

JINASENA
V
UNIVERSITY OF COLOMBO AND OTHERS

COURT OF APPEAL
TILAKAWARDENA, J. (P/CA) AND
WIJAYARATNE, J.
CA 1329/2000
JULY 5, AND
AUGUST 26, 2002

Writ of certiorari – Quash interdiction – Who has the power to interdict? – Issue of a charge sheet – Universities Act, No. 16 of 1978, section 34(4), 45(2), XII and 71(2) – Interpretation Ordinance, section 14 (f) – Industrial Disputes Act, section 31B – Rules of natural justice – Nemo judex in sua causa.

The petitioner was appointed as the Deputy Registrar of the 1st respondent University by the 16th respondent – U.G.C., The petitioner was interdicted by the Vice Chancellor of the University – the 2nd respondent with the approval of the University Council. A charge sheet was issued under the hand of the 2nd respondent and an Inquiry was conducted by the 17th respondent. The 2nd respondent informed the petitioner that his services were terminated by the University Council, the decision to terminate his services has been ratified by the 16th respondent U.G.C.,

The Appeal made to the University Appeals Board was refused. The petitioner contended that, the 2nd respondent misrepresented and misinformed the facts to the Council and that, the Council of the 1st respondent University had no power to interdict him as no such power has been vested with the Council.

It was further contended that under the Universities Act no power had been delegated to the 1st and 2nd respondents prior to the issuance of the charge sheet, and that the 2nd respondent had failed to obtain approval of such charge sheet from the U.G.C. on the recommendation of the Council. The petitioner also contended that, some of the witnesses at the Inquiry had participated at the meeting of the Council held to consider the report – resulting in a breach of rules of natural justice.

Held

- i) The Universities Act does not define or refer to the post of Deputy Registrar – but by necessary implication the post should be considered on par and in relation to that of the Registrar.
- ii) In terms of section 37(1) the Registrar is appointed by the Council of the University.
- iii) Accordingly the appointment to the post of Deputy Registrar should fall within the power of the U.G.C. as there is no specific provision made on the appointment of the Deputy Registrar.
- iv) In terms of section 45(2) it is the Council of the University, which has the power and authority to deal with the Deputy Registrar disciplinarily.
- v) There is no specific provision in the Universities Act or Rules or Regulations in the University Establishment Code, requiring a charge sheet to be approved by the Council of the University. When the Council decides, it is the duty and function of the 2nd respondent Vice Chancellor to give effect to such a decision. The issuance of the charge sheet is consequence to such decision of the Council.
- vi) Alleged breach of Rules of natural justice has no merit, as there were 12 others members who were present in such process of decision making. The interest the 3 witnesses had was only by reason of their official functions.

APPLICATION for a writ of certiorari.

Chula Bandara with Rashni Mendis for petitioner.

Y.J.W.Wijetilake, Deputy Solicitor-General for respondents.

Cur. adv. vult.

May 13, 2003

WIJAYARATNE, J.

This petitioner seeks to invoke the jurisdiction of this court against the several respondents named in the petition by the grant of mandates in the nature of *writs of certiorari* to quash his inter-

diction P8, Charge sheet served on him P9 and the decision to terminate his services as Deputy Registrar of the first respondent University P10.

The back drop in which the application is made is as follows. The petitioner was appointed to the post of Deputy Registrar of the respondent university by the 16th respondent University Grants Commission (UGC) by its letter of appointment marked P1. In the year 1999 the 2nd respondent issued letter of interdiction P8 to the petitioner with the approval of the University Council effective from 10.8.1999. Subsequently charge sheet P9 dated 24.8.1999 was issued to the petitioner under the hand of 2nd respondent and an inquiry into such charges was conducted by the 17th respondent which commenced on 30.10.1999 and concluded after 31 days of inquiry. On 19.9.2000 the 2nd respondent Vice Chancellor by letter marked P10 informed the petitioner that his services as Deputy Registrar, had been terminated by the University Council with immediate effect and the decision to terminate his services has been ratified by the UGC the 16th respondent.

The petitioner alleges that the 2nd respondent Vice Chancellor misrepresented and misinformed the facts to the Council of the university in order to obtain a decision to place him under interdiction. He also states that in terms of section 45(2) (XII) of the Universities Act, No.16 of 1978 read with section 14 (f) of the Interpretation Ordinance, the council of the first respondent university had no power to interdict him as no such power has been vested with the council. The University council of the first respondent university has acted without and/ or in excess of their authority to place him under interdiction and accordingly the said decision has no force of law and is null and void.

