In the Supreme Court

The Full Court

Before : The Chief Justice
Mr. Justice Orr
Mr. Justice Theobalds.

M. 26 of 1983

R. v. Dr. A. Binger and Mrs. N.J. Vaughan

Exparte Chris Bobo Squire

Berthan Macaulay, Q.C. and Wentworth Charles for Applicant

R.N.A. Henriques, Q.C., and Allan Wood for Respondents
and for the Scientific Research Council

June 13, 14, 15 and 17, 1983.

SMITH, C.J. :

Under an agreement dated 22 April 1982 the applicant was employed as Senior Research Scientist in the Scientific Research Council (the Council) for a term of three years with an annual salary of Je. $14,400 and various allowances.

By letter dated 14 February, 1983 written ostensibly on behalf of the Council by its Technical Director, Dr. Al Binger, the first respondent, the applicant was suspended "from the Council's Service for five (5) working days effective February 15, 1983." The letter stated the reasons for the suspension to be the applicant's unauthorised absence from duty and the general lack of interest displayed by him in his work for a prolonged period. The letter stated that serious thought would be given to terminating his services unless marked improvement was shown in his performance within the next two months. The applicant protested his suspension in a letter to Dr. Binger dated 17 February and said that he had "no choice but to appeal to a higher authority." On 21 February the applicant wrote to the Executive Director of the Council, Dr. M.O. Hamilton, inviting attention to cl. 16 of the "Terms and Conditions of Employment for Staff of the Scientific Research Council", which gave a right to appeal to the Council "in relation to any matter affecting appointment", stating that the issues

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relating to his suspension have "a direct relevance" to his appointment and requesting that "the matter be taken to Council." By letter dated 1 March he sent a copy of his "appeal and statement supporting the same" to the Executive Director. In a letter of even date to the applicant the Executive Director agreed that the applicant had "the option of having Council arbitrate on what (he) (the applicant) consider(ed) an unjustified decision" and stated that he will make the necessary arrangements if the applicant confirmed that he was still prepared to have the matter discussed before Council. The applicant replied in a letter dated 3 March asking that the necessary arrangements be made "for an appeal to Council" as it appeared that the matter could not be satisfactorily resolved "in house."

In a memorandum dated 3 March, 1983, signed by Dr. Binger, the applicant was suspended from duties "until further notified," for reasons stated in the memorandum. A memorandum of 4 March from Dr. Binger limited the suspension to a period of three days "based on anticipated co-operation and display of team spirit" by the applicant. In a letter dated 7 March, the applicant appealed to Dr. Hamilton "as the Executive Director of the "cientific Research Council" against this latter decision to suspend him.

On 9 March the Executive Director wrote to the applicant telling him that the term of two years for which the previous Board of the Council was appointed on 16 February 1981 had expired, that a new Board had not yet been appointed and that a date for his appeal cannot, therefore, be fixed until the new Board was appointed. He added that the applicant's appeal had been forwarded to the past Chairman of the Board.

On 18 March the applicant wrote to the Executive Director asking that his letter of 7 March be treated "as a formal appeal to Council" and that his appeals against both suspensions be heard together.

On 29 March the Administrative Secretary of the Council, Mrs. N.J. Vaughan, the second respondent, wrote to the applicant, ostensibly for the Council, terminating his "engagement" on three months' notice

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as from 1 April, 1983 "pursuant to Clause 3(i) of (his) Memorandum of Agreement with the Scientific Research Council." He was sent a cheque for pay in lieu of notice (less a loan balance) as well as a cheque for the gratuity to which he was entitled under his contract. He was told that the Council's obligation to pay the cost of his return passage and for shipping his baggage and personal effects to London would be met. The applicant wrote to the Administrative Secretary on 30 March, in response to her letter of 29 March, pointing out that he was employed by the Council and that it was the Council which must determine his engagement; that he had two appeals to the Council pending; and, inter alia, "appealing to Council through the Executive Director against (her) decision." On the same date he wrote to the Executive Director appealing to Council "against the Administrative Secretary's decision" and asking that this appeal be heard at the same time as the first two.

