Department overpaid since appointment as Professor, October, 1960 to June, 1961 ..	900	0
Cost of Telegrams, paid from Petty Cash	5	65
Due on account of sale of Publications	10	0
Lectures delivered by Mr. K. T. R. de Silva in February, 1961	235	50
Total due ..	1,151	15

The petitioner contends that in terminating his appointment the respondents have acted wrongfully and unlawfully and also in violation of the rules of natural justice by not making the petitioner aware of the nature of the accusations against him and also by not affording him an opportunity of being heard in his defence. 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 " 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. He contended however that the violation of natural justice, the non-observance of the *audi alteram partem* rule, is irrelevant in the present case where the respondents in dismissing the petitioner were acting not in a judicial or quasi-judicial capacity but purely in an administrative capacity. He submitted, for that reason, that their action was not liable to be canvassed by way of *certiorari.* Learned counsel for the petitioner, while not disputing that in deciding whether the petitioner was unfit to be a teacher of the University the Council acts in an administrative capacity, argued that in making that administrative decision as to unfitness the relevant law required the Council to ascertain the existence of certain facts objectively, and that in the ascertainment of these facts the Council was required to act judicially. It can hardly be doubted that, if in the process of arriving at a decision as to unfitness of the petitioner to remain as a teacher the Council is throughout acting in an administrative capacity, there is no room for the requirement of the observance of the rules of natural justice. The application therefore turns on the question whether at any stage in arriving at the administrative or subjective decision as to unfitness the Council is required to consider certain matters judicially. If so, the Council would be amenable to *certiorari.* If not, this application must fail.

The general principle which forms the basis of the jurisdiction of this Court to grant the remedy of *certiorari* is best stated in the oft-quoted words of Atkin L. J. in *Rex v. Electricity Commissioners ; Ex-parte London Electricity Joint Committee* [1]:—

> " But the operation of the writs (of prohibition and *certiorari*) has extended to control the proceedings of bodies which do not claim to be and would not be recognised as courts of justice. Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

Before a body of persons may be made amenable to this remedy, it has to be shown not only that such body has legal authority to determine questions affecting the rights of subjects but it must also be shown that the body is required to act judicially. Where these two conditions can be shown to exist, the legal authority of the body attracts to itself the duty

[1] *(1924) 1 K. B. at 205.*

to observe the rules of natural justice and a non-observance thereof constitutes one method of exceeding its jurisdiction. That the Council of the University has legal authority to determine questions affecting the rights of subjects is undeniable. Is it required to act judicially in determining such questions ?

The circumstances in which a person or body of persons is required to act judicially came to be examined by the Queen's Bench Division in *R. v. Manchester Legal Aid Committee* [1] where Parker J. (as he then was) reading the judgment of the Court stated :—

> " The true view, as it seems to us, is that the duty to act judicially may arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to attempt to define exhaustively. Where the decision is that of a court then, unless, as in a case, for instance, of justices granting excise licences, it is acting in a purely ministerial capacity, it is clearly under a duty to act judicially. When on the other hand, the decision is that of an administrative body and is actuated in whole or in part by questions of policy, *the duty to act judicially may arise in the course of arriving at the decision.* Thus, if, in order to arrive at the decision, the body concerned has to consider proposals and objections and consider evidence, then there is a duty to act judicially in the course of that inquiry. "

Again, in relation to a matter to which I shall advert later, at page 490 :—

> " If, on the other hand, an administrative body in arriving at its decision at no stage has before it any form of *lis* and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially : compare *Franklin v. Minister of Town and Country Planning*[2]. "

The relevant section—section 18—of the Vidyodaya University and the Vidyalankara University Act, No. 45 of 1958, empowers the Council " 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. " Whether the extent of the incapacity or misconduct reaches that stage at which the required majority of the members of the Court considers the officer or teacher in question unfit is a question to be determined solely by the members of the Council in their discretion. But whether incapacity or misconduct is established—whatever be its extent—appears to me no more than the ascertainment of an objective fact.

It is submitted on behalf of the petitioner that he was (and in law still is) a teacher of the University within the meaning of the expression " teacher " appearing in the interpretation section 61 of the Act. He was employed and paid by the University, although in accordance with the procedure laid down by Statute (section 31) he is appointed by the Council which is but one of the authorities of the University. The

[1] *(1952) 1 A. E. R. 480 at 489.* [2] *(1947) 2 A. E. R. at 289.*

submission that the petitioner was a teacher is disputed by the respondents, but for reasons which will be indicated by me later in connection with another argument on behalf of the respondents I am satisfied that the submission is well founded.

