IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. M63/82

BETWEEN	EDWARD DENNIS	PLAINTIFF
AND	CLARENDON PARISH COUNCIL	DEFENDANT

SUIT NO. M64/82

BETWEEN	ERROL CRAWFORD	PLAINTIFF
AND	CLARENDON PARISH COUNCIL	DEFENDANT

SUIT NO. M65/82

BETWEEN	GLADSTONE CAMPBELL	PLAINTIFF
AND	CLARENDON PARISH COUNCIL	DEFENDANT

R. C. Rattray Q.C. and Miss Brenda Warren for plaintiffs.
D. Scharschmidt and Miss Yvonne Bennett for defendant.

Heard: 21st October, 11th November, 14th December, 1982; 21st July, 22nd July, 26th July, 28th July, 1983 and 18th October, 1984.

JUDGMENT

HARRISON J (AG).

The plaintiffs each sought declarations on originating summonses which were heard together.

The plaintiff Edward Dennis sought by an amended summons,

> "1. A declaration that by virtue of the provisions of the Parish Councils (Unified Service) Act, the Parish Councils Act, the Parish Councils (Clarendon) By-Laws and the laws of Jamaica, the decision of the defendant to fine the plaintiff the sum of $318.67 and to deduct this sum at the rate of $50 per fortnight from the plaintiff's salary effective December, 1981 is ultra vires, null and void.
> 2. A declaration that the plaintiff is entitled to recover from the defendant the said sum of $318.67 unlawfully deducted by the defendant from the plaintiff's wages."

The plaintiff Errol Crawford sought, by an amended summons,

> "1. A declaration that by virtue of the provisions of the Parish Councils (Unified Service) Act, the Parish Councils Act, the Parish Councils (Clarendon) By-Laws and the laws of Jamaica, the act of the Defendant in purporting to suspend the Plaintiff for a period of six weeks from his employment as a driver to the Council is ultra vires, null and void.
> 2. A declaration that the plaintiff is entitled to recover from the Defendant the sum of

$727.45 being the amount of wages due and payable to the plaintiff during the period of his purported suspension and which said sum has not been paid to the plaintiff in pursuance of the said purported suspension."

The plaintiff Gladstone Campbell sought, by an amended summons,

"1. A declaration that by virtue of the provisions of the Parish Councils Act and the Parish Councils (Clarendon) By-Laws and the laws of Jamaica the decision of the defendant to fine the plaintiff the sum of $318.67 and to deduct this sum at the rate of $50 per fortnight from the plaintiff's salary effective December, 1981 is ultra vires, null and void."

2. A declaration that the plaintiff is entitled to recover from the defendant the said sum of $318.67 unlawfully deducted by the defendant from the plaintiff's wages."

Each of the three plaintiffs, in addition, sought declarations,

"3. That the defendant pays the costs of and incident to this application.

4. Such further and/or other relief as may be just."

The facts relevant to each applicant and which were not in dispute, are as hereunder.

The plaintiffs Edward Dennis and Gladstone Campbell were both employed as watchmen to the Clarendon Parish Council and assigned to the Roads and Works Department of the said Council at premises at Main Street, May Pen in the parish of Clarendon. On the 25th day of August, 1981, the plaintiff Dennis performed his duties as watchman on the said premises from 10 p.m. to 6 a.m. of the following day, at which latter hour he was relieved by the plaintiff Campbell, as watchman. The plaintiff Campbell discovered "a few minutes after relieving Mr. Dennis" that the storeroom at the said premises had been broken into, the lock had been broken from the door. Campbell went to the home of Dennis at about 6.30 a.m. and advised him of his Campbell's discovery, and they both went to Mr. Neville James, the storekeeper to the said Parish Council and informed him of the breaking. Mr. James examined the storeroom and discovered that 3 tyres and 3 tubes were missing.

