1969 *Present :* **H. N. G. Fernando, C.J., and Pandita-Gunawardene, J.**

YAKKADUWE SRI PRAGNARAMA THERO, Petitioner, *and* THE MINISTER OF EDUCATION (The Hon. I. M. R. A. Iriyagolle) and Others, Respondents

S. C. 667/68—Application for an Injunction

Higher Education Act, No. 20 of 1966—Section 42—Vice-Chancellor of a University—Power of Minister to remove him from office—Scope of Interpretation Ordinance (Cap. 2), s. 14 (f)—Natural justice—Scope of rule audi alteram partem.

Interlocutory injunction—Considerations applicable—Irreparable damage—Rule of "balance of convenience".

There is no provision in the Higher Education Act concerning the ground or the mode of dismissal of a Vice-Chancellor appointed by the Minister of Education in accordance with the provisions of section 42 of that Act. Sub-sections (6) and (7) of section 42 of the Higher Education Act imposing a time limit for the duration of the office must be read with section 14 (*f*) of the Interpretation Ordinance. Accordingly, the Minister, being the person who has the power to appoint a Vice-Chancellor, has thereby also the power to remove the Vice-Chancellor from office. In such a contingency, the rule of *audi alteram partem* need not be observed by the Minister.

An interlocutory injunction will not be granted if there is no likelihood of irreparable damage being caused to the petitioner. Moreover, the burden of proof that the inconvenience which the petitioner will suffer by the refusal of the injunction is greater than that which the respondent will suffer, if the application is granted, lies on the petitioner.

APPLICATION for an injunction on the Minister of Education.

H. W. Jayewardene, Q.C., with *Gamini Dissanayake*, for the Petitioner.

H. L. de Silva, Crown Counsel, for the 1st Respondent.

S. Nadesan, Q.C., with *N. Satyendra*, for the 15th Respondent.

Cur. adv. vult.

January 15, 1969. H. N. G. FERNANDO, C.J.—

The petitioner was appointed the Vice-Chancellor of the Vidyalankara University as from 1st October 1966. The appointment is regulated by s. 42 of the Higher Education Act No. 20 of 1966 which provides that the Vice-Chancellor shall be a person of eminence appointed by the Minister of Education from a panel of at least three names recommended by the National Council of Higher Education.

By letter dated 30th November 1968, the 1st respondent, who is the Minister of Education, purported to remove the petitioner from the office of Vice-Chancellor with immediate effect.

The petitioner in his present petition states that he is taking steps to file action in the District Court of Colombo against the 1st respondent and the National Council for a declaration that he is the duly elected Vice-Chancellor of the University, and further praying for an injunction preventing the respondents from purporting to appoint a new Vice-Chancellor. Because the institution of that action has to be delayed for 30 days after notice thereof is given to the 1st respondent, the petitioner prays in this application for an interim injunction to prevent and restrain the nomination or appointment of any person to the office of Vice-Chancellor pending the final determination of the action proposed to be instituted in the District Court.

Learned Counsel appearing for the 1st respondent took the preliminary objections, firstly that the petitioner has failed to establish that the act of the Minister in making a fresh appointment to the office of Vice-Chancellor will cause irremedial damage to the petitioner, and secondly, that no injunction will lie to restrain a Minister from doing some act as a Minister of Crown. For reasons which will presently be stated however, it turns out that these objections need not be fully considered in the present case.