The question whether the Council is at any stage of the decision as to unfitness required to act judicially must ultimately rest on the construction of the relevant words of the Statute reproduced by me above, but, however considered, 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 the members of the Council are constituted the judges both of their existence and of their sufficiency. Mr. Perera referred me to certain observations made by Lord Cohen in the course of the opinion he delivered in the House of Lords in *Vine v. National Dock Labour Board* [1], a case in which also the question arose whether in exercising a particular power conferred by virtue of a statute a certain body was acting in an administrative as opposed to a judicial capacity. In reaching a conclusion that the body concerned in that particular case was acting in a judicial capacity that learned judge, in stating one of his reasons for that conclusion, observed :—

> " The significant language is, I think, as follows :—(*a*) In cl. 15 (1) and (2) the words ' without adequate cause '. The determination of whether there is adequate cause seems essentially a proper matter for decision judicially. "

In the case of *De Verteuil v. Knaggs* [2], where power was given in an ordinance to the Governor of Trinidad " on sufficient ground shown to his satisfaction " to transfer the indenture of immigrants from one employer to another, the Privy Council expressed the opinion that although no special form of procedure was prescribed there was, apart from special circumstances, a duty of giving to any person against whom a complaint was made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.

Certain local cases also bear on the question that calls for decision on the present application. The situation that must arise when the University Council is considering an exercise of the power of suspension or dismissal is not in essence different from the situation in which a Minister is placed in exercising his powers of dissolution of a Council or removal of a Chairman or members of a local authority under either section 197 of the Town Councils Ordinance, No. 3 of 1946, or section 61 of the Village Communities Ordinance. The relevant words of the sections in these Ordinances were :—

> " If at any time the Minister is satisfied that there is sufficient proof of . . . . ., the Minister may . . . . by Order published in the *Gazette*, remove the Chairman from office. "

[1] *(1956) 3 A. E. R. at 947.*

[2] *(1918) A. C. at 557.*

As Gunasekara J., in *Subramaniam v. Minister of Local Government and Cultural Affairs* [1], in rejecting an argument that because in the exercise of his discretion to make an Order under the provision of law referred to above the Minister may take into account considerations of policy and expediency and therefore *certiorari* does not lie to review such an Order stated, "before the Minister can make an Order in the exercise of his discretion he must decide on evidence whether there is proof of the necessary facts, and at that stage he has a duty to act judicially ". Then again, in the case of *The University of Ceylon v. Fernando*[2] where the expression that came on for interpretation was " where the Vice-Chancellor is satisfied that any candidate for an examination has acquired knowledge of the nature or substance of any question or the content of any paper before the date and time of the examination, or has attempted or conspired to obtain such knowledge, the Vice-Chancellor may suspend the candidate . . . ", the Supreme Court, reversing the view taken by the District Judge, held that the Vice-Chancellor's functions were not administrative but quasi-judicial. At the appeal taken to the Privy Council from the decision of the Supreme Court, the appellant's counsel disclaimed the contention that the Vice-Chancellor's functions under clause 8 were administrative and not quasi-judicial. In *Sugathadasa v. Jayasinghe and The Minister of Local Government*[3] , where three judges of this Court were called upon to decide whether, in exercising his powers of dissolution of a Municipal Council, the Minister under section 277 (1) of the Municipal Council Ordinance, No. 29 of 1947, was required to act judicially or quasi-judicially, the Court observed that " the ultimate test is, what did the legislature really intend by the language used. It may be stated as a general rule that words such as " where it appears to . . . . ", or " if it appears to the satisfaction of . . . . ", or " if the . . . . considers it expedient that . . . . ", or " if the . . . . is satisfied that . . . . " standing by themselves without other words or circumstances of qualification, exclude a duty to act judicially ". In the case before me the power of the Council to determine the unfitness of an officer or teacher is qualified by the words " on the grounds of incapacity or conduct " and, it seems to me, that the power can be exercised only where incapacity or misconduct exists whatever be the extent of that incapacity or misconduct. Therefore, although the Council is the judge of the extent of the incapacity or misconduct, in deciding whether incapacity or misconduct exists the Council is required to act not administratively, but judicially.

