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Judgment 22 of 1972

IN THE PRIVY COUNCIL No. 7 of 1972

O N A P P E A L

FROM THE COURT OF APPEAL OF NEW ZEALAND

B E T W E E N

PAUL WALLIS FURNELL Appellant

\- and -

THE WHANGAREI HIGH SCHOOLS BOARD Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a judgment of the Court of Appeal of New Zealand (Wild C.J., North and Turner JJ.) given on 19 March 1971, allowing an appeal from a judgment of the Supreme Court of New Zealand (Speight J.) given on 22 October 1970. (p.73; p.51)

2. The principal question in this appeal is whether the Respondent (hereinafter called "the Board") was obliged to give the Appellant an opportunity to be heard before it exercised its power under Regulation 5 (1) of The Secondary and Technical Institute Teachers Disciplinary Regulations 1969 to suspend the appellant.

3. The circumstances giving rise to this question may be briefly outlined as follows. The Kamo High School is situated near Whangarei in the North Island of New Zealand. It is under the control of the Board. The Appellant was engaged as a teacher at Kamo High School and commenced duties in August 1968. In 1969 the headmaster of the school considered that the Appellant was not performing his duties satisfactorily. He had some discussions with the Appellant. As a result of those discussions the Appellant, while not conceding that the headmaster was right in his view, agreed that it (p.16 l.6-9)

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(pp.16-17) would be better if he applied for a teaching position at some other school. In this he had no success, and he remained teaching at Kamo High School until late in March 1970.

4. In the meantime, unknown to the Appellant, further complaints in the form of allegations of unsatisfactory behaviour on the Appellant's part were made to the Board. The Board thereupon set up a subcommittee to investigate these complaints in accordance with Regulation 4 of the Secondary and Technical Institute Teachers Disciplinary Regulations 1969. The subcommittee set up by the Board did not interview the Appellant but investigated the complaints, and duly reported to the Board. On 20 March 1970 the Board sent the Appellant a letter, the terms of which are set out in Wild C.J.'s judgment in the Court of Appeal. Briefly, the Appellant was charged with four offences under section 158 of the Education Act 1964. The letter included this paragraph: (pp.18-19; pp.57-58) (10) (20)

> "You are accordingly suspended from your duties at Kamo High School as from today's date March 20 1970 pending further determination of these charges."

5. Until he received the letter of 20 March the Appellant had no knowledge that his conduct was under investigation by the subcommittee. In particular, the Appellant was not given any opportunity to make any explanation to the subcommittee before it reported to the Board, and the Board did not notify the Appellant that it was possible that he might be suspended. (p.17 1.4-6; p.17,1.7-12) (30)

6. Upon receipt of the letter of 20 March the Appellant consulted his solicitors who, on 25 March, wrote to the Board denying the charges, seeking further particulars, and asserting that on the face of it the regulations were completely ultra vires. The text of this letter appears as Annexure "B" to the Appellant's affidavit of 30 July 1970. The letter included the following sentence: (p.17, 1.13-18; pp.20-22; pp.20-22) (40)

> "We cannot see how an investigation by a committee, set up by your Board, could

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properly take place without that committee at least obtaining some explanation from our client." p.20,ll.26-29

7. The Board replied on 6 April 1970 giving detailed further particulars of the offences alleged against the Appellant. pp.22-25

8. On 20 April 1970 the Appellant's Solicitors sent the Board a statement of the Appellant's denial of the charges and his explanation pursuant to Regulation 5 (2) of The Secondary and Technical Institute Teachers Disciplinary Regulations 1969 (hereinafter called "the regulations"). p.26 pp.26-30

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9. Having considered that statement and explanation, the Board subsequently decided to refer the charges to the Director-General of Education in accordance with Regulation 5 (4) (c) of the regulations.

