

SUPREME COURT OF NIGERIA
7TH OCTOBER, 1994. SC.221/1992
CORAM:- S. M. A. BELGORE, A. B. WALI, M. E.
OGUNDARE, E. O. OGWUEGBU, S. U. ONU, JJSC

HOPE CHINYELU NNOLI

.... PLAINTIFF/RESPONDENT

AND

1. UNIVERSITY OF NIGERIA TEACHING
HOSPITAL MANAGEMENT BOARD

2. UNIVERSITY OF NIGERIA
TEACHING HOSPITAL

..... DEFENDANTS/APPELLANTS

CONSTITUTIONAL LAW - *Fair hearing - Master & Servant - Non compliance with Decree 10 of 1985 - Whether a denial of fair hearing under s. 33(1) of the 1979 Constitution.*

EVIDENCE - *Dereliction of duty - Master and Servant - Whether appellants proved admission of dereliction of duty by respondent - As asserted by them.*

MASTER & SERVANT - *Allegation of misconduct - Where respondent appeared as a witness - And not as an accused - Whether 1st appellant was right in playing role of investigator & judge in one go.*

MASTER & SERVANT - *Ultra vires and void removal of a servant - Where contract of service is protected by statute - Removal that is not in compliance with the statutory provisions - Is ultra vires and void.*

MASTER & SERVANT - *Wrongful termination - Where the contract of service has a statutory flavour - And the termination is declared null and void - Whether respondent is to be reinstated.*

STATUTES - *Procedure specified by a statute - Need to follow it strictly.*

WORDS & PHRASES - *“Shall” - As used in s. 9(1) & 13 of Decree No. 10 of 1985 - Whether mandatory.*

FACTS

The respondent is an assistant chief pharmacist working in the employ of the 2nd appellant. An unqualified pupil pharmacist, Mr. Nwuzor, undergoing his internship was posted to the respondent's unit. In February, 1987, the said Mr. Nwuzor compounded chloroquine syrup which caused the death of children between one and four years who took it. Being on internship, Mr. Nwuzor was not supposed to compound medicine without supervision. There was a public outcry following the children's death. The 1st appellant interviewed the respondent, Mr. Nwuzor and the chief pharmacist. It was alleged that the respondent admitted having previous record of negligence. Consequently, the 1st appellant compulsorily retired the respondent with full benefits from the services of the 2nd appellant.

The respondent instituted an action against the appellants before the High Court, Enugu seeking inter alia a declaration that her termination is null and void for non-compliance with statutory provisions and breach of fair hearing under s. 33 of the 1979 Constitution. The trial court found in favour of the respondent and ordered her reinstatement. Appellants appeal to the Court of Appeal was dismissed. Appellant has further appealed to the Supreme Court to determine whether the 1st appellant can act fairly outside the statute creating it in matters relating to discipline of an employee and whether reinstatement of a wrongfully dismissed employee is the right order to make in the circumstances.

HELD (Unanimously dismissing the appeal per lead judgments of **ONU JSC**)
Proceedings specified by a statute

1. When a statute directs that certain procedure be followed before a person can be deprived of his right, whether in respect of his person, property or office, such a procedure must be strictly followed. In the instant case, the appellants failed to establish that the respondent ever admitted any misconduct or dereliction of duty and the learned trial Judge so found. (P. 176 L. 15)

“Shall” - Whether mandatory

2. The word “shall” as used in sections 9(1) and 13 of Decree No. 10 of 1985, I conceive, is mandatory and does not, in my view, permit of any discretion, variation or circumvention of the clear procedure to be followed. Anything short of this, is what the court below, rightly in my view, held to be a non-starter or an ineffective disciplinary action in accordance with the enabling statute which was promulgated to be applied to such category of staff as the respondent and in circumstances as arose in the instant case. (P.177 L.4)

Fair hearing

3. Non-compliance with the provisions of Decree 10 of 1985, therefore, clearly amounts to a denial of fair hearing to the respondent as enshrined in Section 33(1) of the 1979 Constitution. (P. 177 L. 19)

Dereliction of duty

4. In the instant case, the onus lay on the appellants to establish their assertion that the respondent admitted dereliction of duty. The finding on the point constitutes concurrent findings of the two courts below, an appeal against which is not before this court. The appellants, in my opinion, have therefore failed to prove the primary premise of their case which is that the respondent admitted dereliction of duty or misconduct. (P. 178 L. 10)

Playing role of investigator and judge in one go

5. In the case in hand, the appearance of the respondent before the 1st appellant (an administrative body duly constituted) as a witness and not as an accused when summoned over an allegation of misconduct, that act did not confer on the 1st appellant acting for itself and on behalf of the 2nd appellant, reciprocal rights of investigation as well as judge and/or arbiter, all in one go. (P. 181 L.7)

Ultra vires and void removal of servant

6. As the general principle therefore is that where the contract of service is protected by statute (in this case, by section 9(1) of Decree No. 10 of 1985 (ibid) and the removal of the respondent is predicated upon compliance with these statutory provisions, non-compliance with the statutory provisions thereof rendered the respondent's removal ultra vires and void. (P. 182 L.2)