Mr. Jayewardene, for the respondents, sought to find principally in certain observations of Canekeratne, J. in *Suriyawansa v. The Local Government Service Commission* [4] as well as in the opinion of the Board

[1] *(1957) 59 N. L. R. 254 at 260.*
[2] *(1960) 61 N. L. R. 505 at 512.*
[3] *(1958) 59 N. L. R. 457 at 471.*
[4] *(1947) 48 N. L. R. at 438.*

of the Judicial Committee of the Privy Council in *Nakkuda Ali v. Jayaratne* [1] support for his contention that the respondents were throughout acting in an administrative capacity and nothing more. There is point in Mr. Perera's suggestion that the observations of Canekeratne J. went beyond the necessities of that particular case, and it must not be overlooked that the correctness of the view taken in *Suriyawansa's* case (supra) was doubted by Nagalingam J. in the case of *Abeyagunasekera v. Local Government Service Commission* [2], although the observations of Nagalingam J. in the case last-mentioned were themselves *obiter*. The decision in *Nakkuda Ali's* case (supra) has itself been the subject of no little controversy, but it is necessary to remember that the decision followed the view expressed by Their Lordships that when the Controller is cancelling a licence he is not determining a question, but is taking executive action to withdraw a privilege because he believes and has reasonable grounds to believe that the holder is unfit to retain it. These cases are not, in my opinion, of real assistance in the actual controversy that arises on the present application. Nor do I think that two other cases—English cases—cited by Mr. Jayewardene assist in the determination of the question whether the Council was throughout acting administratively. They were relied on for the proposition that where disciplinary action is taken against a person, the validity of the action cannot be questioned by way of *certiorari*. In *R. v. Metropolitan Police Commissioner, ex-parte Parker* [3], which relates to the case of a cab driver who had his licence revoked by the proper police authority, the decision appears to me to have rested—as is seen in the judgment of Donovan J. at page 721—on the ground that the revocation of a licence is a purely administrative act. In the other case relied on, *ex parte Fry* [4], a writ of *certiorari* had been applied for to quash an order of a caution to be administered to a person in the service of a fire-brigade. There Lord Goddard C.J. in the Queen's Bench Division stated that it seemed to him impossible to say where a chief officer of a force which is governed by discipline, as is a fire-brigade, is exercising disciplinary authority over a member of the force, that he is acting judicially or quasi-judicially. While it is not easy to find an analogy between the case of a dismissal of a University professor on grounds of incapacity or misconduct and that of a caution administered to a member of a fire-brigade service merely because both are in a sense examples of disciplinary action, it is necessary to remember that in the Court of Appeal Singleton L. J., with whom two other judges agreed, decided against the issue of a writ of certiorari not on the ground that the writ does not lie, but that the remedy is discretionary and should not be granted in the particular case.

I should now revert to the question to which I have made some reference earlier, viz., the existence at some stage of a *lis* before the Council which attracts to it the duty on the part of the Council to act judicially. Where the administrative process and the quasi-judicial process are so

[1] *(1950) 51 N. L. R. 457.*

[2] *(1949) 51 N. L. R. 8.*

[3] *(1953) 2 A. E. R. at 717.*

[4] *(1954) 2 A. E. R. at 118.*

intermingled that the product is, as one eminent English judge has stated, a hybrid operation, it may not be easy to make a strict demarcation of the points at which the administrative process is stayed, the judicial process is brought on, and thereafter the administrative process is resumed ; it is nevertheless not difficult to envisage at the stage of deciding the existence of incapacity or misconduct the arising of a process in the nature of a prosecution or proposition which requires for its consideration something in the nature of a defence or a refutation or negation thereof. If *lis* in this context is to be given the very strict and technical meaning it bears in court litigation, it will be difficult to discover the existence of such a *lis* in the processes considered in the cases of (1) *R. v. Postmaster-General ; ex parte Carmichael* [1] and (2) *R. v. Boycott ; ex parte Kennedy* [2], cases dealing with the issue of medical certificates, in both of which the process was held to be in the nature of a judicial act. Whatever name be given to the process, the operation involved cannot be performed without a consideration of matters not only in support of the proposition but also of those against it. The latter cannot properly be considered without an opportunity being afforded for their presentation.

For the reasons which I have endeavoured to set out above, I am of opinion that the Council was under a duty to act judicially at the stage of ascertaining objectively the facts as to incapacity or misconduct. The non-observance of the rules of natural justice being admitted by the respondents in this case, the petitioner is, in my opinion, entitled to a grant of a mandate in the nature of a writ of certiorari to quash the order of discontinuance of his services as a teacher, subject however to a consideration of other objections raised on behalf of the respondents to such a grant. I shall therefore now address myself to these other objections. These objections were three-fold in character :—(*a*) that the petitioner must in law be considered to have been appointed under the power vested in the Council by clause (*f*) of section 18 of the Act, (*b*) that the petitioner has by his conduct acquiesced in the order of discontinuance of his services and is therefore not entitled to the remedy sought, and (*c*) that this remedy is not available where other remedies can be shown to be available.

