[IN THE PRIVY COUNCIL]

1964 *Present:* **Lord Cohen, Lord Morris of Borth-y-Gest, Lord Hodson, and Lord Guest**

UNIVERSITY COUNCIL OF THE VIDYODAYA UNIVERSITY and others, Appellants, *and* LINUS SILVA, Respondent

PRIVY COUNCIL APPEAL No. 42 OF 1962

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—*Master and servant—Wrongful dismissal—Remedy of servant—Teacher in Vidyodaya University—His status as servant of the University—Vidyodaya University and Vidyalankara University Act, No. 45 of 1958, ss. 5, 11, 13, 17, 18, 31, 32, 33, 61, 62.*

Where there is a contractual relationship of master and servant, the servant, if he is wrongfully dismissed, cannot normally, and apart from the intervention of statute, obtain an order of *certiorari*. He can only pursue a claim for damages.

The respondent held a teaching appointment as Professor and Head of the Department of Economics and Business Administration in the Vidyodaya University. At a meeting of the Council of the University (appellants) it was unanimously resolved on the 4th July 1961 to terminate his appointment. He thereupon petitioned the Supreme Court on the 8th August 1961 for writs of *certiorari* and *mandamus* to quash the order of the Council and re-instate him. He stated that one member of the Council who participated in the meeting of the Council on the 4th July was biased against him and that the decision was therefore wrongful and illegal and that the order of the Council was made " maliciously, unlawfully and for reasons extraneous to those contained in section 18 (*e*) of the Vidyodaya University and Vidyalankara University Act No. 45 of 1958 ". He further submitted that the Council in ordering his dismissal in terms of section 18 (*e*) of the Act " acted wrongfully and unlawfully and in violation of the rules of natural justice by not making me aware of the nature of the accusations against me and also by not affording me an opportunity of being heard in my defence ".

Section 18 (*e*) of the Vidyodaya University and Vidyalankara University Act No. 45 of 1958 is as follows :—" Subject to the provisions of this Act and of the Statutes, Regulations and Rules, the Council shall have and perform the following powers and duties :—to appoint officers whose appointment is not otherwise provided for, and 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, having regard to the facts concerning the respondent's appointment and having regard to the provisions of the Act, the present case was not one in which there was a failure to comply with statutory provisions enforceable by *certiorari* and *mandamus*. A " teacher " who has an appointment with the University is in the ordinary legal sense a servant of the University

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unless it be that section 18 (c) gives him some altered position. The circumstance that the University was established by statute and is regulated by the statutory enactments contained in the Act does not involve that contracts of employment which are made with teachers and which are subject to the provisions of section 18 (c) are other than ordinary contracts of master and servant. It was not open to the respondent to contend that in terminating his appointment the University Council were bound to "act judicially" and should therefore have given him an opportunity to be heard after being made aware of the grounds upon which the termination of his appointment was to be considered. In the circumstances the remedy of *certiorari* was not available to the respondent.

APPEAL from a judgment of the Supreme Court reported in (*1961*) *64 N. L. R. 104.*

Dingle Foot, Q.C., with *Dick Taverne* and *M. I. H. Haniffa*, for the appellants.

J. G. Le Quesne, Q.C., with Gerald Davies, for the respondent.

Cur. adv. vult.

November 5, 1964. [*Delivered by* LORD MORRIS OF BORTH-Y-GEST]—

In order to decide the issues which are raised in this appeal it is necessary to consider the nature of the position which the respondent held in the Vidyodaya University. He had a teaching appointment in that University. At a meeting of the Council of the University it was unanimously resolved to terminate his appointment. He thereupon petitioned the Supreme Court to grant a mandate of a writ of certiorari to quash the "order" of the Council. His petition was based upon the contention that in terminating his appointment the University Council were bound to "act judicially" and should therefore have given him an opportunity to be heard after being made aware of the grounds upon which the termination of his appointment was to be considered. The Supreme Court directed "that the order of the University Council of 4th July 1961 terminating the petitioner's appointment as from that day be quashed". On appeal from the judgment of the Supreme Court it has been submitted that the relationship between the University and the respondent was that of master and servant, and that the contract of employment was terminated by the University, and that in those circumstances it was not competent for the Supreme Court to issue a mandate of a writ of certiorari. In effect it was contended that the proceedings were entirely misconceived and that even if, contrary to the appellants' contention, the respondent had any ground of complaint it could be raised only in an action and not by seeking the remedy of certiorari.