The plaintiff Errol Crawford is employed as a driver to

the Clarendon Parish Council and attached to the Roads and Works Department. He was involved in an incident while on duty, with the Works Overseer Joe Henriques, on the 19th day of January, 1981, and in another incident with the watchman Leslie Lee on the 10th day of July, 1981. The applicant was charged with insubordination and misconduct while on duty, oh the said dates.

Both plaintiffs Dennis and Campbell were charged with dereliction of duty. All three plaintiffs were summoned by the Secretary of the said Parish Council and attended a meeting of the Disciplinary Committee of the said Council on the 12th day of October, 1981. Each applicant was tried by the said Committee on the respective charges.

The report and decision of the said Disciplinary Committee was read to and adopted by the Establishment Committee of the said Council at its meeting on 10/11/81, which latter Committee then decided that both plaintiffs Dennis and Campbell, should each pay one half of the cost of the missing tyres, by fortnightly deductions of $50 each until the total cost $637.35 was repaid.

The Disciplinary Committee had recommended that the plaintiff Dennis be made to repay half the cost of the three (3) tyres to be recovered by fortnightly deductions of twelve ($12) dollars from his wages or be suspended for two (2) fortnights without pay, and that the plaintiff Campbell be suspended without pay for a fortnight.

In respect of the plaintiff Errol Crawford, the said Establishment Committee, after examining the report of the Disciplinary Committee, decided that in view of the charges preferred, his suspension should be for six (6) weeks instead of four (4) weeks.

Each plaintiff was advised by letter signed by the Secretary of the Clarendon Parish Council that at "the subsequent hearing of these charges by the Disciplinary Committee Meeting held on October 12, 1981. You have been found guilty of the charge ....."

Each plaintiff was then told of "The decision of the Council ....." as to his respective punishment.

The plaintiff Edward Dennis is a permanent employee of the said Council receiving a salary of $122.66 per week, and paid to him fortnightly.

The plaintiff Gladstone Campbell is a temporary employee of the said Council receiving a salary of $118.74 per week, paid to him fortnightly.

The applicant Errol Crawford was appointed as a permanent employee of the said Council "subject to the following terms and conditions ..... that you pass the prescribed Medical Examination as to your physical fitness". This plaintiff had not submitted the relevant medical report up to the time of the hearing of this application. He received a salary of $126.15 per week, paid to him monthly.

Mr. Rattray, Q.C., for the plaintiff submitted that there was no provision in the Parish Councils Act which gives authority to a Parish Council or its committee to make charges and hold quasi-judicial enquiries. Sec. 10 of the Parish Councils (Unified Service) Act transfers the functions of the Parish Council in respect of disciplinary control of its employees to the Parish Councils Services Commission to be dealt with by the said Commission. Parliament gave the statutory function to a particular body, the Commission, and so no other body may exercise such powers, section 10 is exhaustive and does not exclude any category of workers. The Parish Councils Services Commission (Disciplinary Proceedings) Regulations, 1956 made under the authority of section 14 of the Parish Councils (Unified Service) Act provides for the disciplining of certain employees of the Parish Council by the Parish Councils Services Commission, namely, the unified service worker. If an employee of the Parish Council is not included in the said Regulations there is no power in the Parish Council to hold disciplinary hearings, impose penalties and execute it. The Parish Council has in respect

of a non-unified service worker, such as the applicant Gladstone Campbell, a temporary employee, a power of dismissal at common law, but no power at common law to suspend and impose a fine, unless there are rules and regulations governing his employment or the terms of his contract of employment give such a power - Hanley v. Peas & Partners Ltd. (1915) 1 KB 698; 1914 - 15 All ER 984 (reprint)