10. On 29 May 1970 the Director-General of Education wrote to the Appellant's solicitors saying that he had received from the Board particulars of charges made against the Appellant, reciting the charges, and stating that he had decided, under Regulation 5 (5) (c) of the regulations, to refer the charges to the Teachers' Disciplinary Board for hearing and determination. This letter appears as Annexure "E" to the Appellant's affidavit of 30 July 1970. pp.30-32

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11. At this point the Appellant issued his first action against the Board, joining the members of the Teachers' Disciplinary Board as Second Defendants. In his Statement of Claim in this action (A. No. 34/70) he set out the facts hereinbefore summarised; asserted a denial of natural justice on the part of the subcommittee in consequence of which he claimed that his suspension by the Board was unlawful; alleged that the Board had acted in breach of the regulations, and that the Director-General had acted without jurisdiction; averred that his net loss of earnings "to the present time", namely 29 June 1970, was some $600; and that he had been brought into disrepute in the teaching profession. He claimed against the Board an injunction "removing the aforesaid suspension

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and reinstating the Plaintiff to teaching duties." As against the Second Defendants he claimed a writ of prohibition to prohibit them from hearing and determining the charges.

pp. 2-5
p.4,1.36-44

12. On 2 September 1970 the Appellant issued his second action, against the Board alone. In his Statement of Claim in this action (A No. 58/70) he again set out the facts hereinbefore summarised; and alleged (in paragragh 7) that in acting in reliance on its subcommittee's report without allowing him to see and comment on or reply to the findings in that report the Board acted in contravention of the principles of natural justice. He further alleged a breach by the Board of the regulations; averred that his loss of net earnings "to the present time", namely 2 September 1970, amounted to some $1,200; and sought an order for a writ of certiorari to remove the proceedings instituted by the Board into the Supreme Court and to quash the same.

p.5, 1.1-6

p.5,1.22-29

13. The two sets of proceedings were heard together on 15 September 1970 in the Supreme Court before Speight J. It was agreed that the affidavits filed in each action should be read in the other. The Second Defendants in the first action were represented by counsel who indicated that he abided the judgment of the Court and was then given leave to withdraw.

14. Speight J. delivered a reserved judgment on 22 October 1970, ordering:

(a) In the first action, an injunction to require the Board to remove the Appellant's suspension, and a writ of prohibition to the Second Defendants to prohibit them, as members of the Teachers' Disciplinary Board, from hearing the charges on the reference made to it by the Director-General

p.51, 1.8-12

(b) In the second action, certiorari "removing all decisions of the Board subsequent to receiving the report of the investigating committee into this Court and quashing the same."

15. In his reasons for judgment Speight J. referred to sections 158 and 159 of the Education

Act 1964 and to section 161 A which had been inserted by section 7 of the Education Amendment Act 1969. (The wording of section 161 A, so far as it is relevant, appears in the judgment of Wild C.J. in the Court of Appeal). Speight J. next proceeded to set out Regulations 4 and 5 (1) and (2), and to summarise the effect of Regulations 5 (3) and (4), 6 and 7. His Honour then traced the history of the matter. He then set out the nature of the relief claimed.

p.34,1.35 to p.35,1.22
p.64,1.27-43
p.35,1.30 to p.36,1.46
p.36,1.4 to p.39,1.33

16. His Honour then attempted to summarise the competing submissions for the Appellant and the Board. He then proceeded to contrast the procedure under the regulations with the procedure under section 159, which was superseded by the regulations. His Honour observed that the complaint before the Court related to the action of the Board in suspending the Appellant, and he said that the interim suspension of a teacher "is a substantial penalty, even if he is eventually not penalised by the Board or the Teachers' Disciplinary Board" and that a suspension damages a teacher's reputation and could impair his future career.

p.39,1.34 to p.40,1.36
p.40,1.37 to p.41,1.17
p.41,1.41-44
p.41, 1.47-59

17. His Honour next enunciated a proposition which the Respondent's counsel have never accepted, either in the Supreme Court or the Court of Appeal, namely that "the Plaintiff is not merely an employee of the Board."