On 3 May, 1983 the applicant obtained the leave of the Full Court to apply for orders of certiorari to quash "the decisions of the Technical Director of the Scientific Research Council dated the 14th day of February 1983, the 3rd and 4th days of March 1983, suspending the applicant ..... and the decision of the Administrative Secretary, Mrs. M.J. Vaughan communicated to the said applicant terminating the applicant's contract with the Scientific Research Council."

On the application coming on for hearing, objection was taken on behalf of the respondents and the Council to the application being heard on the grounds, firstly, that it was misconceived and, secondly, that the relief sought was beyond the jurisdiction of the Court. It was submitted, in support of the objection, that the Court had no jurisdiction to deal with matters of purely private rights between parties arising out of a contract of employment; that where there is a simple contract of employment and the gravamen of the complaint is a breach of contract this constitutes a purely private dispute between the parties and the remedy of certiorari is not available. Passages from text books on administrative law were cited in support of the

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submissions as well as Vidyodaya University of Ceylon and others v Silva (1964) 3 All E.R. 865 and R. v British Broadcasting Corporation Exparte Lavelle (1983) 1 W.L.R. 23.

In delivering the judgment of the Board of the Privy Council in the Vidyodaya University case Lord Morris of Borth-y-Gest said, at p. 867 :

> " 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.

Lord Morris then referred (ibid) to the following statement of principle in the speech of Lord Reid in Ridge v Baldwin (1964) A.C. 40, 65 :

> " 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. "

Lord Reid refers to "A pure case of master and servant." In Malloch v Aberdeen Corporation (1971) 2 All E.R. 1278 at 1294 Lord Wilberforce said that he took "pure master and servant cases" to mean "cases in which there is no element of public employment or service, no support by statute, nothing in the nature of an office or a status which is capable of protection." He went on to say (ibid) :

> " If any of these elements exist, then, in my opinion, whatever the terminology used, and even though in some inter partes aspects the relationship may be called that of master and servant, there may be essential procedural requirements to be observed, and failure to observe them may result in a dismissal being declared to be void. "

The response of counsel for the applicant to the objection made to the hearing of the application was that the basis for the objection was irrelevant as the relationship of master and servant did not exist between the applicant and the officers of the Council who, respectively,

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suspended him and purported to terminate his employment, without justification in the case of the suspensions and without authority in the case of the termination. This response is, in my view, unavailing to the applicant because if the two respondents are, so to speak, unauthorised intermeddlers then, a fortiori, certiorari does not lie in respect of their conduct. Similarly, if the relationship between the applicant and the Council is a pure case of master and servant, there would be no power to grant the order sought in respect of the conduct of officers of the Council, whether authorised or not. It is, therefore, necessary to determine the nature of the relationship between the applicant and the Council.

The Council is a statutory corporation constituted under the provisions of the Scientific Research Council Act, which was enacted in 1960. It consists of a chairman and other members appointed by the Minister for terms of three years. Section 8 of the Act provides as follows :

> " The Council may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a Technical Director and such other officers, agents and servants as it thinks necessary for the proper carrying out of the provisions of this Act. "

There is a proviso to the section that the Minister's approval is necessary for a salary in excess of $3,000.00 to be assigned to any post and for the appointment of anyone to such a post. Section 14 permits the Council to make regulations, with the approval of the Minister, determining generally the conditions of service of officers and servants of the Council. This power has not been exercised. There are no other provisions in the Act relating to the employment of officers and servants.

Among the documents exhibited before us was a document dated 22 March 1966 with the title "Terms and Conditions of Employment for Staff of the Scientific Research Council" and a statement that the contents of the document were formulated under section 8 of the Act. Its comprehensive terms include provisions relating to disciplinary action and termination of employment.

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The agreement between the Council and the applicant incorporated a schedule which contained conditions to which the agreement was subject. Among them are provisions for dismissal for misdonduct, neglect of duty, etc. (cl. 7) and "determination of engagement" by three months notice in writing by either side (cl. 8). The agreement appeared complete in itself but the applicant was granted leave, after the close of the argument, to produce a letter to him from the Council dated 16 April, 1982 formally offering him an appointment and inviting his formal reaction; if it was favourable he should indicate this by signing a copy of the letter in the space provided next to the word "agreed". The agreement was sent with the letter for execution "in anticipation of (his) favourable reaction." The applicant deposed that he signed the copy letter on the day he executed the agreement, namely, 22 April 1982. The offer of appointment was made subject to a number of stated "contingencies", including the following :

> "(e) The appointment will, as far as possible, be subject to the Council's Terms and Conditions of Service, a copy of which is enclosed. "

The applicant has identified the document to which reference is made in the immediately preceding paragraph hereof as the document of which a copy was enclosed with the Council's letter of 16 April.