Mr. Rattray further submitted that the said Parish Council had no power to delegate its disciplinary functions at all or to any of its committees, such as the Disciplinary or Establishment Committee; such delegation is ultra vires and void. No such power was given either by the Parish Council Act or the Parish Councils (Unified Service) Act. Only the Parish Council itself or the Parish Councils Services Commission may exercise disciplinary functions over its employees; special tribunals and public bodies exercising functions synonymous to judicial functions are precluded from delegating powers unless there is express authority to that effect - ..... Judicial Review of Administrative Action, 4th Edition, by de Smith. Mr. Rattray continued. The plaintiff Edward Dennis, a permanent employee, a unified service worker, is therefore subject to be dealt with by the Parish Councils Services Commission and not be the Clarendon Parish Council and so any decision to fine him and make deductions from his salary is invalid, and entitles him to a declaration. The plaintiff Errol Crawford is also entitled to a declaration for the same reasons; he was appointed a permanent employee "subject to terms and conditions". Seeing that he did not submit a medical report, the Clarendon Parish Council could have terminated his employment - it did not. Even if he is not a unified service worker, there is no power at common law to suspend him; he is entitled to a declaration. The applicant Gladstone Campbell, a temporary worker, is not subject to be disciplined by either the Disciplinary or Establishment Committee but by the Clarendon Parish Council itself, which itself has power of dismissal at common law but no right to suspend or fine him; he is entitled to a declaration.

Mr. Scharschmidt for the defendant submitted, firstly, that each applicant must show that he is permitted by rule or statute to proceed by originating summons in applying for a declaration. The applications are made under section 531A of the Judicature (Civil Procedure Code) which gives the Court an original and not a supervisory jurisdiction. An original jurisdiction is a simple declaration of the applicant's legal position, Folkes' Introduction to Administrative Law, 4th Edition, p. 199, whereas to ask the Court to review an action declaring it ultra vires is the exercise of a supervisory jurisdiction. The cases show that if it is contended that the action taken by a body is ultra vires, asking the Court to exercise its supervisory role, the applicant should proceed by writ of summons, claiming therein a declaration, and not by way of an originating summons, unless the statute clearly gives the Court such a reviewing power, vide Ridge v. Baldwin (1964) AC 40, (1963) 2 All ER 66.

Instead of being asked to declare the action of the Disciplinary and Establishment Committees, unlawful, the Court should be asked to state what are the specific rights of each applicant.

He submitted, secondly, that the employment of the applicants by the Clarendon Parish Council is a simple master and servant contract, that the master has a right to dismiss in the ordinary situation though no right to suspend, that the remedy for wrongful dismissal or suspension or unlawfully withholding of pay was an action for breach of contract claiming damages and therefore a declaratory judgment should not be given; that a master and servant relationship may exist though there is a strong statutory flavour and the fact that the party is by contract given a right to trial in a certain forum or relates to the provisions in a statute, does not put an end to the status of master and servant, but the court should look at the contract and where exceptional or additional features are found, the court can exclude a master and servant relationship. He sited in support, the cases of University Council of Vidyodaya, vs. Silva (1965) 1 WLR 77 and Barbar vs. Manchester Regional Hospital Board (1958)

1 W.L.R. 181; 1 All E.R. 322 and referred to the cases of Ridge v. Baldwin, ante Vine vs. National Dock Labour Board (1957) A.C. 488 and Administrative Law, 5th Edition by Professor H. R. Wade, p. 498, concluding that in the instant case, even if the applicants were dealt with by the wrong tribunal, the relationship of master and servant existed and so the ultimate santion would be in damages.

Counsel submitted, thirdly, that claiming a declaration that "..... the plaintiff is entitled to recover from the defendant the sum of ....." is in essence an action in damages and while this alternative remedy exists the Court will not in its discretion grant a declaration if no useful purpose will be served. In the case of the applicant Crawford his suspension had long expired and even if he is entitled to a declaration no useful purpose would now be served by granting it. Counsel continuing said that the plaintiffs should have brought actions by writ claiming (a) breach of contract and (b) a declaratioh, at the time they were advised that a trial would be held into their conduct and it is now too late to invoke the provisions of section 531A of the Judicature (Civil)Procedure Code). Alternatively, if brought in time, certiorari was the proper remedy because the applicants were saying that the Disciplinary Committee had either exceeded its jurisdiction or had no jurisdiction at all. He finally submitted that neither the plaintiff Dennis nor the plaintiff Campbell was entitled to a declaration as each was claiming the return or a sum of money, a consequential relief, to which neither was entitled on a declaration, and in any event, the plaintiff Campbell was a temporary employee, in that he had not satisfied the condition precedent by supplying a report of his medical examination and therefore was outside the scope of the Parish Council (Unified Service) Act.