The law is well settled that if, where there is an ordinary contractual relationship of master and servant, the master terminates the contract the servant cannot obtain an order of certiorari. If the master rightfully ends the contract there can be no complaint: if the master wrongfully ends the contract then the servant can pursue a claim for damages.

A recent statement of principle is to be found in *Ridge v. Baldwin*[1]. In his speech in that case Lord Reid at page 65 said :—

> " The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence: it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them. The present case does not fall within this class because a chief constable is not the servant of the watch committee or indeed of anyone else."

To a similar effect were the words of Viscount Kilmuir L.C. in his speech in *Vine v. National Dock Labour Board*[2]. Vine was a registered dock labourer who as such was employed under a scheme embodied in an order made under a section of the Dock Workers (Regulation of Employment) Act, 1946. He was invalidly dismissed. Because this was so his name had not been validly removed from the register of Dock Workers and he continued to be in the employ of the National Board. At page 500 Lord Kilmuir said :—

> " This is an entirely different situation from the ordinary master and servant case ; there, if the master wrongfully dismisses the servant, either summarily or by giving insufficient notice, the employment is effectively terminated, albeit in breach of contract. Here, the removal of the plaintiff's name from the register being, in law, a nullity, he continued to have the right to be treated as a registered dock worker with all the benefits which, by statute, that status conferred on him. It is therefore right that, with the background of this scheme, the court should declare his rights."

In the same case Lord Keith (at page 507) said :—

> " This is not a straightforward relationship of master and servant. Normally, and apart from the intervention of statute, there would

[1] [*1964*] *A. C. 40.*

[2] [*1957*] *A. C. 488.*

never be a nullity in terminating an ordinary contract of master and servant. Dismissal might be in breach of contract and so unlawful but could only sound in damages."

The House of Lords approved the dissenting judgment which had been given by Jenkins L.J. in the Court of Appeal. In the course of his judgment Jenkins L.J. said ([1956] 1 Q. B. at page 674)—"But in the ordinary case of master and servant the repudiation or the wrongful dismissal puts an end to the contract and the contract having been wrongfully put an end to a claim for damages arises. It is necessarily a claim for damages and nothing more. The nature of the bargain is such that it can be nothing more." See also the judgment of their Lordship's Board in *Francis v. The Municipal Councillors of Kuala Lumpur* [1].

It becomes important to consider therefore whether the respondent had any other position or status than that of an employee or servant of the University. The Vidyodaya University is a Corporation established by the Vidyodaya University and Vidyalankara University Act No. 45 of 1958 which was assented to on the 19th December 1958. The University has power (see section 5 of the Act) to institute Professorships, Lectureships and any other posts or offices which may be required and to make appointments thereto. The Vice-Chancellor (see section 11) is a whole time officer of the University and is the principal executive and academic officer of the University: he holds office for a term of five years but he may be re-appointed. The Authorities of the University (see section 13) are 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 of the Act relates to the Council. Its provisions are as follows:—

"17. (1) The University Council shall be the executive body of the University.

(2) The Council shall consist of the following persons:—

(*a*) The ex-officio members who shall be—

(i) the Vice-Chancellor,
(ii) the Director of Education, and
(iii) the Deans of the Faculties.

(*b*) Other members who shall be—

(i) three members appointed by the Chancellor,

(ii) two members elected by the Court from among its own body,

(iii) two members elected by the Senate from among its own body, and

[1] *[1962] 1 W. L. R. 1411.*

(iv) in the case of the Vidyodaya University of Ceylon five members elected by the Vidyadhara Sabha from among its own body, and in the case of the Vidyalankara University of Ceylon five members elected by the Vidyalankara Sabha from among its own body.

(3) Members of the Council other than ex-officio members shall hold office for a period of three years :

Provided that the members of the Council elected under the provisions of sub-paragraphs (ii) and (iii) of paragraph (*b*) of sub-section (2) shall retain their membership so long only within the said period of three years as they continue to be members of the body which elected them.

(4) The quorum for a meeting of the Council shall be prescribed by Statute."

Section 18 defines the powers and duties of the Council : some of these call for mention :—

" 18. Subject to the provisions of this Act and of the Statutes, Regulations and Rules, the Council shall have and perform the following powers and duties :—

. . . . . .