p.42, 1.12-13

18. His Honour reached the conclusion that when the Board acts under Regulation 5 (1) it makes two separate determinations, viz :

p.43,1.4-13

(1) whether charges should be brought against the teacher;

(2) whether the teacher should be suspended pending the determination of such charges

19. His Honour identified the issue before him as "whether, in cases where suspension is involved, the Board which makes the suspension, has a duty to satisfy itself that it has ascertained both sides of the matter in a preliminary way so as to be properly guided

p.44,1.8-13

whether the penal step of suspension is called for."

p.45,1.28 to p.48,1.40

20. His Honour then proceeded to discuss a passage in de Smith, Judicial Review of Administrative Action (2nd ed., 1968) at page 177, Literature Board of Review v. H.M.H. Publishing Co. Inc. (1964) Qd.R.261, and Wiseman v. Borneman (1971) A.C. 297, a decision of the House of Lords.

p.48,1.41 to p.49,1.10

21. His Honour concluded from the cases that whether or not a preliminary investigation as to the existence of a prima facie case requires the giving of an opportunity to be heard will depend upon the circumstances, including in particular:

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(a) whether or not the facts are already within the knowledge of the interested parties;

(b) whether the question is purely an interpretation by the final judicial body as to the meaning of those facts; and (of greatest importance)

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(c) whether the bringing of the proceedings without consultation and the opportunity to be heard may in themselves do irreversible damage despite the opportunity of having a verdict eventually returned in favour of the individual.

p.49,1.35-37

22. His Honour reached the conclusion that the Appellant had "not been fairly treated in the way in which our principles of justice require"

23. The allegations of breaches of natural justice were the only allegations dealt with in Speight J.'s judgment. The Appellant advanced allegations of non-compliance with the regulations at the hearing, and Speight J. apparently decided that he need not say more about those allegations as he had already expressed views adverse to the Appellant's submissions thereon in arguendo. In the Court of Appeal counsel on both sides confined themselves to arguing the applicability of the principles of natural justice. Counsel for the Appellant (the Respondent in the Court of Appeal) no longer argued that the regulations had not been observed by the Board.

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24. The Respondent appealed to the Court of Appeal of New Zealand from the judgment of the Supreme Court on the grounds that the judgment was erroneous in fact and law. Judgment of the Court of Appeal was delivered on 22 March 1971 when the Court unanimously allowed the appeal.

pp.52-53
p.71,1.7-9

25. Wild C.J. commenced his judgment with a narrative of the facts, including therein a long extract from the regulations. He then referred to the Privy Council's discussion of the circumstances in which the principle of audi alteram partem is to be applied in Durayappah v. Fernando (1967) 2 A.C. 337. He outlined the Solicitor-General's two principal submissions for the Respondent (Appellant in the Court of Appeal). Having referred to sections 157, 158, 159 and 161 A of the Education Act 1964, his Honour proceeded to contrast the provisions of section 159 with the regulations. He concluded that it was clear from both the history and the content of the regulations that they provided a code of disciplinary procedure which was complete and exhaustive. He added that this "must be regarded as a strong indication that the regulations leave no room for any rule of natural justice to be implied."

p.53,1.18 to p.62,1.10
p.62,1.11 to p.63,1.22
p.62,1.20-27 and p.63,1.23 -27
p.63,1.37 to p.65,1.4
p.65,1.5 to p.66,1.25
p.67,1.17-21
p.67,1.21-24