Mr. Rattray in reply, stated that the applications, made under the said section 531A, were seeking an interpretation of the law and a statement of the rights of the plaintiffs under these laws in order that their rights would be certain and in order that their

service records would not continue to reflect on unlawful imposition of a suspension and punishment, that the use of this procedure permitted the confidence between employer and employee to remain and that the plaintiffs were not asking the Court to exercise its reviewing power, though the cases do not support the contention that the said section 531A could not be so used. He cited the cases of Puhton etaal vs. Ministry of Pensions and National Insurance (1963) 1 All E.R. p. 275; Punton et al vs. Ministry of Pensions and National Insurance (1963) 2 All E.R. p. 693;and Bunton et al vs. Ministry of Pensions and National Insurance (1964) 1 All E.R. p. 448.

This Court notes that, Section 531A of the Judicature (Civil Procedure Code) Act on which the applications are based reads:

> "Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the rights depends upon a question of construction of a law or an instrument made under a law, may apply by originating summons for the determination of such question of construction, and for a declaration as to the right claimed".

This section is in similar terms with Order 54A rule 1A of the Rules of the Supreme Court (England), except where the words "a law or an instrument made under a law" occur, the words "a statute" appear instead.

In Taylor v. National Assistance Board et al (1957) 1 All E.R. 183 a wife applied by originating summons for a determination of the question "whether, on the proper construction of the Legal Aid and Advice Act 1949, S. 4 ..... the amount of alimony pending suit should be taken into account in assessing her disposable income, and for a declaration that the determination of the board was ultra vires". The National Assistance Board had held, on her application for a civil aid certificate, that the alimony should be taken into account. The board took a preliminary point that under the Legal Aid (Assessment of Resources) Regulations, 1950, their decision being final, could only be challenged by certiorari and not by applying for a declaration. Lord Merriman, hearing the application for the declaration

held that the court had power to make the declaration. On appeal, the Court of Appeal reversed the decision that the amount of alimony pending suit should be excluded. Counsel for the Board did not pursue the preliminary objection to the proceedings for a declaration. Denning L. J. in his judgment said,

> "At the outset, I must observe that under regulation 9(2) of those regulations, '..... every decision or determination of the Board shall be final'; and in the court below it was submitted by counsel on behalf of the National Assistance Board that their determination could not be challenged in these proceedings. Lord Merriman P., overruled this objection, and the Solicitor General did not pursue it before us. I would like to say in passing that I entirely agree with the President on this point. The remedy by declaration is available at the present day so as to ensure that a board or other authority set up by Parliament makes its determinations in accordance with the law; and this is so, no matter whether the determinations are judicial or disciplinary, or, as here, administrative determinations". (emphasis mine).

In Punton et al vs. Ministry of Pensions and National Insurance (1963) 1 All E.R. 275, the plaintiff applied by originating summons under Rules of the Supreme Court Order 54A r. 1A (England) for a declaration in respect of the decision of the National Insurance Commissioner in determining the question in law that they as platers' helpers were directly interested in a trade dispute resulting in stoppage of work by others, and therefore they were not entitled to unemployment benefit. The summons having been struck out by the Master, the plaintiffs subsequently appealed. Leave was granted by the Court of Appeal to amend the summons and the said Court held, (headnote)

> "Application may properly be made to the High Court by originating summons for a declaration whether on the findings of the National Insurance Commissioner, he came to a correct determination in law on the construction of a provision of the National Insurance Act, 1946, notwithstanding that the determination of the Commissioner is by statute expressed to be final, and notwithstanding that his determination in law might have been tested by way of certiorari and that a time limit is imposed on the commencement of such proceedings;....."