(*d*) after consideration of the recommendations of the Senate, and subject to ratification by the Court, but without prejudice to anything done by the Council before such ratification,—

(i) to institute, abolish, or suspend Professorships, Lectureships, and other teaching posts, and

(ii) to determine the qualifications and emoluments of teachers ;

(*e*) to appoint officers whose appointment is not otherwise provided for, and 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 ;

(*f*) to appoint, and to suspend, dismiss or otherwise punish persons in the employ of the University other than officers and teachers ; "

It is provided by section 31 that every appointment to a post of Professor or Lecturer in the University is to be made by the Council after considering the recommendation of a Board of Selection and by section 32 it is provided that every appointment to a post of teacher other than that of Professor or Lecturer is to be made by the Council after considering the recommendation of a Selection Committee.

Section 33 is in the following terms :—

"33. (1) Every appointment of a teacher, Registrar or Librarian shall be upon an agreement in writing between the Corporation and such teacher, Registrar or Librarian. Such agreement shall—

(*a*) In the case of experienced persons who have already gained distinction in their subjects, be for such period and on such terms as the Council may resolve, and

(*b*) in other cases, be for a probationary period of three years which may be extended by the Council by resolution for a further period not exceeding one year, if the Council thinks fit.

(2) In the case of agreements entered into by the Corporation under sub-section (1) (*b*), any renewal thereof upon the expiration of the probationary period shall be expressed to be and remain in force, subject to the reservations hereinafter referred to, until the teacher, Registrar or Librarian appointed thereby has completed his sixtieth year, or, if he completes his sixtieth year in the course of an academic year, until the last day of such academic year, and in any such agreement there shall be expressly reserved—

(*a*) a right for the Corporation to annul the agreement on any ground on which it shall be lawful for the Council, under the provisions of section 18 (*e*), to dismiss a teacher, Registrar or Librarian ; and

(*b*) a right for the teacher, Registrar or Librarian to terminate the agreement at any time upon three months' notice in writing to the Vice-Chancellor."

By the Interpretation Section (section 61) "officer" means the Vice-Chancellor, the Registrar, the Dean of any Faculty, the Librarian, or the holder of any office created by Statute and "teacher" includes Professor, Lecturer and any other person imparting instruction in the University and who is in receipt of an annual salary, or, in the case of a Bhikku, an allowance.

The first Vice-Chancellor of the University had power (see section 62) to make such appointments as he might think necessary for the purpose of bringing the University into being and for such purpose to exercise any power which the Act conferred on any Authority of the University.

Pursuant to this power the Vice-Chancellor by letter dated the 15th May 1959 appointed the respondent to "the post of Lecturer Grade I in the Department of Economics". The letter was in the following terms :—

"15th May 1959.

Linus de Silva, Esqre.,

Dear Sir,

Post of Lecturer—
Department of Economics

With reference to the discussion you had with my Administrative Assistant, I am pleased to appoint you to the post of Lecturer Grade I in the Department of Economics of this University. You will continue to be the Head of the Department and will represent it at the various University bodies.

The scale of salary attached to the post is Rs. 8,880/- to Rs. 13,200/-.

Please acknowledge receipt of this letter.

Dharmasastronnatikami,
Vice-Chancellor."

On the 1st September 1960 the Vice-Chancellor wrote to the respondent in the following terms :—

"Vidyodaya University of Ceylon,
Colombo 10.
1st Sept., 1960.

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

Post of Professor and Head of the
Dept. of Economics & 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 Dept. of Economics and Business Administration with effect from the 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 from the beginning of the Third Academic Year.

Sgd. Dharmasastronnatikami,
Vice-Chancellor."

By letter dated the 2nd September 1960 the respondent accepted the appointment.

On the 4th July 1961 the Vice-Chancellor sent a letter to the respondent terminating his appointment. The letter was in the following terms :—

" 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 to-day.