Wrongful termination - Reinstating the respondent

7. Since the respondent was 45 years old when she was prematurely retired from her office or employment and that act of termination from the services of the appellants was rightly, in my view, declared null and void, the effect is that the respondent is entitled to return to her duty post. (P. 183 L.16)

NOTABLE POINTS OF INTEREST**BELGORE JSC*****1. Need to comply with statutory provisions & principle of fair hearing***

The statutory provisions establishing a corporate body hardly overlooks pro

visions for the body to employ staff and to discipline them. Once the statutory provisions are clear as to how to deal with erring servant they must be adhered to strictly including clear observation of the principle of fair hearing. An employee must be clearly told he is being tried for disciplinary action and mere
 5 presence in a manner of an ordinary witness cannot be substitute to intimation of an accusation against him for him to offer his defence. (P. 184 L1)

OGUNDARE.JSC

10 ***2. Specific performance in contract tinged with statutory flavour***

It is well settled by a long line of cases that the court will not order specific performance of a contract of personal service except where the contract is tinged with statutory flavour, in which case a servant over whom statutory provisions prevail is said to be invested with a legal status which makes his
 15 relationship with his master beyond the ordinary master and servant relationship. (P. 187 L.27)

3. Case more of procedural ultra vires than breach of natural justice

20 From the pleadings, evidence and admissions by the Appellants it is not disputed that there was non-compliance with ss(1) of section 9 before the Respondent was compulsorily retired from service. Although the Respondent fought this case essentially on the grounds of breach of natural justice, in my respectful judgment however, 1st Appellant's transgression is one of procedural ultra vires rather than breach of natural justice. (P. 188 L35)

4. Breach of mandatory statutory procedural safeguards

Where a public body fails to comply with certain procedural safeguards in an enabling Act or Regulations, there is a breach of a duty imposed on it and its decision in such circumstance is ultra vires. To render the decision void, however, the procedural provision must be mandatory and not merely directory. (P. 189 L20)

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OGWUEBGUJSC

5. Respondent does not hold office at the pleasure of appellants

There is no doubt that the respondent in the present case does not hold her

office at the pleasure of the appellants or any body at all. Rather, she holds it under the provisions of the University of Nigeria Teaching Hospital Act, 1974 and the University Teaching Hospitals (Reconstitution of Board, etc.) Act No. 10 of 1985. Both appellants being creatures of statutes, cannot act except within and under the powers conferred on them by the relevant statutes creating them. (P.196 L5)

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6. Circumstance of no hearing at all

In this case there was a failure by the appellants to comply with all the preconditions set out in section 9(1) of the Act. There was in the circumstances no hearing let alone a fair hearing. The purported interview where the respondent played a role analogous to that of a witness was not in compliance with S.9(1) of the Act. (P. 198 L8)

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REPRESENTATION

A.N. Anyamene SAN, Miss U. Uyanwune for the Appellants

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U.N. Udechukwu Esq. for the Respondents

CASES REFERRED TO

Federal Civil Service Commission v. Layoye (1989) 4 SCNJ (Pt.11) 146

Garba v. University of Madiguri (1986) 1 All NLR (Pt.1) 124 (Reprint)

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Sule v. Nigerian Cotton Board (1985) 6 SC 62

Ifezue v. Mbadugha (1984) 5 SC 79

Olatunbosun v. NISER Council (1988) 3 NWLR (Pt.80) 25

Chukwu v. Ezulike (1985) 5 NWLR (Pt.45) 892

Mohammed v. Olawumi (1990) 2 NWLR (Pt.133) 458

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Adeniyi v. Gov. Council of Yaba Cotech (1993) 6 NWLR (Pt.300) 426

Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.9) 599

Ebosie v. Ebosie (1976) 7 SC 113

Shitta-Bey v. Federal Civil Service Commission (1981) 1 SC 10

Vine v. National Dock Labour Board (1956) 3 All ER 939

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Lloyd v. McMahon (1987) AC 625

Ceylon University v. Ferando (1960) 1 WLR 223

STATUTES REFERRED TO

University Teaching Hospitals (Reconstitution of Boards, etc)

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Decree No. 10 1995 ss. 9(1), 13, 5(3)(a)

Constitution of the Federal Republic of Nigeria 1979 ss. 33, 258(1)

Evidence Act Cap. 112 1990 ss. 135(1), 149(d)

Federal Polytechnics Act 1979 s. 12(1) & (3)

LEAD JUDGMENT BY ONUJSC

When we heard this appeal on the 11th day of July, 1994, we took arguments from learned counsel and I dismissed it. I reserved my reasons for the action we took until today. I now give my reasons for dismissing the
5 appeal.

The two questions which in my opinion stand out in bold relief for answers in this appeal are firstly, whether a public body such as a University Teaching Hospital Management Board established by statute can act fairly outside the provisions of the statute creating it in matters relating to the discipline of a
10 servant or employee and secondly, whether the reinstatement of a dismissed servant or employee is the right order to make in the circumstances.