26. His Honour then referred to Kitto J.'s dissenting judgment in Testro Bros. Pty. Ltd. v. Tait (1963) 109 C.L.R. 353.

p.67,1.25 to p.68,1.14

27. His Honour next proceeded to consider the three factors mentioned by the Privy Council in Durayappah v. Fernando, supra. As to the third factor, the sanction which the Board is entitled to impose, he held that Megarry J.'s observation as to the applicability of the rules of natural justice to a suspension in John v. Rees (1970) Ch. 353 were inapplicable to the instant case. He held that Speight J.'s references to suspension as "a substantial penalty", "a grave step" and "a grave penalty" were overstatements which had led to an erroneous conclusion, and that suspension was "not a penalty but a temporary measure taken for the purpose of removing the teacher from his post pending a decision by the Board under Reg. 6 (1), or the

p.68,1.23 to p.69,1.32
p.69,1.33-41
p.69,1.42-46

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p.70,l.1-6 p.70l.20-29	Teachers' Disciplinary Board under Reg.8 (4), as to whether the charge has been proved." While suspension involved a residuum of damage to a teacher's reputation, that was a necessary hazard of the teaching profession.	
p.70,l.40-43	28. Wild C.J. summarised his judgment by saying that the Court was not at liberty to engraft on to the regulations a provision which appeared deliberately to have been omitted.	
p.70,l.44 to p.71,l.3	29. Wild C.J. found it unnecessary to discuss a submission for the Respondent that, even if the rules of natural justice were to be implied, the teacher was nevertheless not entitled to certain of the forms of relief which he sought. The basis of that submission was that the relationship between the parties was the ordinary relationship of employer and employee. The argument is elaborated in paragraphs 46 - 57 below.	10
pp.71-72 p.73,l.1-2	30. North P. delivered a short judgment concurring with the judgment of Wild C.J. Turner J. agreed with both judgments and had nothing to add.	20
p.76	31. The Court of Appeal of New Zealand on 21 December 1971 granted the Appellant final leave to appeal from the judgment of the Court of Appeal to Her Majesty in Council.	
p.61,l.39-46	32. The Appellant was not paid his normal salary between the date of his suspension (20 March 1970) and the date of the Supreme Court judgment (22 October 1970). Nothing turns on the precise amount of his net loss (after deductions for taxation, etc.) but it is an amount considerably in excess of $1,000 (N.Z.). After the date of the Supreme Court judgment the Board paid the Appellant's salary but at the Board's request the Appellant stayed away from the Kamo High School. Subsequently he resigned and the Respondent accepted his resignation with effect from 1 February 1971. In consequence of the foregoing some seven months' net salary is at stake in the present appeal.	30 40
	33. The Respondent submits:	

A. The regulations provide a complete scheme or code for dealing with disciplinary matters and the Courts should therefore not import any additional procedural safeguards into the regulations.

The Court of Appeal adopted this submission, Wild C.J. stating that the regulations provide a code of disciplinary procedure which is complete and exhaustive. Wild C.J. regarded
10 this as merely "a strong indication that the regulations leave no room for any rule of natural justice to be applied." But it is contended that if the regulations are construed as a complete code it necessarily follows that no additional procedural requirement may be added. If so, that is sufficient to dispose of this appeal.

34. In the Supreme Court Speight J. raised the question whether the regulations "laid down a
20 comprehensive code", as had been urged upon him by counsel for the Board. But he failed to return to this fundamental question later in his judgment.

35. If Parliament or the author of statutory regulations makes its or his intention plain that a specified procedure is exhaustive, as is increasingly common in modern statutes and statutory regulations, the courts will not import the audi alteram partem principle of natural
30 justice. Reliance is placed on some remarks by Lord Devlin in Ridge v. Baldwin (1964) A.C. 40, at 73-74; The Commissioner of Police v. Tanos (1958) 98 C.L.R. 383, at 396, per Dixon C.J. and Webb J.; Wiseman v. Borneman (1971) A.C. 297, at 318 per Lord Wilberforce and at 308 per Lord Reid; and especially on what was said by this Board in Durayappah v. Fernando (1967) 2 A.C. 337, at 348.