It was submitted for the respondents and the Council that the agreement of 22 April 1982, with its schedule, is the entire contract between the applicant and the Council and that the Terms and Conditions of 22 March 1966 do not, therefore, apply to the applicant, who was a contract officer. It was pointed out that several of the provisions in the document of 22 March 1966 were inconsistent with the terms of the agreement of 22 April 1982. This argument preceded the introduction in evidence of the Council's letter offering the appointment to the applicant and the question whether this letter had the effect of incorporating some of the terms and conditions of the document of 22 March 1966 into the agreement with the applicant was, unfortunately, not argued.

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It is true that there are provisions of the two documents which are inconsistent the one with the other but the conclusion seems inescapable that such of the terms and conditions of the document of March 1966 as are not expressly provided for in the agreement of 22 April 1982 are incorporated in the agreement. For the purposes of the argument before us, there are three clauses of the document of March 1966 which are relevant. Clause 10 provides that an employee who is absent from duty without permission from the head of department or head of section or commits any other misdemeanours shall be liable to disciplinary action. Clause 11 sets out the penalties that may be imposed for disciplinary offences and included among them is suspension from duty without pay. Clause 16, as already stated, gives a right of appeal to Council "in relation to any matter affecting appointment." It is quite clear that officers of the Council regarded these provisions as applicable to the applicant because he was apparently suspended by the Technical Director under cl. 11 for an offence under cl. 10, and the Executive Director expressly acknowledged the right of the applicant to appeal to Council in respect of the disciplinary action taken against him. I shall, therefore, treat these clauses as forming part of the applicant's agreement with the Council.

The applicant seeks the order of the Court to quash the decisions suspending him as well as the decision terminating his appointment. If his appointment was not validly terminated then his right to appeal against the suspensions would still be alive and he could pursue it, if reinstated. If, however, his appointment was validly terminated, it would be futile his seeking to exercise his right of appeal in respect of the suspensions. It is, therefore, only necessary to decide the issue in respect of termination. He purported to appeal against the decision terminating his appointment but, in my opinion, cl. 16 of the terms and conditions of March 1966 gave him no such right. By his agreement, it is the Council itself which has the power to terminate his appointment so an appeal cannot lie to

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Council in respect of the exercise of this power. The provisions of cl. 16 are inapplicable. It does not matter that the letter of termination was signed by the Administrative Secretary as it purported to be an exercise of the Council's powers.

The validity of the termination of the applicant's appointment can be questioned in certiorari proceedings only if the Council "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" (Lord Reid in Ridge v. Baldwin - supra), in which event, exercise of the Council's powers of termination by its officers without authority of the Council would be a ground for granting the application.

It was contended for the applicant that he was a public officer, as defined in the Constitution, or, alternatively, was in public employment. Reference was made to provisions of the Constitution and to provisions of the Scientific Research Council Act to show, as was submitted, that the Scientific Research Council "is part of 'the public service'" as defined in the Constitution. While it appears from s. 123 of the Constitution and provisions of the Act that this submission may be right in the sense that service in the employment of the Council may be within the wide definition of "the public service", this is not sufficient, in my opinion, to avail the applicant. It is not enough that the applicant is the holder of a public office. It has to be an office in respect of which, as Lord Wilberforce put it in Malloch v Aberdeen Corporation (supra), there are "essential procedural requirements to be observed."

The provisions of Chapter IX of the Constitution relating to the appointment and discipline of the holders of public offices clearly do not apply to the applicant. So reference must necessarily be made to the Act to see whether the type of contract which the Council made with the applicant was subject to any statutory restriction or control. Section 8 is the only relevant provision in the Act and it gives unrestricted powers to the Council, except in respect of

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remuneration, regarding the terms and conditions it may impose on the employment of any of its officers, servants or agents. It is pursuant to these powers that the terms and conditions of March 1966 were drawn up but they have no statutory force. They do not, in my opinion, confer a status on employees of the Council higher than a contractual status in a pure master and servant relationship. In my judgment the applicant does not have the status to enable him to obtain an order of certiorari.