The plaintiff, herein respondent, having been retired with full benefits from her employment as Assistant Chief Pharmacist with the 1st defendant, herein 1st appellant, instituted Suit No. E/194/87 before Ononiba. J. in
15 the High Court of the former Anambra State against both 1st appellant and the 2nd defendant (now 2nd appellant) jointly and severally as per her Statement of Claim for the following reliefs:

*1. A declaration of this Honourable Court that the purported termination of plaintiffs employment with the University of Nigeria Teaching
20 Hospital, contained in a letter reference number UNTH/PF.2166/ 163 and dated 19th May, 1987 addressed to the plaintiff by one Mrs. M. Ohaegbulam, the Director of Administration of the University of Nigeria Teaching Hospital is null and void or ineffectual or unlawful by reason of gross irregularity, lack of reasonable cause, denial of natural justice and non-compliance with
25 the enabling statutes establishing the defendants, and breach of Section 33 of the Constitution of the Federal Republic of Nigeria 1979.*

*2. An order of this Honourable Court setting aside the said letter reference UNTH/PF.2166/163 dated 19th May, 1987 by which defendants
30 purported to retire the plaintiff from her employment as Assistant Chief Pharmacist with the university of Nigeria Teaching Hospital.*

3. A declaration that the plaintiff is entitled to remain and continue in employment at University of Nigeria Teaching Hospital, until she attains the retirement age as prescribed by law or until earlier retired on grounds of ill-health or other lawful cause.
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4. An order of this Honourable Court setting aside the purported retirement of the plaintiff all her rights and benefits; including her right to

continue in employment at University of Nigeria Teaching Hospital until she attains the age of retirement as prescribed by law or until she is otherwise earlier retired on grounds of ill-health or other lawful cause."

Pleadings having been ordered, duly filed and exchanged, the case 5
went to trial. The High Court granted her the declarations and order sought
and the same were confirmed by the Court of Appeal sitting in Enugu (herein-
after in the rest of this judgment referred to as the court below).

Aggrieved by this decision, the appellants with the leave of the 10
court below, has further appealed to this court on five grounds and later with
leave, an additional ground.

But first the facts of the case which are largely not in dispute. The
respondent was the only qualified chemist in the compounding unit of the 2nd
appellant at the time material to this case. An unqualified pupil pharmacist,
named Mr. Nwuzor who was then undergoing his internship with 2nd appel- 15
lant, was posted to the respondent's unit. Being on internship, Mr. Nwuzor
was not to compound medicine on his own without supervision. On 20th
February, 1989, Mr. Nwuzor allegedly compounded chloroquine syrup which
caused the deaths of children aged between one and four years who took it.
Post mortem examination conducted on the bodies of the children confirmed 20
the cause of death. Analysis of the said syrup by the Central Drug Control
Unit of the Federal Ministry of Health, revealed that the said chloroquine
syrup contained about eight times more chloroquine phosphate than a normal
dose. Such over-dosage, it was deciphered, is dangerous and liable to result
in deaths of children aged between one and four years. 25

Sequel to the deaths of the children, there was a public outcry and
the 1st appellant conducted an investigation to ascertain the person or per-
sons responsible for the over-dosage.

On the 18th day of May 1987, the 1st appellant interviewed the re-
spondent. Mr Nwuzor and the Chief Pharmacist Mr Nwuzor admitted com- 30
pounding the chloroquine syrup and stated he was supervised during the
compounding by the respondent. This assertion by Mr Nwuzor was put to
respondent and following her answer she was asked by the 1st appellant if
she had any previous record of negligence. She was alleged to have answered
in the positive following which 1st appellant compulsory retired her with full 35
benefits from the service of the appellant. Whereupon, the respondent com-
menced her action by a writ against the appellants on 3rd August, 1987 as
hereinbefore alluded to.

From the grounds of appeal filed, the appellants have identified the

following five issues (respondent's four essentially and substantially overlap and dovetail into them) for our determination., They are:-

1. Does mere non-compliance with the formalities prescribed by s.9(1) of the University Teaching Hospitals (Reconstitution of Boards. etc.) Decree 1985 for the removal of officers or similar sections in other laws ipso facto mean a denial of fair hearing to the officer affected so as to nullify the removal?

2. Was the plaintiff as a matter of law or fact denied fair hearing before she was retired?

3. Was it fair hearing for the court below to ignore the complaint of the defendants in their appeal to the said court that as the reliefs claimed by the plaintiff was declaratory it was incumbent on the trial court to consider whether on the facts before it the plaintiff was fully entitled to the exercise of its discretion in her favour?

4. Was the construction put on the opening words of s.9(1) of the University Hospitals (Reconstitution of Boards. etc) Decree No. 10 of 1985 in its application to the facts of this case correct?

5. Did the justice of this case call for reinstatement of plaintiff to her employment in the hospital?

At the hearing of this appeal on 11th July, 1994, learned counsel on either side relied on their briefs and orally expatiated briefly on them. In my consideration of the appeal, I deem it pertinent to treat appellants' issues 1, 2, 3 and 4 which overlap the respondent's issues 1, 2 and 3 all distilled from appellants' grounds 1, 2, 3, 4 and 5 together, and thereafter. appellants' issue 5 which emanates from additional ground 6, separately.