Similarly under section 45(2) (XII) of the Universities Act no power had been delegated to the first and second respondents prior to the issuance of the charge sheet (P9) to the petitioner. The 2nd respondent failed to obtain approval of such charge sheet from the UGC on the recommendation of the council. The charge sheet having reference to paragraph 4.1.2 of Chapter XXII of Universities Establishment Code which had no approval from the UGC had no applicability or legal authority and hence not binding on any university as the same were not published in terms of section 18 and

137 of the Universities Act. It is only used as a guide to disciplinary authority. The petitioner alleges that the 2nd respondent had no power to frame charges against him and to issue charge sheet P9. Accordingly the second respondent had acted without and / or in excess of her authority as Vice Chancellor. The charge sheet so issued has no force of law and is null and void.

The letter-dated 24.9.2000 issued by the second respondent stated that the petitioner's services had been terminated on a decision taken by the Council of the first respondent University at its 298th (special) meeting held on 11.9.2000. The petitioner takes up the position that 6th and 7th respondents who were witnesses at the inquiry into the charges, had participated at such 298th meeting of the council held to consider the report of the 17th respondent. The 11th respondent who too was listed as a witness had taken part in it. The petitioner states that it resulted in breach of rules of natural justice as witnesses who are interested in the outcome of the inquiry have joined the process of decision making too. Further the petitioner pleads that the decision of the council to terminate his services is not justified as it is against the "rule of proportionality" (not known in administrative law).

The petitioner states that his appeal to the University Appeals Board had been refused. He made application to the Labour Tribunal under and in terms of section 31 B of the Industrial Disputes Act. The petitioner seeks the intervention of this court to quash his interdiction P8, charge sheet P9 and the decision to terminate his services as Deputy Registrar P10 by *writ of certiorari*.

The respondents were given notice of the application. Some of them filed their appearances. The second respondent filed her affidavit. She admitted some of the averments but denied various allegations and refuted that she or the council acted without authority. The contentions raised during the argument were whether the second respondent acted without proper authority in the issuance of the charge sheet P9 and whether the council of the first respondent university could have taken a decision to terminate petitioner's services with legal authority when the appointing authority of the petitioner is the UGC. In terms of section 71 (2) of the Universities Act. In short *vires* of the decisions to interdict, charge sheet and terminate is being canvassed. In addition breach of rules of natural jus-

tice on the doctrine of *nemo judex in sua causa* too is urged by the petitioner. The respondents contested the right of the petitioner to seek redress by way of *writs of certiorari* after having invoked the jurisdiction of other forum for alternative remedy. 80

What comes up for consideration by this court thus are,

- a) was the charge sheet approved by the relevant authority
- b) was there breach of rules of natural justice affecting legality of the decision to terminate petitioner's services.

The consequential issue then be is whether the interdiction, charge sheet and the decision to terminate petitioner's services are amenable to *writ of certiorari* to quash the same. The next question would be whether the petitioner who already had had recourse to alternative remedy, has the right to obtain redress by way of writ of certiorari, a discretionary remedy granted by this court. 90

It is pertinent in the present context to determine whom the disciplinary authority of the petitioner in his substantive post of Deputy Registrar of the first respondent university. The post of Deputy Registrar is not a statutory post in terms of the Universities Act, No. 16 of 1978. However his letter of appointment P1 states that the appointment is made "*in pursuance of the powers vested in the UGC in terms of section 71 (2) of the Universities Act.*" There is no dispute that the post of Deputy Registrar is in the category of senior administrative officer. The Universities Act does not define or refer to the post of Deputy Registrar, but by necessary implication the post should be considered on par and in relation to that of the Registrar of the university. 100

In terms of section 37(1) of the Universities Act, 'the Registrar of the University' shall be appointed by the council of the university. Section 71(2) of the act provide;

The commission shall in accordance with the scheme of recruitment and the procedures for the appointment prescribe by Ordinance, make the following appointments to the staff of a Higher Educational institution – 110

- (1) appointment to a post of officer, **except** where other provision has been specifically made under this act in respect of that post.

Accordingly the appointment to the post of Deputy Registrar should fall within the powers of the UGC as there is no specific provisions made on the appointment of the Deputy Registrar.