36. The regulations are ex facie intended to
40 operate as a complete code. They carefully detail the steps to be taken at the various stages of a 5-tiered process, viz:

(1) Preliminary investigation of the complaint(s) by a subcommittee of the Board: Regulation 4.

(2) (i) Consideration by the Board as to whether it has "reason to believe that the teacher may have committed an offence": Regulation 5 (1).

(ii) A hearing by the Board on the merits, after notice to the teacher: Regulation 5 (3) and (4).

(3) Consideration by the Director-General: Regulation 5 (5).

(4) A hearing before the Teachers' Disciplinary Board, on reference from the Director-General: Regulation 8. 10

(5) An appeal from an adverse finding at stage (4) to the Teachers' Court of Appeal; Regulation 11 and Part VI of the Education Act 1964.

In addition the Teachers' Disciplinary Board may state a case to the Supreme Court on questions of law: Regulation 7 (4), invoking the Commissions of Inquiry Act 1908, s.10. 20

37. A case presenting a useful analogy is Brettingham-Moore v. St. Leonards Corporation (1970) 43 A.L.J.R. 343. The judgment of Barwick C.J. at 347-8 is especially helpful.

38. Further evidence that the regulations were intended to operate as a complete code comes from their history. The procedure was originally laid down by section 159 of the Education Act 1964. This procedure was replaced by the procedure contained in the regulations, 30 pursuant to section 161 A. Under section 159 the Board could suspend as soon as a charge had been made against the teacher: section 159 (7). Under the regulations there must be a preliminary investigation before the power to suspend becomes exercisable by the Board. The reasonable inference is that the organisation of teachers and the association representing Boards employing teachers, judged that the procedure specified in the regulations was, of itself 40 and without more, sufficient to safeguard teachers against a suspension founded on trivial or baseless complaints.

39. If the above submission (A) is not accepted then the Respondent submits, alternatively:

B. Several factors, considered in combination, show that the principle audi alteram partem should not be implied so as to require either the subcommittee or the Board to hear a teacher or to invite his comment upon
10 the subcommittee's report before the Board suspends him under Regulation 5 (1)

40. The Respondent respectfully adopts Wild C.J.'s analysis of the position in the light of the three matters which this Board in Durayappah v. Fernando, supra, held should always be borne in mind.

41. The question confronting a Board, when deciding whether or not to suspend a teacher, is not "Is he guilty of the offence charged?"
20 but: "Is the nature of the charge such, and the circumstances in which it is alleged to have been committed such, that this teacher should be suspended in the interests of the school, its pupils, and the public?"

It is submitted that the power to suspend is a power intended to be exercised in order to serve those interests, not in order to punish the teacher.

42. Suspension is not a sanction employed
30 against the teacher: It is not a penalty at all. This is supported by the wording of section 157 (3) and (4) of the Education Act 1964, by the non-inclusion of suspension amongst the penalties prescribed by Regulation 10, and by the fact that if a teacher who has been suspended later has his suspension lifted, he must receive the salary that would have been payable to him had he not been suspended. Suspension may be a penalty in quite different
40 contexts, e.g. when a member of a political party is suspended from membership: as, for example, in John v. Rees (1970) Ch.353. But it is not a penalty in the context of the Education Act 1964 and the regulations.

43. As a practical matter a Board will often need to act promptly. The regulations themselves result in some delay before suspension can take place. The Board must have met and appointed a subcommittee or person under Regulation 4; that subcommittee must have been convened to investigate the complaint(s); it must then have reported to the Board, and the Board must be convened in order to act under Regulation 5. Thus, even in the more serious of the cases to which section 158 rather than section 157 applies, a teacher is protected from immediate suspension. Once the above-described steps have been taken, it is an irresistible inference from the regulations that it was intended that suspension, if decided upon, should proceed without further ado. If the Board had to comply with the requirements of natural justice, further delay would necessarily be occasioned. There would have to be a preliminary hearing of some kind, possibly involving opportunities for the cross-examination of many witnesses. Such further delay would not serve the interests of the school, its pupils, their parents, or the public. Moreover, if, as a matter of law, a teacher must be heard before he is suspended, the Board will sometimes find it impossible to comply with the law. Such a result cannot have been intended. The regulations should be so construed as to give effect to, rather than to frustrate, their manifest purpose.