The learned Senior Advocate, Mr. Anyamene, for the appellants first of all submitted that the court below disabled itself from an unbiased appraisal of arguments of the appellants before it when by the use of the following words, it beclouded the real issues submitted to it for determination, to wit:-

"The main issue which calls for determination can be put thus: Was the plaintiff who held a particular official status under contract of employment with statutory favour justifiably removed from that office without complying with the laid down conditions and the rules of natural justice under any circumstances?"

..... Appellants seem to argue that under the 6 special circumstances that prevailed, both the conditions laid down and the strict observance of natural justice became irrelevant and therefore could be overlooked. In other words, the circumstances which led to the removal of the plaintiff were so obvious that she cannot be heard to complain that she was denied a fair hearing".

Learned Senior Advocate then contended that it was obvious from the above quotation that the court below proceeded on the wrong premises in saying that the respondent was denied natural justice and that the case of the appellants was such that the circumstances provided an exception to the application of the rules of natural justice. After stating how the learned trial Judge minced no words as to what he understood by fair hearing guaranteed 5 by section 33 of the 1979 Constitution, he drew our attention particularly to the learned trial Judge's comment on 1st appellant's failure to comply with the statutory prescriptions i.e. Section 9(1) of Decree 10 of 1985, thereby depriving the respondent of her right to fair hearing as guaranteed by section 33 of the 1979 Constitution. He further maintained that there was a necessity to 10 observe those statutory preconditions set out in Decree 10 of 1985 whether or not the respondent was negligent in the chloroquine affair.

Attacking the reasoning of the trial court, learned Senior Advocate submitted that such an attack was predicated on the dictum of this court in the case of Federal Civil Service Commission v. Laoye (1989) 4 SCNJ (Pt.11) 146 at 160; (1989) 2 NWLR (Pt.106) 652 at 679 that where an employee is confronted 15 with an accusation of misconduct and he admits it, he could face discipline thereafter without further formality, vide the dicta of the same court in Garho & Ors. v. University of Maiduguri (1986) 1 NWLR (Pt.18)550;(1986) 1 All NLR (Pt.1) 124 at 184 (Reprint) and Sule v. Nigerian Cotton Board (1985) 6 S.C. 62 at 20 80; (1985) 2 NWLR (Pt.5) 17. He argued next that it was therefore incumbent on the court below in determining this appeal which involves a rehearing, to consider whether or not the dicta of these cases applied to the case in hand. Rather, he argued, the court below evaded the point completely and fell into 25 the same pitfall as the trial court which thought the dicta irrelevant. Even without the dicta, he maintained, it would be stretching judicial interpretation to the ludicrous to hold that if the respondent when questioned by 1st appellant had admitted blame for the wrong compounding of the chloroquine syrup, for 1st appellant then to ask its secretary to give a query to the respondent and thereafter appoint a committee to investigate the matter and report to it. 30 Learned Senior Advocate went on to draw an analogy from criminal trials where an accused pleads guilty to a charge and it would be unnecessary for it to go through the otherwise mandatory procedure for finding him guilty instead of proceeding straight to judgment and sentence. Similar consideration, he argued, applied to civil cases, adding that if a defendant admits liability to 35 a claim, the court proceeds to enter judgment for the plaintiff without further Inquiry.

The court below, learned Senior Advocate further submitted, was further misled by its interpretation of the opening words of Section 9(1) of

Decree 10 of 1985 by illustrating how Akintan J.C.A., a member of the court's panel understood it as well as how Uwaifo, J.C.A. who wrote the lead judgment, interpreted it. He then explained how that interpretation was the reverse of that adopted by Oputa J.S.C. in *Garba & ors. v. University of Maiduguri* 5 (supra) a case in which an analogy was given of a situation where a student who slapped his Vice-Chancellor would automatically be expelled without a resort to the provisions of section 33 of the 1979 Constitution and without falling foul of the doctrine of fair hearing. Apart from the above illustration, learned Senior Advocate further submitted, that the construction put on the 10 opening words of section 9(1) of Decree 10 of 1985 "if there are reasons for believing that any person employed as a member of the clinical" constituted a misunderstanding and misapplication of the basic English meaning of "to appear" which in fact means "to seem". He then contended that it is more than naive to say that there is a seemliness of misconduct when the 15 person concerned admits the misconduct.

The learned Senior Advocate's further quarrel was with the use of the word "shall" in the same section 9(1) of Decree 10 of 1985 which as the court below held, meant that the provision requiring the giving of written notice to the employee was absolutely obligatory, imperative and a command. 20 The court below, he pointed out, was unmindful of the fact that the "shall" may be mandatory or directory as held by this court in *Dominic Ifezue v. Mbadugha* (1984) 5 S.C. 79.; (1984) 1 SCNLR 427 where the said word governed two acts mentioned in section 258(1) of the Constitution but the requirement of the first act was held to be mandatory while that of the second was 25 held to be directory. It is in this wise that learned Senior Advocate argued that the word "shall" in section 9(1) is directory, adding that otherwise, it will lead to absurd result; to wit: that in the instant case, if the secretary of 1st appellant was not available and some other officer gave the written notice, the entire exercise leading to the disciplinary action would be null and void based on the 30 view of the court below.