It is for these reasons that I agreed with the judgment of the Court upholding the objection to the hearing of the application and dismissing it as misconceived.

ORR J:

This is an application for:

(1) Orders of Certiorari to quash the decisions of the Technical Director of the Scientific Research Council dated the 14th day of February, 1983, and 4th day of March, 1983, suspending the applicant Chris Bobo Squire a Senior Research Scientist of the Scientific Research Council and the decision of the Administrative Secretary of the Scientific Research Council, Mrs. N. J. Vaughan communicated to the said applicant terminating the applicant's contract with the Scientific Research Council and;

(2) An Order of Prohibition prohibiting the Administrative Secretary from taking any action pursuant to the purported decision of termination referred to above until the appeals by the applicant to the Scientific Research Council against the decision have been determined by the Scientific Research Council.

Mr. Henriques took a preliminary point that the relationship between the Scientific Research Council and the applicant was one of master and servant and that any dispute between them was a private matter for which remedies were available at Common Law and was not a matter amenable to Prerogative Orders. In short that the application was misconceived.

We upheld Mr. Henriques' submission and dismissed the application. It is therefore necessary to consider whether the applicant had any other position or status than that of an employee or servant of the Scientific Research Council.

The Scientific Research Council was established by the Scientific Research Council Act.

By section 4(1) of the Act the Scientific Research Council is a body corporate having perpetual succession and a common seal.

Section 8 which gives the Council the power to appoint officers, servants and agents is as follows:

> " The Council may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a Technical Director and such other officers, agents and servants as it thinks necessary for the proper carrying out of the provisions of this Act;

Provided that--

> (a) no salary in excess of three thousand dollars per annum shall be assigned to any post without the prior approval of the Minister;
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> (b) no appointment shall be made to any post to which a salary in excess of three thousand dollars per annum is assigned without the prior approval of the Minister".

By section 14:

> " The Council may with the approval of the Minister make regulations--
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> (a) determining generally the conditions of service of officers and servants of the Council;
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> (b) relating in particular, but without prejudice to the generality of the provisions of paragraphs (a) and (c), to--

(i) the grant of pensions, gratuities and other benefits to such officers and servants and their dependants, and the grant of gratuities and other benefits to the dependants or estates of deceased officers and servants of the Council;

(ii) the establishment and maintenance of sick funds, superannuation funds and provident funds, the contributions payable thereto and the benefits receivable therefrom;

(c) generally for the better carrying out of the purposes of this Act".

It was common ground that no such regulations had been promulgated.

The applicant was engaged as Senior Research Scientist under a written contract dated the 22nd April, 1982 which was subject to the conditions set out in the Schedule annexed to the contract and which formed a part of the contract.

Paragraphs 7 and 8 which deal with dismissal and determination of engagement are as follows:

" 7. If the officer shall any time neglect or refuse or for any cause (excepting ill-health not caused by his own misconduct as hereinbefore provided) become unable to perform any of his duties or to comply with any order or shall disclose any information respecting the affairs of the Council to any unauthorised person or shall in any manner misconduct himself the Council may dismiss him and on such dismissal all rights and advantages reserved to him by this Agreement shall cease.

8. (1) The Council may at any time determine the engagement of the Officer on giving him three months notice in writing, and, if he is in Jamaica at the time, furnishing him with passages and facilities for baggage and effects as hereinbefore set forth. He shall not be entitled to half salary on the voyage home unless specially granted by the Council.

(2) The Officer may, at any time after the expiration of three months from the commencement of service in Jamaica, determine his engagement on giving the Council three months notice in writing. Thereupon the officer shall repay to the Council a proportion of the expenses incurred by the Council, for passages and facilities for baggage and effect calculated by subtracting the number of months for which he has actually served the Council under this contract from 36 and dividing the resultant figure by 36. Thereafter the officer shall have no further claim upon the Council.

(3) If the officer terminates his engagement otherwise than in accordance with this Agreement he shall be liable to pay to the Council as liquidated damages three months salary and a proportion of the expenses incurred by the Council in relation to baggage and effects calculated as in the preceding sub-clause".