In regard to the first objection, my attention has been drawn to section 33 of the Act which requires every appointment of a teacher to be upon agreement in writing between the University and the teacher. If the process of suspension or dismissal of a teacher can be said to attract at some stage the duty to act judicially (section 18 (*e*)), it has been contended that no such duty arises in the case of suspension or dismissal of persons in the employ of the University other than officers or teachers (section 18 (*f*)). The distinction between clauses (*e*) and (*f*) in section 18 is itself significant as indicative of a distinction in rank or status between officers and teachers as defined in section 61 and ordinary employees. In the case of the latter suspension or dismissal can be

[1] *(1928) 1 K. B. at 291.* [2] *(1939) 2 K. B. at 651.*

effected presumbly on any ground, while in the case of the former that can be done only on grounds of incapacity or misconduct. On behalf of the respondents it has been submitted that there is a special form of agreement teachers are required to enter into and that the petitioner has failed and neglected to sign that form of agreement. The petitioner denies knowledge of any request made to him by the University authorities to sign such a form of agreement. It is unnecessary for me to decide between the parties on the question of the request to sign the special form of agreement because, in my opinion, not only is there in existence a sufficient agreement in writing in relation to the appointment of the petitioner, but also I am satisfied that the respondents cannot, having regard to their conduct, now be heard to say that the petitioner was dismissed by virtue of the power vested in the Council by clause (*f*) of section 18. Documents "A" and "B" reproduced earlier in this judgment provide in this case, in my opinion, a sufficient agreement within the meaning of section 33. Not only is it not denied that the petitioner has in fact functioned as Professor and Head of a Faculty in the University after " A " and " B " passed between the Vice-Chancellor and the petitioner, it is also quite apparent from the Council's own reply to certain members of the Tutorial Staff of the Faculty concerned that the Council itself considered that action was taken in this case in terms of clause (e) of section 18. This reply which is the document " G " attached to the petitioner's affidavit is reproduced below, and the statement contained therein that " the termination of services of Mr. Linus Silva was decided upon in terms of section 18E of the University Act on adequate evidence placed before it " is itself revealing in regard to the process followed, viz., the hearing of evidence placed before the Council and a consideration of its adequacy, a process during which a *lis* in the sense indicated earlier had, in my opinion, arisen.

Document " G "

VIDYODAYA UNIVERSITY OF CEYLON,
Colombo 10.
July 13th, 1961.

Dr. W. M. Tilakaratne,
Central Bank of Ceylon,
Colombo.

Dear Sir,

The Council at its meeting on 12/7/61 considered your letters of the 6/7/61 and of 11/7/61,

I am directed by the Council to inform you that the termination of the services of Mr. Linus Silva was decided upon in terms of Section 18E of the University Act on adequate evidence placed before it. The Council therefore regrets its inability to vary its decisions.

With regard to Prof. Mukerji, the Council unanimously decided to request Prof. Mukerji to reconsider his decision. A copy of a letter addressed to him is annexed for your information.

I shall be thankful if you will bring this letter to the notice of the other signatories.

Dharmasastronnatikami,
Vice-Chancellor.

The first objection must therefore fail.

In regard to the second objection, it was argued that the petitioner has accepted the balance salary due to him as computed in the manner indicated in letter " E " of 4th July, 1961, and has therefore acquiesced in the termination of his services. It is pointed out that the cheque for Rs. 3,346/15 sent to him with that letter has been credited by the petitioner to his bank account. I am unable to see any substance in this objection where the petitioner claims his services have been terminated otherwise than as provided by law. Where his position is that he is still lawfully in the service of the University, he is quite entitled to utilize the salary paid to him.

The third objection is that the remedy by way of *certiorari* is not available where other remedies are open to the petitioner and it has not been shown that he has availed himself of these. It is contended that the relationship between the University and the petitioner was that between employer and employee and that therefore he must seek his remedy at common law which is an action for damages for wrongful dismissal. Mr. Perera's reply to this contention was that it is not open to the petitioner to obtain a reinstatement in service by recourse to the common law remedy which is confined to an award of damages. I agree with Mr. Perera's submission that to disentitle a petitioner to the remedy by *certiorari* the alternative remedy must be an adequate remedy. If a person can establish that he has been wrongfully dismissed there may well be many cases where damages can never form an adequate remedy. Morever, as Gratiaen J. pointed out in *Sirisena v. Kotawera-Udagama Co-operative Stores Ltd.* [1], the alternative remedy rule is not a rigid one. In regard to this third objection to the granting of this application, Mr. Perera relied strongly on the House of Lords decision in *Vine v. National Dock Labour Board* (*supra*) which dealt with the question whether damages were an adequate remedy in the case of the dismissal of a dock worker registered in the reserve pool by the National Dock Labour Board under a scheme set up by a Statutory