Learned senior counsel then went onto argue that while being mindful of the fact that the respondent asked for declaratory reliefs, the grant of which is within the discretionary jurisdiction of the courts and that the principles governing the exercise of such discretion were issues before the court 35 below, the trial court had held that whether or not the respondent was negligent in this chloroquine syrup affair was, *stricto sensu*, not relevant to its judgment, adding that "she may not have been negligent."

The comments of the court below, in this regard (as per Uwaifo and Akintan, J.J.C.A.), learned counsel contended, amounted to the brushing aside

of the question which arose out of the trial court's findings and an invitation to overlook a serious breach of a constitutional right to fair hearing. It was then argued that the lower court's power was only limited to a review of the trial conducted by the 1st appellant in an action founded on the outcome of the trial by it but since 1st appellant failed to comply with the laid down law, the trial court having no jurisdiction, could not embark on trial suo motu on its own.

After referring us to the applicable principle for granting a declaratory judgment, learned Senior Advocate cited in support of his proposition the case of *Judicial Service Committee & ors. v. Micheal Omo* (1990) 6 NWLR (Pt.157) 407 at 458 et seq. Our attention was also drawn to the case of *Olatunbosun v. NISER Council* (1988) 3 NWLR (Pt.80) 25 - a case in which the provisions invoked were in pari materia with section 9(1) of Decree 10 of 1985 and where in illustrating the application of the above principle, the court found as a fact that Professor Olatunbosun, whose contract of service like in the instant case had a statutory flavour, was removed from his employment without a fair hearing. This court held at page 56 of the Report that the professor "should not be allowed to reap any further financial gains from the respondent (his employer) in view of the findings of fact of disobedience by the two courts below." This statement by this court, it is submitted, can mean that it is competent for a court trying a claim for a declaratory relief to make a finding whether the plaintiff's conduct merited the grant of the declaration sought, contrary to the stand the trial Judge in the instant case took and upheld by the court below, that a finding whether the respondent was negligent or not was entirely irrelevant to the consideration whether to grant the declaratory relief sought in the suit. Furthermore, the learned Senior Advocate maintained that the court below again failed in its primary duty of pronouncing on the said complaint of the appellants, even in the alternative to its view of the law being held wrong by a higher court, as constantly admonished by this court. We were then urged to hold that the principle stated by Ogundare, JCA. (as he then was) is correct and ought to have been applied in the instant case to dismiss the respondent's case.

Continuing, learned Senior Counsel enquired whether the respondent was in law and in fact given a fair hearing. He recounted how the matter arose, the role played by appellants' pleading, the evidence of D.W.2 (Professor J. M. Oli), what respondent's counsel elicited in cross-examination in relation to Mr. Nwuzor with regard to everything the latter did, being a greenhorn under internship and while being supervised and which the respondent

did not deny categorically. He elaborated on the role the respondent acknowledged she played in admitting that for the compounding of the lethal syrup, she showed Mr. Nwuzor the formula as well as the ingredients and explanation about whatever was required which would have rendered possible the detection of the over-concentration of chloroquine syrup had the syrup been examined when it cooled down. After stressing that the essence of fair hearing is that a person is heard before being punished, learned counsel argued that from the pieces of evidence available. It is patent that 1st appellant gave the respondent ample opportunity to exculpate herself from the allegation that she did not supervise Mr. Nwuzor in compounding the chloroquine syrup which caused the deaths of children in at least four known cases. Learned counsel therefore submitted that it was wrong for the learned trial Judge to have held that he was not seized of any direct evidence to the effect that the respondent accepted liability before 1st appellant and that there was indeed direct evidence of acceptance which the learned trial Judge did not say he disbelieved. There could therefore be no absence of fair hearing as held by the trial court and as purportedly affirmed by the court below, he contended. After attacking the findings of Akintan, JCA. in relation to fair hearing once more learned Senior Advocate concluded his submission by asserting that the learned Justice's statements are no acceptable meaning of fair hearing, that fair hearing does not reside in form as the courts below had held and that the courts below are not competent to substitute their own brand of satisfaction of guilt for that of the respondent's employer.

When in oral argument, learned Senior Advocate was confronted by us with the latest decision of this court in *Adeniyi v. Governing Council of Yaba College of Technology* (1993) 6 NWLR (Pt.300) 426 which supports the lower court's view-point. learned counsel in turn referred us to the case of *Adeko v. Jebu Ode District Council* (1962) 1 All NLR 220 at 222, (1962) ISCNLR 349 for the proposition that there was abundant evidence before the High Court to establish" that there was just cause and excuse for compulsorily retiring the respondent on the ground that, she had been guilty of negligence and/or remissness as defined in Decree 10 of 1985.

The cardinal point on which the trial court determined the action in favour of the respondent, it would appear clear, was the failure on the part of the appellants to follow the prescribed procedure enshrined in section 9(1) of the University Teaching Hospitals (Reconstitution of Board, etc.) Decree No.10 of 1985 (herein after referred to simply as Decree 10 of 1985), for the removal of an officer of the respondent's cadre or status and which it, in addition, held to have amounted to a denial of her fundamental right to fair hearing as pre-

served in section 33 of the 1979 Constitution and further that all other issues raised by the appellants were irrelevant to its decision. The court below, in upholding the trial court's finding, of facts as well as law before dismissing the appeal of the appellants held, *inter alia*

"In considering the issues canvassed by both parties, it is well to remember that the pre-eminent matter to determine is whether the plaintiff was properly and lawfully retired from the services of the defendants. This will necessarily call for an examination of her status in the-employment of the defendants and the rules relating to any disciplinary action that may be taken against her, leading to her removal from her office or employment.