Lord Denning, M.R. in his judgment said of the declaration on page 275,

> "This is a procedure that is now available to overcome many of the difficulties surrounding certiorari ..... In particular it is not subject to the time limit of six months to which certiorari is ordinarily subject."

Diplock, L.J., exhibiting some caution said,

> "I merely desire to add that, in concurring in the order made, I do not wish it to be thought that, without further careful examination, I necessarily assent to the proposition that a declaration lies as an alternative remedy wherever certiorari would lie."

The supervisory jurisdiction of the Court to make declarations on the originating summons under Order 54A rule 1A, was confirmed by Phillimore,J., when he heard the amended application for the declaration by the plaintiffs, vide Punton et al vs. Ministry of Pensions and National Insurance (1963) 2 All E.R. 693, though in the particular circumstances, he declined to exercise his discretion and refused to grant the declarations sought. On appeal, the Court of Appeal held that the High Court had no jurisdiction on the originating summons because it was a monetary claim for unemployment benefit which the High Court had no power to award because the National Insurance Act, 1946 had set up its own machinery to deal with such claims and so the effective decision was that of the National Insurance Commissioner. Furthermore, if certiorari had been granted therein to quash the decision, it would not usurp the functions of the inferior tribunal but merely leave the way open for the claim to be head again and determined correctly, vide Punton et al vs. Ministry of Pensions and National Insurance (No. 2) (1964) 1 All E.R. 448. Sellers, L.J., in delivering the judgment said, at page 454,

> "It is true that the Court of Queen's Bench has an inherent jurisdiction to control inferior tribunals in a supervisory capacity and to do so by certiorari (which would be the relevant procedure in this case) which enables the court to quash the decision if the inferior court can be shown to have exceeded its jurisdiction or to have erred in law.

> Neither certiorari nor mandamus usurp the function of a tribunal but require it, having quashed its decision to hear the case and determine it correctly. There may be many cases where a summons for a declaration is at least an adequate substitute for certiorari proceedings and where it may have advantages over it with no defects. That would be so where an authoritative statement of the law by the High Court will serve to undermine a decision or order so that it need not be complied with and could not in the light of the pronouncement of the law be sucessfully enforced ....."

He continued at page 455,

> "Apart from certiorari there is no machinery for getting rid of the decision of the National Insurance Commissioner and, what is more important, no way of substituting an effective award on which the claims could be paid. It would be out of harmony with all authority to have two contrary decisions between the same parties on the same issues obtained by different procedure, as it were on parallel courses which never met or could meet, and where the effective decision would remain with the inferior tribunal and not that of the High Court. I conceive that to be the case here, and it seems to me to lead to a conclusion against the jurisdiction of the High Court in this particular matter. The tribunal is wholly independent ....."

In the instant case, it cannot be said that, if certiorari had been granted, to quash the decision of the Disciplinary Committee of the Parish Council, assuming it is proven as the applicants complain, that it had no power to try them, that such grant "would leave the way open" for the said Committee to try the plaintiffs again. It seems also that if the said Disciplinary Committee had no power to try the plaintiffs, and they the plaintiffs were subject to the jurisdiction of a different body, the two legal bases enunciated in the Punton case (no. 2) ante, for holding that the Court had no such supervisory jurisdiction on the originating summons, would not apply to the instant case.

The Parish Councils Act, section 3(1) reads, "The Parish Council shall be composed of one councillor for each electoral division of the parish ....." Section 6 of the said Act permits the Parish Council to "employ a Secretary and such other officers

and servants as may be necessary ....."