[1] *(1949) 51 N. L. R. 263.*

Order. The dismissed worker claimed damages for wrongful dismissal and a declaration that his purported dismissal was illegal, ultra vires and invalid. The Queen's Bench Division granted him damages and the declaration, but on an appeal by the National Board to the Court of Appeal the declaration was struck out. On the worker taking an appeal to the House of Lords, the House, while observing that the granting of a declaration was discretionary, nevertheless granted it because Their Lordships were of opinion that the award of damages in that case was not an adequate remedy. In the course of his opinion expressed in that case Lord Keith observed that the relationship between the National Board and the worker in that case was not a straightforward relationship of master and servant, and Mr. Perera argued that in the case of the petitioner too it was not the ordinary relationship between employer and employee. I do not feel called upon to discuss this matter at any length as I am satisfied that in the case of a dismissal of a person in the situation of the petitioner the common law remedy is not an adequate remedy.

Mr. Jayewardene, however, has contended that, apart from the common law remedy, it is open to the petitioner to take his grievance to a Labour Tribunal established under section 31A of the Industrial Disputes Act, No. 43 of 1950, as amended by the (Amendment) Act, No. 62 of 1957. Under section 31B of that Act, it is open to a workman to make an application to a Labour Tribunal for relief or redress in respect of the termination of his services and it is not doubted that the Labour Tribunal has a power to order reinstatement of a workman. Mr. Jayewardene contended that the definition of " workman " in the Industrial Disputes Act is wide enough to cover the case of the petitioner, while Mr. Perera argued that the workmen contemplated in the Act were persons under a contract of service as opposed to a contract for services. It is unnecessary to decide that question here because, even if it is assumed that the petitioner is a workman within the meaning of that Act, I am satisfied that the remedy by way of an application to a Labour Tribunal with its procedure of appeal to this Court is not as convenient, speedy and effective a remedy as that which the petitioner has already invoked — see *R v. Wandsworth Justices* [1]. If I may adopt respectfully the language of Humphreys J. in that case, substituting " dismissal " for " conviction ", " I think that the appellant is perfectly entitled to come to this Court and say, upon precedent and authority, 'I was dismissed as the result of a denial of justice, and I ask for justice, which can only be done by the quashing of that order '."

[1] *(1942) 1 A. E. R. 56.*

Lastly, interference by way of *certiorari* being a discretionary remedy, should it be granted in this case ? In *R v. Manchester Legal Aid Committee* (*supra*), the Court granted the writ *ex debito justitiae* because the applicant was a person aggrieved. The principle to be followed is that indicated by Blackburn J. in *The Queen v. Justices of Surrey* [1] which is that where the applicant has by reason of his local situation a peculiar grievance of his own, and is not merely applying as one of the public, he is entitled to the writ *ex debito justitiae.*

All the objections to the application for interference by way of *certiorari* therefore fail, and the order of discontinuance calls to be quashed. There remains the application for an order in the nature of a *mandamus.* Mandamus is applied for as being consequential to a quashing of the order of discontinuance. If the petitioner was wrongly discontinued, it seems to follow that he must be considered to be still a teacher at the University. Before the question of dismissal or discontinuance can be finally determined it seems but reasonable that the authorities should have a right in the nature of an interdiction of the petitioner, but on that matter as well one has to be guided by the Statute (section 18 (*e*)) where not only dismissal but even suspension is conditioned by the existence of misconduct or incapacity. The question whether the petitioner is the holder of an office of a public nature as would entitle him in the circumstances of the present case to the grant of an order by way of *mandamus* was not specifically argued before me. The fact that the petitioner has *de facto* ceased to be a teacher of the University after the service on him of the letter " E " of 4th July 1961 and that he has no actual possession of his post of Professor and Head of a Faculty may be due to the circumstance that the respondents honestly believed that their order of 4th July 1961 was lawful. Now that this Court has pronounced on the validity of this order, I have no reason to think that the respondents who are a responsible body of men will not take action that is lawful and appropriate. I do not therefore consider it essential that I should now explore here whether the petitioner is the holder of an office of a public nature. *Mandamus* is itself a discretionary remedy, and it will be sufficient for the present if I make no order in respect of the prayer relating to a *mandamus.*

The order of the University Council of 4th July 1961 terminating the petitioner's appointment as from that date is hereby quashed. The respondents are ordered to pay to the petitioner the taxed costs of this application.

Application for Certiorari allowed.

[1] *(1870) L. R. 5 Q. B. 466.*