In addition, the applicant was handed a letter of appointment which stated inter alia:

" (e) The appointment will, as far as possible, be subject to the Council's Terms and Conditions of Service, a copy of which is enclosed".

The terms and conditions of employment were "formulated under section 8 of the Scientific Research Council Law No. 30. 1960".

Paragraph 16 reads as follows:

" There is a right of appeal to Council in relation to any matter affecting appointment".

Section 3(2) of the Act provides that the Council shall consist of not less than fifteen nor more than twenty persons as the Minister may from time to time determine and section 3(5) provides that the members shall hold office for three years.

The term of office of the members of the Council expired on the 16th February 1983 and no appointment had been made up to the date of the application.

Section 4(4) of the Act reads:

" All documents, other than those required by law to be under seal, made by, and all decisions of, the Council may be signified under the hand of the chairman or any other member authorized to act in that behalf or the Technical Director of the Council".

Differences arose between the applicant and some Senior Officers and by letter dated the 14th February 1983, Dr. Binger, the Technical Director suspended the applicant from the Council's Service for five days with effect from the 15th February 1983.

On the 21st February 1983, the applicant appealed under Clause 16 of the Terms and Conditions referred to above.

On the 4th March 1983, Dr. Binger suspended the applicant for three days. The applicant also appealed this decision.

On the 29th March 1983, the services of the applicant were terminated by letter which reads inter alia:

> " Pursuant to Clause 8 (i) of your Memorandum of Agreement with the Scientific Research Council, your engagement is being terminated on three (3) months' notice effective April 1, 1983. The Council will not require you to work during the period of your notice and accordingly you will find enclosed Cheque No. 050525 in the sum of $2108.69.

The remainder of the letter indicates how the amount is calculated and refers to his passage arrangements.

It ends

> Yours sincerely
> SCIENTIFIC RESEARCH COUNCIL
>
> N. J. Vaughan (Mrs.)
> Administrative Secretary".

At the time of the second suspension and the termination of his appointment, the new members of the Council had not been appointed.

From the foregoing the following conclusions may be extracted:

(i) The applicant was employed by a Statutory Corporation which has discretionary powers to appoint officers on such terms and conditions as it thinks fit;

(ii) The applicant was employed under a contract for three (3) years terminable on three (3) months notice on either side;

(iii) No statutory restrictions were placed on the powers of dismissal. The Clause in the Terms and Conditions of service relating to appeals were imposed by the Council itself, not by regulations;

(iv) There was nothing in the terms of the contract to suggest any security of tenure and no such requirement was imposed by the Act;

(v) The termination of his appointment was in accordance with the terms (para. 8) of this contract.

In Ridge v. Baldwin [1963] 2 All E.R. 66 Lord Reid said at page 71:

" 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."

In Vine v. National Dock Labour Board [1956] 3 All E.R. 939 it was held that the relationship between Vine and the National Dock Labour Board was not one of master and servant. Vine was a registered dock labourer employed under the Scheme set up under the Dock Workers (Regulation of Employment) Order 1947, which was made under the Dock Workers Regulation of Employment Act 1946. Under the Scheme, the National Board could delegate as many of their functions to local boards including removal from the register of the name of any dock worker, in accordance with the provisions of the Scheme - underlining supplied. He was invalidly dismissed.

Viscount Kilmuir, L.C., said at page 944:

" 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 of Avonholm said at page 949:

> " The scheme gives the dock worker a status. Unless registered, he is deprived of the opportunity of carrying on what may have been his life-long employment as a dock worker, and he has a right and interest to challenge any unlawful act that interferes with this status".

In Vidyodaya University v. Silva [1964] 3 All E.R. 865, Vidyodaya was a professor and head of the departments of economics and business administration. The University was established and regulated by statute.

The powers and duties of the Council, the executive body of the university were regulated by the Vidylankara University Act. Section 18(e) gave the power 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. The Act did not give a right to be heard nor provide a right of appeal. Silva was dismissed without being told the nature of the accusations against him and was not given an opportunity of being heard in his own defence. He sought a writ of certiorari to quash the council's order dismissing him.