The Parish Councils (Unified Service) Act which came into force on 14/9/56, established the Parish Councils Services Commission "which shall consist of not less than four nor more than six members ....." The functions of the Commission are set out in Section 10(1):

> "Notwithstanding anything to the contrary, from and after the appointed day, such matters as may be prescribed relating to the exercise by a Parish Council and the promotion, transfer, termination of appointment, dismissal and disciplinary control of employees of such Parish Council, or any prescribed class of such employees, and their terms and conditions of service, shall stand referred to the Commission to be dealt with by the Commission in such manner as may be prescribed."

Section 14(2) (d) permits the Minister to make regulations in respect of "any matter which under section 10 requires to be prescribed," By regulation 4(1) (a) (ii) of the Parish Councils Services Commission Regulations, the principal regulations, contained in the Second Schedule to the said Act, "the promotion, termination of appointment, dismissal and disciplinary control of unified service officers", is one of the matters assigned to the Commission, which "shall ..... make recommendations to a Parish Council" in relation thereto. A "unified service office" is defined as "any office of emolument in the service of a Parish Council, set out in the Appendix", to the Act, and section 2 of the said Appendix recites one of such offices as "Permanent offices the minimum emoluments of which are not less than $1,100 per annum".

The Parish Councils Services Commission (Disciplinary Proceedings) Regulations, 1956 made under section 14 of the Parish Councils (Unified Service) Act sets out a comprehensive procedure for dealing with a unified service officer in disciplinary proceedings. It provides for, the report by the Secretary to the Commission, the preparation of the charges and notice to the officer, his interdiction, where necessary, the officer's reply to such charges, notice of the hearing, the hearing and calling of witnesses, the

officer's representation, the Commission's report and recommendation to the Parish Council, notice of dismissal, if contemplated, appeal to the Privy Council and advise to the Governor General, among other things.

I am of the view that both plaintiffs Edward Dennis and Errol Crawford are unified service officers, both having been appointed by the Parish Council, thereby being permanent employees, receiving amounts of $122.66 and $126.15, per week, respectively, as salary. The said Errol Crawford, not having submitted his medical report, is nontheless an appointed permanent employee but subject to having his appointment revoked.

The Disciplinary Committee of the Clarendon Parish Council is, in respect of the plaintiffs, unknown to the law. It is not recognized by the Parish Councils Act, nor by the Parish Councils (Unified Service) Act nor by the Parish Councils (Clarendon) By-Laws, 1951. The latter By-Laws made under section 12(c) of the Parish Councils Act, refer to standing committees, namely, finance, roads and works and public health and sanitation and section 72 permits the appointment of select committees "for specific purposes".

It seems to me therefore that the plaintiffs in the instant cases were never subject to the jurisdiction of the Disciplinary Committee or any purported exercise of their powers and so one cannot say that if certiorari had been applied for and had issued it would not have effectively usurped the function of the said Committee. I therefore hold that the present applications are not hampered by the restrictions recited in the Punton case (No. 2), and that the Court has a supervisory jurisdiction to grant a declaration on the originating summons. If I am not correct in that approach, I am of the opinion, that if this Court holds that there exists only the original jurisdiction, but finds, as it does, that the said Disciplinary Committee had no legal basis to do what it did, a simple declaration of the legal rights of the plaintiffs, to be heard by a body other than the said Disciplinary Committee,

namely by the Parish Councils Services Commission, a necessary consequence of such a declaration of their rights would be in effect a declaration that the action of the said Committee is a nullity.

Counsel for the respondent Clarendon Parish Council argued that the nature of the employment of the applicants is a simple master and servant contract and therefore, any unlawful breach attracted a sanction in damages only and not the entitlement to a declaration, as would employees who enjoyed the status of a protected office. In University Council of the Vidyodaya University of Ceylon et al vs. Silva (1965) 1 W.L.R. 77, the respondent who had been appointed by the Vice Chancellor of the Vidyodya University as a lecturer was dismissed by the Council of the said University under powersconferred on the said Council by the University Act. The respondent had not been told of the charges nor was he heard in his defende. His application to the Supreme Court for writs of certiorari and mandamus was granted on the ground that the said Council had a duty to act judicially, that it was not a purely administrative action, and the order terminating his appointment was quashed. On appeal to the Judicial Committee of the Privy Council it was held, reversing the order of the Supreme Court, that the respondent was not shown to be in any special position other than a servant, and where there was an ordinary contractual relationship of master and servant, the latter could not obtain an order for certiorari if the master terminated the contract.