Sub-section (6) of s. 42 of the Higher Education Act provides as follows :—

> " (6) The Vice-Chancellor of a University shall, unless he earlier vacates office, hold office for a term of five years, or until he has completed his sixty-fifth year, whichever event occurs earlier, and shall thereafter be deemed to have voluntarily retired :
>
> Provided, however, that if, under the preceding provisions of this sub-section, his term of office expires in the course of an academic year he shall continue in that office until the last day of such academic year, and shall thereafter be deemed to have voluntarily retired.
>
> A Vice-Chancellor shall be eligible for reappointment. "

The argument of the Counsel for the petitioner has been that sub-section (6) fixes a term of five years as the period during which a person appointed to be Vice-Chancellor will hold office and that no authority has the power to limit that period of office. Sub-section (6) itself, it is argued, provides for two means by which the period may be reduced, one being the event of resignation by the person appointed, and the other being the eventuality that the person appointed, may complete his 65th year before the end of his five year term. The sub-section it is argued does not comtemplate any other means by which the term of office can be reduced.

Counsel relied in this connection on sub-section (7) which empowers the Minister to make arrangements and for carrying on the office in a case where the Vice-Chancellor is temporarily unable to perform his duties. This sub-section, it was argued, establishes by implication the intention of Parliament that the Minister will not have any power to remove the Vice-Chancellor from office.

There would be much force in these arguments if sub-sections (6) and (7) are the only provisions of law which are apparently applicable. But that is not the case, since consideration must necessarily be given to the Interpretation Ordinance which applies for the construction of all Acts of Parliament. Section 14 of that Ordinance provides in paragraph (*f*) that—

> (*f*) for the purpose of conferring power to dismiss, suspend, or re-instate any officer, it shall be deemed to have been and to be sufficient to confer power to appoint him.

Prima facie this paragraph appears to confer on the Minister in this case the power to dismiss the Vice-Chancellor from office because the substantial effect of paragraph (*f*) appears to be that the Minister, being

the person who has under s. 42 of the Act of 1966 the power to appoint a Vice-Chancellor, has thereby also the power to dismiss the Vice-Chancellor.

Counsel for the petitioner has argued that the application of paragraph (*f*) of s. 14 of the Interpretation Ordinance is excluded in the present context. He has urged that Parliament provided for the nomination by the National Council of a panel of 3 names, and for the appointment as Vice-Chancellor by the Minister of a person of eminence chosen from that panel. Parliament must be held to have contemplated that no action would ever arise for the removal from office of a Vice-Chancellor so appointed. I may say that it may not have been unreasonable for Parliament to entertain such an intention ; but even so Parliament has not expressed that intention in the Act of 1966. Parliament must be presumed to be aware of the general rules contained in the Interpretation Ordinance, and if it were Parliament's intention that the Rule set out in s. 14 (*f*) is not to apply in the present context, simple provision to that effect could have been made in the Act of 1966. In considering this argument, I have unfortunately to take into account an unpleasing possibility, however theoretical it may be, that a person appointed as Vice-Chancellor can conceivably become permanently of unsound mind or be convicted of a crime. If Counsel's argument be correct, then there would be no lawful means of removing from office a person whose continuance therein has become completely objectionable in the public interest. I cannot agree that a Court should attribute to Parliament any intention to exclude the operation of s. 14 (*f*) of the Interpretation Ordinance in such an event.

I must hold for these reasons that there is nothing in s. 42 of the Act of 1966 which implies that the Minister has no power to dismiss a Vice-Chancellor from office.

Counsel for the petitioner made a further submission that the Minister's power to dismiss the Vice-Chancellor may be exercised only after observance by the Minister of the rule of *audi alteram partem*. The operation of this rule in relation to the power of dismissal was discussed in the House of Lords in the case of *Ridge v. Baldwin* [1]. Lord Reid there stated that cases of dismissal appear to fall into three categories :—

(1) Dismissal of a servant by his master ;

(2) Dismissal from an office held during pleasure ;

(3) Dismissal from an office where there must be something against the man to warrant his dismissal.

In discussing the second of these cases Lord Reid referred to a series of decisions commencing from 1670 holding that where an office is simply held at pleasure, the person who has the power of dismissal cannot be

[1] *(1963) 2 A. E. R. 66.*

bound to disclose his reasons, and that accordingly the Court cannot determine that it would he fair to hear the officer's case before he is dismissed. Lord Reid then points out that the case before him is not one of an office held at pleasure, and states that " in this case the Act of 1882 permits the Watch Committee to take action (i.e., to dismiss the officer) only on the grounds of negligence or unfitness ".