However the provisions of section 45(2) (xii) dealing with the powers, functions and duties of the council need examination

Section 45(2) reads;

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“Without prejudice to the generality of powers conferred upon it by sub section (1) the council shall exercise, perform and discharge the following powers, duties and functions:-

(xii) to appoint persons to, and to suspend, dismiss or otherwise punish persons in the employment of the University.

Provided that, except in the case of officers and teachers these powers may be delegated to the Vice Chancellor.

In terms of the above provisions it is the council of the university, which has the power and authority to deal with the Deputy Registrar disciplinarily. Accordingly the interdiction, charge sheeting, and termination of the services of the petitioner as the Deputy Registrar is within lawful authority of the council of the University.

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With regard to the charge sheet being issued by the second respondent there is no specific provisions of the Universities Act or rules and regulations in the University Establishment Code requiring a charge sheet to be approved by the council of the University. The learned counsel for the petitioner does not cite such provisions either.

On the contrary section 34(4) of the Universities Act state:

(4) Subject to the provisions of this act, it shall be the duty of the Vice-Chancellor to give effect, or to ensure that effect is given to the decisions of the council and of the senate.

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When the council has decided to, in terms of P8 to “deal with the petitioner by way of disciplinary action”, it is the duty, and function of the Vice-Chancellor to give effect to such decision. The issuance of the charge sheet is consequent to such decision of the council of the University Only.

Rule 8.2 of the University Establishment Code, which the peti-

tioner concede is meant to provide guidance to the authorities, reads:

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8.2 If the preliminary investigations discloses a prima facie case against the suspect person, the Chairman of the Commission or the principal Executive Officer of the Higher Educational Institution/Institute as the case may be will furnish him with a statement of charges against him and call upon him to show cause why he should not be punished."

In terms of section 34 sub section (6)

"The Vice Chancellor shall be responsible for the maintenance of discipline within a university.

Consequent to the decision of the council of the first respondent University to take disciplinary action against the petitioner, in terms of the above provisions, the second respondent Vice Chancellor is required as the principal Executive-officer responsible for the maintenance of discipline within the University to issue a statement of charges. There is no requirement of such a charge sheet to be approved by the council. Accordingly the issuance of the charge sheet P9 by the second respondent is within lawful authority, powers and functions of the second respondent holding the office of the Vice Chancellor. In the light of the above provisions, I hold that P8, P9 and P10 are valid in law and cannot be the subject of *writ of certiorari* on grounds of lack of lawful authority.

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The alleged breach of rules of natural justice, when the 6th, 7th and 11th respondents who are witnesses at the inquiry participating at the 298th council meeting in the process of making the decision to terminate the services of the petitioner, in my view has no merit. The proceedings disclose that there were 12 other members who were present in such process of decision making and the decision to terminate the petitioner's services was unanimous. Whatever the interests the 6th, 7th and 11th the defendants may have as witnesses was only by reason of their office and functions thereof. It is this very office that placed them in the seats of the council. Their decision as such is not taken in their personal interests. However, there is nothing to suggest that the three respondents have in any manner influenced the decision of the rest of the members of the council. The number of other members who were

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unanimous in their decision is sufficient to take the decision they took even with the presence of the 6th, 7th and 11th respondents. I am unable to accept the suggestion that the three respondents could have swayed the decision of the twelve others in a way disadvantageous to the petitioner or but for their presence the decision of the council would have been otherwise. It is apparent that the gravity of charges and the standing of the petitioner as Deputy Registrar in the administrative set up compelled the council to take the decision with serious consequences to the petitioner. The members of the council were unanimous that the petitioner should not continue in the office of the Deputy Registrar and they have taken such decision in the interest of the University as an institution. In the result I hold that there is no breach of rules of natural justice. 190

The impugned decision to interdict, the charge sheet and the decision to terminate the services of the petitioner are not liable to be quashed on grounds of lack of authority or breach of rules of natural justice. In such event there is no question of the petitioner being entitled to the mandates of *writ of certiorari* as claimed in his application. When the petitioner is not entitled to such remedies, his invocation of the jurisdiction of other forum or having recourse to other alternative remedies need not be considered as affecting his right to invoke the jurisdiction of this court. 200

In the result the application of the petitioner is dismissed with costs fixed at Rs. 3000/-.

TILAKAWARDENA, J. (P/CA) - I agree.

Application dismissed