In a previous case, Barber vs. Manchester Regional Hospital Board (1958) 1 All E.R. 322 the plaintiff who was employed by the defendant Board as a consultant surgeon was dismissed by the said Board, without such Board following a procedure of placing his case before the Minister prior to dismissal. In setting aside a declaration granted to the plaintiff, it was held that the plaintiff's employment was an ordinary master and servant relationship despite the "strong statutory flavour" - he was awarded damages.

These cases demonstrate the principle that the Court will

not specifically enforce a contract for personal services. However, if the employee enjoys a special status given by statute, such an office will be protected. Such was held to be the status of a police officer in Ridge v. Baldwin (1939) 2 K.B. 651 where the Court held that he was not the servant of the Watch Committee which purported to dismiss him. In Vine v. National Dock Labour Board (1956) 3 All E.R. 939 the House of Lords granted to the plaintiff a declaration that his dismissal by a disciplinary committee of the local board, was a nullity because the latter did not have any authority to delegate its quasi-judicial disciplinary functions given to it by statute, and that, it was not "an ordinary master and servant case". This followed the decision in Barnard et al vs. National Dock Labour Board (1953) 2 Q.B. 19, where a declaration was granted to the plaintiff that his suspension by the port manager, to whom was delegated the quasi-judicial disciplinary functions of the local board, was a nullity. In his judgment, Denning L.J., as he then was, said of the decision of the port manager to suspend -

> "..... we are not asked to interfere with the decision of a statutory tribunal; we are asked to interfere with the position of a usurper. The port manager is a usurper ..... he ..... assumed a mantle that was not his ..... it is a case of a man acting as a tribunal when he has no right to do so".

The plaintiffs Edward Dennis and Errol Crawford being unified service workers, in accordance with the regulations made under the Parish Council (Unified Service) Act, are subject to the exercise of disciplinary powers by the Parish Council Services Commission and by no other body. The purported exercise of such powers by the Disciplinary Committee would have been quashed by certiorari leaving them to their legal rights to be tried by the correct tribunal. The instant case is not tainted by the reluctance, and at times refusal of the court to grant specific performance of a contract for personal services, because the plaintiffs were not dismissed, but fined and suspended, and so it is a case less than the unenforceability of that of dismissed workers.

A complete procedure of preferment of charges, trial, recommendation and appeal in respect of the unified service officer, is set out in the regulations to the Parish Council (Unified Service) Act - it is a comprehensive scheme. The tribunal to hear the charges, is one other than the employer - the independent, Parish Council Services Commission. The master and servant relationship was therefore clearly excluded by the said statute. I therefore conclude that the plaintiffs Dennis and Crawford enjoy a special status as unified service officers in the employment of the defendant and therefore the master and servant relationship does not arise. The latter Act does not bestow merely a "strong statutory flavour" but imposes entrenched statutory provisions giving to the said employees the status of protected offices. As a consequence, a declaration is the proper remedy, because an invalid record of an unauthorised hearing and punishment must be relevant to the prospects of advancement of the individual in an organisation, and therefore damages would not be adequate in the circumstances.