There is no doubt that the plaintiff was the Head of the section of the Pharmacy Department where and when the chloroquine syrup in question was compounded. She had a supervisory role to play. There is no doubt also that when four children to whom the syrup was administered unfortunately died, allegedly as a result of its effect, the incident met with public indignation towards, and reproach of, the University of Nigeria Teaching Hospital.

I think the learned Judge well took account of these circumstances but he, in my-view, admirably struck the right chord when he expressed the following views:

'As I said earlier, the death of four children at the University of Nigeria Teaching Hospital was a serious embarrassment to the hospital and a tragedy of monumental proportions which attracted public condemnations. The Board was entitled to feel, as it did that investigations should be conducted in order to ascertain the person or persons responsible for this disaster. But in doing this, it must not be guided by popular sentiments. It must not embark on any action that is precipitate merely to assuage public indignation. The powers exercised by the Board are granted to it by statute and it is to that enabling statute that it ought to resort whenever it exercises its powers. It is the duty of court of law to ensure that the exercise of such powers is done in accordance with the law. Plaintiff's right to fair hearing is guaranteed by section 33(1) of the 1979 Constitution and that right cannot be whittled down except by clear provisions (under our present dispensation) of a decree. Whether the plaintiff is negligent in this chloroquine syrup affair is, strictu sensu, (sic) not relevant to this judgment. She may or may not have been negligent. This judgment is concerned with the fact that the plaintiff was removed from her employment without observing the preconditions set down for that purpose by the law that established the University of Nigeria Teaching Hospital Management Board. Even if I accept the notice of appearance before the Board given by Chief Pharmacist as sufficient, the

breach of the statutory requirement will still be manifest as Section 13 of Decree No.10 of 1985 makes it mandatory that such notice must be given by the Secretary to the Board who by virtue of the provisions of section 5(3)(a) of the Decree No. 10 of 1985 is also a director of Administration. There was no notice from the Secretary let alone being in writing. All in all, I am
 5 satisfied that the retirement of the plaintiff was not in accordance with the law and therefore I am bound to hold that the plaintiff has proved her case on the balance of probabilities. Accordingly, I enter judgment for the plaintiff in terms of her claims as contained in paragraph 19 of the plaintiff's statement of claim."

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I fully endorse the above observations. They form the correct judicial posture which must prevail in deciding the propriety or the manner in which the plaintiff could have been removed from her employment. That is the nature and essence of judicial control of those conferred with powers under a
 15 statute to act in a particular way. When a statute directs that certain procedure be followed before a person can be deprived of his right, whether in respect of his person, property or office, such procedure must be strictly followed. In the instant case, the appellants failed to establish that the respondent ever admitted any misconduct or dereliction of duty and the learned trial Judge so found.
 20 The court below in sustaining that decision had this to say:-

"A lot of reliance was placed on a piece of evidence given by Professor Oli (D.W.2) in which he said of the plaintiff 'she admitted her fault of not supervising. We blamed her for not supervising Mr. Nwuzor.' The learned
 25 Judge held that he had 'no direct evidence to the effect that the plaintiff accepted liability before the Board.' I think he was perfectly right."

Before arriving at the above conclusions, the court below had, in my view, meticulously examined what the respondent was reported as accepting was her blame, if any in the chloroquine episode, the failure of the appellants
 30 to provide quality control machinery vis-a-vis what D.W.2 said that the respondent admitted was her fault in not supervising Mr. Nwuzor. After setting out the dichotomy between an admission of blame and what constitutes an acceptance of responsibility for blame as head of department, i.e being remotely in control - the court below, rightly in my view, came to the latter rather
 35 than the former view as applying and even then, only provided reasons or the basis for believing that she should be removed for either misconduct or negligence. The 1st appellant from that point in time, would be obliged to commence against the respondent disciplinary proceedings in fulfillment of section 9(1) of Decree 10 of 1985, the opening words of which are:-

“If it appears to the Board that there are reasons for believing that any person employed as a member of the clinical.....should be removed from his office or employment, the Board shall require the secretary to give notice of those reasons to the person in question....”

The word “shall” as used in sections 9(1) and 13 of Decree No.10 of 1985, I conceive, is mandatory and does not, in my view, permit of any discretion, variation or circumvention of the clear procedure to be followed. See *Chukwuka v. Ezulike* (1986) 5 NWLR (Pt.45) 892; *Oyeripo v. Oyinloye* (1987) 1 NWLR (Pt.50) 356; *Udo v. The State* (1988) 3 NWLR (Pt.82) 316 and *Achineka v. Ishagba* (1988) 4 NWLR (Pt.89) 411.