44. It may be that a suspension affects a teacher detrimentally in regard to his career; if so, the harm is very small. The investigating subcommittee meets in private. Its report is not publicised. The Board's decision to suspend the teacher is unlikely to become widely known, except in smaller towns. If the offences alleged are found proved after hearing by the Board the previous suspension does not result in any loss of salary if the Board decides, under Regulation 6, merely to caution, reprimand or censure the teacher. No action by the Board alone can result, without more, in a loss of salary. Only the Teachers' Disciplinary Board, if the case goes so far, may impose a penalty involving a deduction from the teacher's salary. Even then, Regulation 10 (3) provides a safeguard. Regulations 5 (4) (a) and 8 (7) may

also be pointed to as showing their framers' determination that the suspension of an innocent teacher should not occasion him any loss of salary.

45. Moreover, no useful purpose would be served by a requirement that a teacher must be heard by the Board before being suspended. A teacher's views on whether the public interest requires his suspension are irrelevant.
10 The only subject on which he could usefully speak would be the facts of his alleged offence. However, the regulations expressly reserve the inquiry in those facts to a later stage. An extra hearing, before the suspension, would be redundant and time-wasting.

46. The Respondent further submits:

C. If, contrary to submissions A and B the Board was required to afford the Appellant a hearing before suspending
20 him, the Appellant is not entitled to any remedy because he was an ordinary employee of the Board.

47. This argument was briefly advanced in the Supreme Court and fully developed before the Court of Appeal. Speight J.'s disposal of this argument (see paragraph 17 supra) was erroneous.

48. In Ridge v. Baldwin (1964) A.C.40, at 65, Lord Reid distinguished three classes of dismissal case, namely (1) dismissal of a
30 servant by his master, (2) dismissal from an office held during pleasure, and (3) dismissal from an office where there must be something against a man to warrant his dismissal. Lord Reid said that there could not be specific performance of a contract of service, and that "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 ...."

40 49. The Respondent submits that the Appellant fell within class (1) rather than class (2) or

class (3). It is further submitted that although Lord Reid was speaking of dismissals, what he said is equally applicable to suspensions. Consequently, the appellant cannot complain of a failure of natural justice on the part of the Board. Nor can he obtain an order for a writ of certiorari to quash his suspension, or an injunction compelling the Board to remove the suspension, as either order would be tantamount to an order for the specific performance of his contract of service, which the courts decline to order. 10

50. Teachers appointed by the Board of Governors of a secondary school in New Zealand are employees of the Board: see, the Education Act 1964, sections 50, 51, 56, 59 and, especially, 61. The Board is an autonomous body corporate. When it appoints or dismisses or suspends a teacher, it does not act as an agent for the Crown. 20

51. Various statutory regulations affect the employment of secondary teachers in New Zealand secondary schools. The following is an exhaustive list of the statutory regulations which applied to the relationship between the Appellant and the Board:

(1) Education (Assessment, Classification and Appointment) Regulations 1965 (S.R. 1965/175). These regulate the method of appointing teachers, but not the conditions of their employment. 30

(2) Education (Salaries and Staffing) Regulations 1957 (S.R. 1957/119) Regulation 60 deals with the notice required on termination of employment

(3) Education (Teacher's House Occupancy) Regulations 1968 (S.R. 1968/137).

(4) Examination and Certification of Teachers Regulations 1961 (S.R. 1961/97).

(5) Teachers Leave of Absence Regulations 1951 (S.R. 1951/128) 40

(6) Secondary School Boards Administration Regulations (S.R. 1965/177). Regulation 59 gives the Principal of a school the power, subject to the general direction of the Board, to recommend the appointment or dismissal of assistant teachers.