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, Oct. '60 to June '61 ..	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 Feb. 1961	235	50
Total Due ..	1,151	15 "

The respondent thereupon made application to the Supreme Court of Ceylon by Petition dated the 8th August 1961. He sought mandates in the nature of writs of certiorari and mandamus to quash the order of the Council and to direct the members of the Council (whom he made

respondents to his Petition) to recognise him as Professor and Head of the Department of Economics and Business Administration. In his Petition and in his Affidavit he stated that one member of the Council who was present at and participated in the meeting of the Council of the 4th July was biased against him and that the decision was therefore wrongful and illegal and that the order of the Council was made " maliciously, unlawfully and for reasons extraneous to those contained in section 18E " of the Act. He further submitted that the Council in ordering his dismissal in terms of section 18E of the Act " acted wrongfully and unlawfully and in violation of the rules of natural justice by not making me aware of the nature of the accusations against me and also by not affording me an opportunity of being heard in my defence ."

In the statement of objections of the members of the Council it was submitted that the application was misconceived in that the Council was not a judicial or quasi-judicial body but was the executive body responsible for the administration of the University which did not maintain a record and did not make orders capable of being reviewed or questioned by means of a writ of certiorari and that a decision to terminate an employment could not be reviewed by way of certiorari. It was further submitted that it was not a fit case for the exercise of a discretion to grant either certiorari or mandamus.

In an Affidavit of the Vice-Chancellor it was stated that there was a form of agreement for use on the appointment of teachers in the University and it was stated that the respondent had been given a draft agreement in the usual form in order that he should sign it but that he had failed and neglected to sign it. The paragraphs in the form of agreement included the following :—

" 3. The Professor agrees diligently and faithfully to perform such duties as the Vidyodaya University may require him to undertake in accordance with the Act and the Statutes, Acts and Regulations made thereunder and shall obey the lawful orders of the Vice-Chancellor."

" 4. (i) The Professor may terminate this agreement by giving to the Vice-Chancellor three months' notice in writing ending at the end of a term.

(ii) If the Professor terminates this agreement otherwise than in accordance with this agreement, the Vidyodaya University may not be bound to pay to him any salary to which he would otherwise have become entitled.

5. The appointment shall continue subject to this agreeement until the end of the session after the Professor completes his fifty-fifth year but may by resolution of Council be extended for a further period until the Professor attains his sixtieth year.

6. The Vidyodaya University may annul this agreement on any ground on which it may be lawful for the Council, under the provisions of Section 18 of the Act to dismiss a teacher provided that the terms of that paragraph are complied with.

7. The Professor shall, as long as he is employed by the Vidyodaya University and has not completed his fifty-fifth year contribute to the Vidyodaya University Provident Fund in accordance with Part VIII of the Act."

In an Affidavit in reply the respondent denied that any draft agreement was sent to him and stated his belief that no form of agreement was in existence at any material time.

At their meeting on the 4th July the Council had before them a memorandum prepared by the Registrar and also various other documents but it is common ground that the respondent was not shown these and was not told the nature of the accusations against him and was not given an opportunity of being heard in his own defence. In a joint Affidavit it was stated by a number of members of the Council who were present on the 4th July that they were satisfied that the respondent's conduct was such that he was unfit to continue in the employment of the University and that they were satisfied that the best interests of the University would be served by the termination of the respondent's appointment. They emphatically denied that their action was in any way actuated by malice or that it was not within the powers and duties imposed by section 18 (*e*) of the Act.

Their Lordships have in no way been concerned to consider the matters referred to in the various Affidavits in reference to the conduct of the respondent. The sole issue raised in the appeal is whether it was appropriate and competent for the Court to issue a mandate in the nature of a writ of certiorari. In the Supreme Court the appellants submitted that even if it were competent for the Court to proceed to quash the " order " of the University Council there were various reasons why the Court should not so proceed. Thus for example it was submitted that the appellant had acquiesced in the discontinuance of his services. The submissions here referred to were however not advanced before their Lordships' Board.

On behalf of the respondent it has not at any time been suggested that less than two-thirds of the members of the Council concurred in the decision reached.

In his judgment in the Supreme Court the learned Judge (T. S. Fernando J.) recorded that learned Counsel appearing for the appellants admitted that the respondent was not informed of the accusations against him and was not afforded any opportunity of defending himself against them but had contended that those circumstances were of no relevance because the Council were not acting in a judicial or quasi judicial capacity but purely in an administrative capacity. The learned Judge said :—

" 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."