The applications for declarations in the instant cases are framed in a negative form, according to the classification of the author de Smith, in his 4th edition of the Judicial Review of Administration Action; there he gave an example of a negative form, namely "..... that the defendant has not the right, power, privilege or immunity that he has claimed". Professor H. R. Wade in his Administrative Law, 5th edition page 39, observed,

> "Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e. deprived of legal effect. This is because in order to be valid it needs statutory authorization, and if it is not within the powers given by the Act, it has no legal leg to stand on. The court will then quash it or declare it to be unlawful or prohibit any action to enforce it. The terminology here depends to some extent on the remedy granted. "Quashing" is used in connection with the remedy of certiorari, but in effect it is simply a declaration of nullity. A declaratory judgment is an alternative remedy with similar effect; it declares the offending act to be a nullity in law ..... Once the court has declared that some administrative act is legally a nullity, the situation is as if nothing had happened."

One of the more compelling reasons in support of the grant of the declarations asked for in these matters, is borne out by the Parish Councils (Unified Service) Act, in respect of the constitution of the said Commission. Section 3(2) reads,

> "No person shall be appointed as a member of the Commission at any time when he is a member of either the House of Parliament or a councillor of the Kingston and St. Andrew Corporation or a Parish Council or an employee of the Kingston and St. Andrew Corporation or any Parish Council, and any member of the Commission who becomes a member or a councillor, as the case may be of any of the bodies aforesaid shall thereupon be deemed to have vacated his office as a member of the Commission."

The said Act was here expressly excluding from the tribunal which was given the power to hear disciplinary charges against unified service officers, any "..... councillor of ..... a Parish Council or an employee of ..... any Parish Council". Comprising and sitting on the Disciplinary Committee which sought to exercise such powers over the plaintiffs were five (5) councillors of the Clarendon Parish Council one of whom was the chairman of the Committee, and an employee, the Secretary of the said Council. The Establishment Committee which amended and ratified the report of the Disciplinary Committee consisted of nine (9) councillors of the Clarendon Parish Council. That composition of a tribunal, of councillors and an employee, was in clear defiance of the spirit of and a contravention of the express provisions of the said Act, and therefore could not be allowed to maintain its legitimacy.

Professor Wade, in his said work at page 220, cautioned that, "Procedural safeguards, which are so often imposed for benefit of persons affected by the exercise of administrative powers are normally regarded as mandatory so that it is fatal to disregard them", and quoting Dankwerts, L.J. in Bradbury vs. Enfield L.B.C. (1967), 1 W.L.R. 1311 at page 1325, he continued,

> "It is impertative that the procedure laid down in the relevant statutes should be properly observed. The provisions of the statutes in this respect are supposed to provide safeguards for Her Majesty's subjects. Public bodies and Ministers must be compelled to observe the law, and it is essential that bureaucracy should be kept in its place."

With regard to the plaintiff Gladstone Campbell, a temporary employee, he is not a unified service officer. He does not therefore occupy a protected office, and therefore at common law, is subject to the discipline of his employer. However, his employer is the Clarendon Parish Council, not the Disciplinary Committee of the said Council. The Parish Council (Clarendon) By-Laws, 1951 makes provision for the Parish Council to "..... during session resolve itself into a committee of the whole Council, when it deems it necessary .....", Sec. 72; this is not what was done.

It is worthy of note that section 126A of the Parish Councils Act, Act 12/82, now gives to Parish Councils power to make regulations "regulating the conduct of and maintaining discipline among ..... employees", but that such regulations "shall not take effect unless and until they have been confirmed by the Parish Councils Services Commission." This again highlights the independence and supermacy of the said Commission in disciplinary matters. I will say no more than, that the plaintiff Campbell, not being a unified service officer, is not a person contemplated by the Parish Councils (Unified Service) Act, and therefore will not have a declaration made on his behalf.

This Court therefore concludes that the Disciplinary Committee of the defendant Council had no jurisdiction to conduct the disciplinary proceedings in respect of the charges against the plaintiffs and therefore the plaintiffs Edward Dennis and Errol Crawford in Suit No. M63/82 and M64/82 respectively, shall each have the declaration applied for in terms of paragraphs 1 and 3. The application of the plaintiff Campbell in Suit M65/82 is refused with costs to the defendant.