Anything short of this, is what the court below, rightly in my view, held to be a non-starter or an ineffective disciplinary action in accordance with the enabling statute which was promulgated to be applied to such category of staff as the respondent and in circumstances as arose in the instant case. The proposition, inter alia, in *Adeko v. Ijebu Ode District Council* (supra) to the effect that where there was abundant evidence before the High Court to establish that there was just cause and excuse for dismissing the appellant therein on the ground that he had been guilty of misconduct as defined in the Western Nigeria Local Government Regulations and heavily relied on in the instant case, it is my respectful view inapposite and of no avail. Non compliance with the provisions of Decree 10 of 1985, therefore, clearly amounts to a denial of for hearing to the respondent as enshrined in section 33(1) of the 1979 constitution. As this court had occasion to point out in *Kotoye v. C.B.N.* (1989) 1 NWLR (Pt.98) 419 at page 448 (per Nnaemeka-Agu, J.S.C.):

“For the rule of fair hearing is not a technical doctrine. It is one of substance. The question is not whether injustice had been done because of lack of hearing. It is whether a party entitled to be heard before deciding had in fact been given an opportunity of hearing. Once an appellate court comes to the conclusion that the pwl was entitled to be heard before a decision was reached but was not given the opportunity of a hearing, the judgment thus entered is bound to be set aside.”

Indeed, fair hearing in the context of section 33(1) (ibid) has been held to encompass “the plenitude of natural justice in the narrow technical sense of the twin pillars of justice, to wit: audi alteram partem and nemo iudex in causa sua as in the broad sense of what is not right and fair to all concerned but also seems to be so.” See *Mohammed v. Olawunmi & ors.* (1990) 2 NWLR (Pt.133)458 at 485; *Nwokoro & ors v. Onuma & Anor.* (1990) 3 NWLR (Pt.136) 22 at 31 (per Karibi-Whyte, J.S.C.) As *Akpata, J.S.C.* observed in *Chief v. Joseph Odetoeye Oyeyemi v. Commissioner for Local Government, Kwara State*

& Ors. (1992) 2 NWLR (Pt.226) 661 at 689 - a chieftaincy case:

“Audi Altarem partem” simply means hear the other party. When paraphrased, it means that no man should be deprived of his rights or properties without a hearing. In this case, the appellant should not be punished
5 by being removed from his position as a traditional ruler or chief without being given a hearing. Any decision based on the findings of an inquiry without the person affected by the decision being given a hearing will be invalid.

10 In the instant case, the onus lay on the appellants to establish their assertion that the respondent admitted dereliction of duty. See section 135(1) of the Evidence Act. Cap.112 Laws of the Federation of Nigeria, 1990 Edition. The finding on the point constitutes concurrent findings of the two courts below. An appeal against which is not before this court. The appellants, in my
15 opinion, have therefore failed to prove the primary premise of their case which is that the respondent admitted dereliction of duty or misconduct.

The dictum of this court in Federal Civil Service Commission v. Laoye (1989) 2 NWLR (Pt.106) 65:2 at 679: (1989) 4 SCNJ (Pt.11) 146 at 160. a case involving a civil servant who was dismissed from service and to whom the
20 Civil Service Rules applied, thus giving it a statutory flavour and buttressed by the dicta in the cases of Garba & ors v. University of Maiduguri (1986) 1 NWLR (Pt.18) 550; (1986) 1 ANLR (Pt.1) 124 at 184 and Sule v. Nigerian Cotton Board (1985) 6 S.C. 62 at 80: (1985) 2 NWLR (Pt.5) 17, which states that:-

“The decision in Garba v. University of Maiduguri should be taken
25 as a prohibition of instituting disciplinary measures against Civil Servant where there has been a criminal charge or accusation. However, other considerations might enter. For once such criminal allegations are involved, care must be taken that the provision of Section 33(4) of the Constitution are adhered to. Where the person so accused accepts his involvement in the acts
30 complained of no proof of the criminal charges against him would be required. He has, in such a case, been confronted with the accusation and he has admitted it. He could face discipline thereafter.”

does not relieve the appellants in the instant case of the burden of satisfying
35 this court, aside from the concurrent findings referred to above, that there was an admission of fault on the part of the respondent. As Nnameka-Agu J.S.C. poignantly pointed out at page 727 in the Laoye Case (supra):

“There can be no doubt that the respondent has had very serious charges levelled against him. In fact he has been accused of grave crimes

which, if proved, will amount not only to felonious crime but also border on economic sabotage of the nation. A person so accused is entitled to be confronted with his crimes, be told the nature and content of the case against him, be brought face to face with accusers and their witnesses, be given the opportunity to test their veracity under the fire of cross examination, to defend himself personally or with the assistance of a counsel of his choice, and to call such witnesses that he wishes to call to support his case, all these within a reasonable time and before a court or tribunal constituted in such a way to ensure its fairness and impartiality....

.....It is no answer in any case in which a person is entitled to a hearing to say that his offence was so obvious that any hearing would have been a mere formality. For, quite often, when the rule of natural justice is observed and a trial proceeded with, it turns out that the whole affair was a conspiratorial fabrication or at best based on mere suspicion. This is why once a breach of natural justice has been properly raised in any proceeding it is not a relevant consideration to inquire whether the court or tribunal in fact decided rightly.”

(Italics is mine).