The Privy Council held that the relationship between the university and Silva was that of master and servant.

Lord Morris delivering the opinion of the Board said at page 875:

> " 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 s. 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 of 1958 does not involve that contracts of employment, which are made with teachers and which are subject to the provisions of s. 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 (22). In his judgment in that case BARRY, J., said (23):

'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.' "

In Malloch v. Aberdeen Corporation [1971] 1 W.L.R. 1578 the House of Lords held that the status of a teacher in Scotland was not that of an ordinary servant.

Lord Wilberforce said at page 1595:

" One may accept that if there are relationships in which all requirements of the observance of rules of natural justice are excluded (and I do not wish to assume that this is inevitably so), these must be confined to what have been called 'pure master and servant cases,' which I take to mean cases in which there is no element of public employment or service, no support by statute, nothing in the nature of an office or a status which is capable of protection. If any of these elements exist, then, in my opinion, whatever the terminology used and even though in some inter partes aspects the relationship may be called that of master and servant, there may be essential procedural requirements to be observed, and failure to observe them may result in a dismissal being declared to be void.

This distinction was, I think, clearly perceived in two cases in this House."

He then refers to Vine v. National Dock Labour Board [1957] A.C. 488 and Ridge v. Baldwin [1964] A.C. 40 and continues:

" On the other hand, there are some cases where the distinction has been lost sight of, and where the mere allocation of the label--master and servant--has been thought decisive against an administrative law remedy.

One such, which I refer to because it may be thought to have some relevance here, is Vidyodaya University Council v. Silva [1965] 1 W.L.R. 77.....

> " It would not be necessary or appropriate to disagree with the procedural or even the factual basis on which this decision rests: but I must confess that I could not follow it in this country in so far as it involves a denial of any remedy of administrative law to analogous employments. Statutory provisions similar to those on which the employment rested would tend to show, to my mind, in England or in Scotland, that it was one of a sufficiently public character, or one partaking sufficiently of the nature of an office, to attract appropriate remedies of administrative law."

However, the criticism of Vidyodaya University v. Silva cannot assist the applicant. He cannot even claim the statutory restrictions on dismissal which Silva enjoyed by virtue of section 18 (e).

In Regina v. British Broadcasting Corporation, Ex parte Lavelle [1983] 1 W.L.R. 23, the applicant who was employed by the British Broadcasting Corporation, a statutory corporation, applied for orders of certiorari inter alia, against the decision of a domestic tribunal to dismiss her. Woolf J. reviewed the authorities and dismissed her application and at page 30 said:

> " There is nothing in rule 1 or section 31 which expressly extends the circumstances in which the prerogative remedies of mandamus, prohibition or certiorari are available. Those remedies were not previously available to enforce private rights but were, what could be described as, public law remedies. They were not appropriate, and in my view remain inappropriate remedies, for enforcing performance of ordinary obligations owed by a master to his servant. An application for judicial review has not and should not be extended to a pure employment situation. Nor does it, in my view, make any difference that what is sought to be attacked is a decision of a domestic tribunal such as the series of disciplinary tribunal provided for by the B.B.C."

I adopt this as an accurate statement of the law.

In the light of the authorities cited and the position of the applicant referred to above, I am of the opinion that the relationship between the applicant and the Scientific Research Council was that of master and servant and therefore certiorari does not lie in respect of the decision to dismiss him.

In view of my conclusion, I do not find it necessary to deal in detail with Mr. Macaulay's contention that the letter of dismissal signed by the Administrative Secretary, Mrs. Vaughan was a nullity due to the fact that there were no members of the Council in existence.

"A body corporate, being an entity separate from its members and not being a physical person, acts by agents, and, subject to the provisions of any statute, the ordinary law of agency applies to regulate their authority, their fiduciary position, delegation, and liability for their act". See Halsbury's Laws of England 4th Edition para. 1337.

I am of the view that the dismissal of the applicant was the act of the Scientific Research Council. Any complaint in this regard is a matter for redress under his common law remedies and not by way of prerogative orders.

For these reasons I concurred in dismissing the application.

THEOBALDS J:

I have had the opportunity to read the draft judgments of my learned brethren in this matter. I agree with the reasoning and conclusion arrived at and find that there is nothing that I can usefully add.