After referring to various authorities the learned Judge came to the conclusion that the Council was " under a duty to act judicially at the stage of ascertaining objectively the facts as to incapacity or misconduct " and that as they had not acted judicially (in the sense of giving a hearing after notifying the grounds of complaint) the respondent was entitled to succeed. The sole issue involved in the appeal is whether there was as a matter of obligation a duty in the Council to give the respondent an opportunity to be heard and a duty to do all that in law is denoted by the words " act judicially ".

Certain of the authorities referred to by the learned Judge were cases dealing with other relationships than that of master and servant and their Lordships do not find it necessary to discuss those cases in detail. Some of them were referred to in the speeches in the House of Lords in *Ridge v. Baldwin* (supra). The case of *Vine v. National Dock Labour Board* (supra) depended upon the special position of Dock Workers under the Dock Workers (Regulation of Employment) Act 1946 and the Regulations which were made. As Lord Kilmuir L.C. said there was " an entirely different situation " from the ordinary master and servant case : and as Lord Keith said there was not a " straightforward relationship " of master and servant.

Under the Dock Workers (Regulation of Employment) Order S. R. & O. 1947 No. 1189 dock workers are in the employment of the National Dock Labour Board (see Clause 8 (2) of the Scheme) but are then allocated (see Clause 4) to work for individual employers. There are however certain statutory limitations on the power of dismissal (see Clauses 16, 17 and 18 of the Scheme).

Vine was allocated work with a stevedoring company but failed to report to them. There was a complaint lodged with the National Dock Labour Board. The complaint was heard by a disciplinary committee appointed by the local dock labour board. They upheld the complaint and, purporting to act under Clause 16 of the Order, gave Vine notice to terminate his employment with the National Dock Labour Board. He appealed to a tribunal set up under the scheme. The appeal was dismissed. He then brought an action claiming damages and claiming a declaration that his purported dismissal was illegal, ultra vires and void. It was held that his dismissal was invalid inasmuch as the local

dock labour board had no power under the scheme to delegate the disciplinary powers to a disciplinary committee. The decision of the disciplinary committee was therfore a nullity. The House of Lords held that in the circumstances of the case and having regard to the background of the scheme it was proper that the Court should declare the plaintiff's rights. His name had not been validly removed from the register and he continued to be in the employ of the National Board.

In that case therefore there was a statutory scheme which gave a number of rights and imposed a number of obligations going far beyond any ordinary contract of service and, in his judgment in the Court of Appeal, Jenkins L.J., having examined the scheme said :—"In the face of thos: provisions, to my mind, it becomes plain that no analogy to this case can be found in the case of master and servant."

No case was cited to their Lordships in which an order of certiorari has been made directing the quashing of an "order" of dismissal of a servant and their Lordships do not consider that support for the respondent's contentions is to be derived from the case of *Fisher v. Jackson*[1] upon which reliance was placed. It was rather a special case. A deed of trust establishing an endowed school provided that the master of the school should be appointed by the vicars of three specified parishes and power was given to the three vicars to remove the master for certain specified causes. The plaintiff was appointed master of the school in April 1890 and in December 1890 two of the vicars served on him a notice of dismissal signed by themselves which stated certain reasons for his dismissal. No meeting of the vicars had been summoned to consider the question of the plaintiff's dismissal and he had not had any opportunity of being heard in his defence. There was no evidence that the third vicar had been consulted. The Court granted an injunction restraining the defendants from removing him from his office until after the holding of a meeting of the vicars in accordance with the terms of the Deed of Trust and until he should have had an opportunity of being heard at such meeting. That case was referred to in the House of Lords in *Ridge v. Baldwin* (supra) and was treated (see page 67) as a case where the plaintiff was the holder of an office.

In a straightforward case where a master employs a servant the latter is not regarded as the holder of an office and if the contract is terminated there are ordinarily no questions affecting status or involving property rights. It becomes necessary therefore to consider whether in the present case there are any features which suggest a relationship other than that of master and servant. It was submitted on behalf of the respondent firstly that if someone has the power to determine what the rights of an individual are to be then a duty to act judicially arises simply from the nature of the power, and secondly that where the power is a power to dismiss from an office (and it was contended that the respondent could be said to be the holder of an office) and to dismiss not at discretion but by reason of misconduct then there is a duty to act judicially. In their Lordships' opinion the first of these submissions

[1] [*1891*] *2 Ch. 84.*

is too wide and cannot be accepted. The second calls for an examination of the position which the respondent occupied having regard to the facts concerning his appointment and having regard to the provisions of the Act. It was contended that the respondent had certain statutory rights and that certiorari could be granted in order to enforce them and in order to ensure obedience to the provisions of the Act.