In *Ridge v. Baldwin* the relevant Statute provided that " the Watch Committee may at any time dismiss any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for service ". Having regard to this statutory provision, Lord Reid placed the case in the third class which I have mentioned above, and proceeded to refer to " an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation ".

Let me here repeat that the third class of case which Lord Reid considered was the class " where there must be something against a man to warrant his dismissal ". It is important to remember that the requirement that there must be some such fault on the part of the holder of an office is not derived by the Court from its own opinion, but is instead derived (as it was in the case of *Ridge v. Baldwin*) from express provision in the Statute which constitutes an office. Thus the pronouncement, that the rule of *audi alteram partem* must be observed in the third class of case, means only that where a statute provides for dismissal on some specific ground or after observance of some specific procedure, an officer must be heard in his defence unless the need for such a hearing is expressly excluded by the prescribed procedure.

Learned Counsel for the petitioner contended that the office of Vice-Chancellor under s. 42 of the Act of 1966 is not one of a servant, and is not one held at pleasure ; and that it therefore falls within neither of the first two classes specified above. He contended on that basis that this office falls within the third class, and that accordingly the rule of *audi alteram partem* should have been observed. This argument in my opinion, ignores the consideration to which I have just referred, namely that a case is not within the third class unless the power of dismissal is regulated by the Statute which constitutes the office. Moreover it seems to me that in every case where the unfettered power of dismissal from an office which s. 14 (*f*) of the Interpretation Ordinance confers is exercisable, that is to say where the Legislature has said nothing concerning the ground or mode of dismissal, the office is held at pleasure or is at the least held on terms equivalent to the terms of an office held at pleasure. A case where s. 14 (*f*) applies is not one of master and servant, nor is it one where a Statute provides for dismissal on a stated ground or according to stated procedure, and is not therefore a case falling into either the

first or the third class in Lord Reid's classification. Such a case, if not identical with the second class, cannot be distinguished on any ground from the cases placed by Lord Reid in that class.

I hold therefore that the petitioner was validly removed from office by the Minister.

I have discussed the rule of *audi alteram partem* on the assumption that it was not observed in this case by the Minister. But for purposes of record I must note that the affidavit of the Minister avers that he did summon the petitioner to a Meeting on 18th November 1968, and did on that occasion afford to the petitioner an opportunity to state any reasons against the course of action which the Minister ultimately took. This averment has been subsequently denied by the petitioner, but it is not necessary to determine which of the two conflicting versions are correct, because for reasons already stated, my conclusion is that this is not a case in which the rule of *audi alteram partem* need have been observed by the Minister.

I hold also that one at least of the objections taken by learned Crown Counsel must be upheld, namely that irreparable damage will not be caused to the petitioner if the injunction for which he prays is not granted. Assuming for the moment that the dismissal of the petitioner from office was unlawful, it would follow that any new appointment to the office of Vice-Chancellor would be equally unlawful. If then such a new appointment is made, the petitioner will nevertheless continue to hold his office, and ample remedies will be available for him to resist encroachment upon his lawful rights and functions by the person newly appointed.

I rely also on the rule of the "Balance of Convenience" stated in Halsbury (Vol. 21, 3rd Ed., p. 366) :—

> "Where any doubt exists as to the plaintiff's right, or if his right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right. The burden of proof that the inconvenience which the plaintiff will suffer by the refusal of the injunction is greater than that which the defendant will suffer, if it is granted, lies on the plaintiff."

Even if some doubt might be thought to exist as to the validity of the Minister's act in removing the petitioner from office, it is in the interests of the University that a new appointment be made.

For the reasons which have now been stated we dismissed the petitioner's application after hearing the arguments of Counsel.

Application dismissed.