(7) The Secondary and Technical Institute Teachers Disciplinary Regulations 1969 (S.R. 1969/271).

10 52. Certain conditions of each teacher's contract of employment derive from the Education Act 1964:

(1) Section 153 - the payment of overgrade salaries.

(2) Section 154 - right to be offered a transfer in certain circumstances.

(3) Section 155 - duration of appointment

(4) Section 157 - liability to be suspended
20 upon being charged with a serious criminal offence.

(5) Section 158 - disciplinary offences

(6) Section 163 - prohibition on other employment.

(7) Sections 174 - 182 - teacher's rights of appeal to the Teachers' Court of Appeal.

(8) Sections 199 - 200 - teachers' rights in respect of house occupancy.

30 53. The provisions listed in paragraphs 51 and 52 leave considerable scope for bargaining on terms and conditions of employment between a secondary school teacher and the Board of Governors. Each teacher is an ordinary employee of the Board, even although his contract of service has a statutory flavour. In theory every teacher in the country may work

under a contract of service with terms different from those applying to every other teacher.

54. The situation in the present case is, it is submitted, indistinguishable from that before this Board in Vidyodaya University Council v. Silva (1965) 1 W.L.R. 77. The Respondent Board submits that the ratio decidendi of that case governs this aspect of the present appeal. Reliance is also placed on Barber v. Manchester Regional Hospital Board (1958) 1 All E.R. 322, a decision of Barry J., and on the decisions of this Board in Francis v. Kuala Lumpur Councillors (1962) 1 W.L.R. 1411 and Pillai v. Singapore City Council (1968) 1 W.L.R. 1278

55. The Appellant was not the holder of an "office" within the meaning of Lord Reid's second and third classes in Ridge v. Baldwin, supra. For the distinction between a servant and the holder of an office, in the context of an action for loss of services, reliance is placed on Attorney-General (N.S.W.) v. Perpetual Trustees Co. (1955) A.C. 457, at 489.

56. The injunction granted by Speight J. in the Supreme Court cannot be supported, having regard to the rule that an injunction will not be granted by the court if its effect is to compel the continuance of the employer-employee relationship.

57. The decision of the House of Lords in Malloch v. Aberdeen Corporation (1971) 1 W.L.R. 1578, which was reported after the New Zealand Court of Appeal gave judgment in the present case, is distinguishable. A majority of their Lordships held that teachers in Scotland are not mere servants. That decision has no bearing on the present appeal. Moreover, it is respectfully submitted that the views of Lord Morris of Borth-y-Gest and of Lord Guest, so far as they differ from the views of the majority, are to be preferred. It is further respectfully submitted that the Board should decline to follow certain observations made by Lord Wilberforce as to the authority of Vidyodaya University Council v. Silva.

58. The Respondent contends that this appeal should be dismissed with costs for the following

among other reasons.

REASONS

(1) THAT the regulations provide a complete scheme or code for dealing with disciplinary matters and the Courts should therefore not import any additional procedural safeguards into the regulations.

(2) That several factors, considered in combination, show that the principle audi
10 alteram partem should not be implied so as to require either the subcommittee or the Board to hear a teacher or to invite his comment upon the subcommittee's report before the Board suspends him under Regulation 5 (1).

(3) THAT, if the Board was required to afford the Appellant a hearing before suspending him, the Appellant is not entitled to an order for a writ of certiorari or to any other remedy because he was an ordinary employee of the
20 Board.

(4) THAT the decision of the Court of Appeal of New Zealand was correct.

R. C. SAVAGE.

NO. 7. of 1972

IN THE PRIVY COUNCIL

O N   A P P E A L

FROM THE COURT OF APPEAL OF NEW ZEALAND.

B E T W E E N

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CASE FOR THE RESPONDENT

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