It appears to be common ground that the respondent did not sign the form of agreement which was referred to in his Affidavit by the Vice-Chancellor. The respondent was undoubtedly a " teacher ". Was his appointment within the scope of section 33 (1) (*a*) or was it within section 33 (1) (*b*) ? There may not be adequate evidence to enable a conclusion to be reached as to this or as to whether the appointment could have been terminated by the giving of some specific period of notice. No such notice was however given. What took place was that the respondent was dismissed in purported reliance upon the power of dismissal reposed in the Council by section 18 (*e*) of the Act. The provisions of that section make a distinction between an " officer or teacher " (see section 18 (*e*)) and " persons in the employ of the University other than officers and teachers " (see section 18 (*f*)). In regard to persons within the latter grouping the ordinary law of master and servant would apply. An officer or teacher on the other hand may be suspended or dismissed " 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." These are solemn powers with which the Council is entrusted. It may be assumed having regard to the composition of the Council that the legislature had confidence that the powers would be exercised with a full sense of responsibility and with a desire to do what was right and fair. In many situations doubtless the Council would wish, quite apart from any question as to any obligation, to give an opportunity to anyone whose capacity or conduct was in question to offer explanation or justification. It is not for their Lordships to say whether or not that course would have been desirable or helpful in the present case. The limited and rather narrow question for their Lordships is whether there was an obligation to take the course of acting judicially.

Though the groups of " officers and teachers " are both liable under and within section 18 (*e*) to be dismissed or suspended by the Council it does not follow that the relationship towards the University is the same in the case of both groups. Thus for example it may be that the Vice-Chancellor or some other " officer " is in a different position from that of a " teacher ". Their Lordships do not have to decide that question or to express any opinion in regard to it. Nor does the definition of an " officer " which is contained in section 61 necessarily and of itself bring it about that for the purposes now being considered an " officer " is not within the ordinary relationship of master and servant. It is to be observed further that there is no provision in the Act giving a right to

be heard nor any provision as to any right of appeal to any other body. The present case is not one therefore in which there has been a failure to comply with statutory provisions.

The circumstances in the present case differ from those which existed in the cases of *Suriyawansa v. The Local Government Service Commission* [1] and *Abeyagunasekera v. Local Government Service Commission* [2] and their Lordships do not find it necessary to discuss those cases; there were Rules which laid down the manner in which charges against someone in the service of the Commission were to be examined.

It seems to their Lordships that a "teacher" who has an appointment with the University is in the ordinary legal sense a servant of the University unless it be that section 18 (*e*) gives him some altered position.

The circumstance that the University was established by statute and is regulated by the statutory enactments contained in the Act does not involve that contracts of employment which are made with teachers and which are subject to the provisions of section 18 (*e*) are other than ordinary contracts of master and servant. Comparison may be made with the case of *Barber v. Manchester Regional Hospital Board* [3]. In his judgment in that case Barry J. (at p. 196) said "Here despite the strong statutory flavour attaching to the plaintiff's contract I have reached the conclusion that in essence it was an ordinary contract between master and servant and nothing more."

It may be said that if those or some of those who are "officers" of the University have a special position which takes them out of the category of employed servants, as to which matter their Lordships express no opinion, and if as a result the Council would in their case have to act judicially in exercising the power of dismissal under section 18 (*e*), it would seem strange if it were different in the case of "teachers" who are linked with "officers" in section 18 (*e*). Any difference would however only be a consequence of the application of the law to the facts. The present case depends therefore upon ascertaining the status of the respondent. He invoked a procedure which is not available where a master summarily terminates a servant's employment and for the reasons which have been expressed their Lordships do not consider that the respondent was shown to be in any special position or to be other than a servant.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be allowed and that the Order of the Supreme Court dated the 22nd November 1961 be set aside. The respondent must pay the costs before the Supreme Court and the costs of the appeal.

The respondent must have his costs of the consent petition to enable the appeal to be set down for hearing without further Orders of Revivor and there will be a set-off.

Appeal allowed.

[1] *(1947) 48 N. L. R. 433.* [2] *(1949) 51 N. L. R. 8.*
[3] *[1958] 1 W. L. R. 181.*