In the instant case, as the respondent did not admit blame for the wrong compounding of the chloroquine syrup and the two courts below so found, it was incumbent on the 1st appellant through its Secretary to have given the respondent a query to hear her own side of the story in fulfilment of the provisions of section 9(1) of Decree 10 of 1985 rather than compulsorily retiring her. In the case of Adeniyi v. Governing council of Yaba Tech. (supra), this court had occasion to interpret Section 12(1) and (3) of the Federal Polytechnics Act, 1979, in pari materia with section 9(1) of Decree 10 of 1985. There, the appellant was the Deputy Registrar of Yaba College of Technology. He was also the Secretary of the Governing Council conducting interview for applicants for the vacant office of the Rector of the Institution. The interview took place on August 8, 1985. The appellant was responsible for the preparation and production of the Report of the Interview Panel. Somewhere along the line, there was a leakage of the Report of the Interview Panel. Knowledge of the leakage got to the council and it was decided that an Investigation Panel be set up to look into the leakage and make recommendations to the Council.

On 27th September, 1985, the appellant was invited to appear before the panel to give evidence on the issue of the leakage of the Interview Report. This the appellant did. The panel sent its report to the council which sat on 29th October 1985. The council dismissed the Report of the Investigation Panel and decided without calling on the appellant, to retire him compulsorily

from the service of the College. A letter to this effect was served on the appellant.

The appellant felt aggrieved with this decision. He wrote petitions to the Minister of Education and Chairman of the Governing Council. When nothing positive came out of his petitions he sued the respondent by way of an application under the Fundamental Rights (Enforcement Procedure) Rules, 1979 claiming inter alia an order enforcing his fundamental right to fair hearing and the quashing of the decision of the Governing Council. The High Court after a full hearing dismissed appellant's application in its entirety. His appeal to the Court of Appeal was similarly dismissed; whereupon he further appealed to this court which in unanimously allowing his appeal held, inter alia, that in the observance of the principles of natural justice and the essential requirement of fair hearing, there is a distinction between the recommendation of an Investigation Panel which has no statutory powers, and the action on the recommendation by a statutory body with requisite statutory powers. Whereas the recommendation of the Investigation Panel will not affect the civil rights and obligations of the appellant, the acting upon such recommendation does. Hence, the implementation of the recommendation must comply, with the rules of Natural Justice. See also *Aiyetan v. NIFOR* (1987) 3 NWLR 20 (Pt.59) 48; *Olatunbosun v. N.I.S.EX* (supra) As *Olatawura, J.S.C.* clearly puts it at page 468 of the Report:-

"I believe s.12(1) of the 1979 Act is designed for the protection of the public officer whose conduct is not to be investigated. Those charged with the responsibility of investigating why a disciplinary action should not be taken against erring officers must ensure that everything necessary to be done to give the officer a fair hearing or ensure fairness must be done and they should not in any way be over zealous in the course of the investigation. Where a decision to accuse an officer of a misconduct is taken, the officer must not be left in doubt that an allegation has been made against him."

In the instant case where the Board of the 1st appellant which investigated the chloroquine episode also sat as Judge which proceeded to compulsorily retire the respondent without requiring its Secretary as its Director of Administration to give to her the required notice of her appearance before the body and in writing vide sections 13 and 5(3)(a) of Decree 10 of 1985, the finding of the learned trial Judge which the lower court affirmed, to the effect that:-

"Indeed, failure of the Board to comply with the statutory prescriptions (i.e s.9(1) of Decree No. 10 of 1985) has deprived the plaintiff of her right to fair hearing which is guaranteed by section 33 of the 1979 Constitution." cannot be faulted. In this regard also, I cannot see how Akintan, J.C.A.'s view

that:”

The position in the instant case therefore is not whether the decision to retire the respondent was arrived at without giving her a fair hearing but that the Board did not follow the statutory provisions which confers (sic) on the Board the power to remove the respondent from her office in the institution. Her purported retirement was therefore rightly declared null and void”

can be successfully impeached. In the case in hand, the appearance of the respondent before the 1st appellant (an administrative body duly constituted) as a witness and not as an accused when summoned over an allegation of misconduct, that act did not confer on the 1st appellant acting for itself and on behalf of the 2nd appellant, reciprocal rights of investigation as well as Judge and/or arbiter, all in one go. Thus, in *Adeniyi v. Governing Council, Yabatech.* (supra) - a case whose circumstances are similar in many respects to the one herein, Wali, J.S.C. rightly observed at page 464-465 of the Report thus:-

*“It is not enough where a person is being accused of misconduct that lead to termination of his appointment to invite him as a witness only before an Investigation Panel set up for the purpose. Nor can it be assumed that because he was invited to testify, that he was aware of the nature of the allegations against him. There is nothing known to law like a charge by presumption or by implication. In the instant case, even if the Investigation Panel were to be treated as a disciplinary panel, it did not lay any accusation of misconduct against the appellant before he was invited before it as a witness. The College Council adopted and accepted the recommendation of the Investigation Panel which it applied and terminated the services of the appellant, thus committing the same serious omission of not laying any formal accusation against the appellant and affording him hearing to defend himself. See *Garba v. University of Maiduguri* (supra); *Aiyetan v. N.I.F.O.R.* (supra) and *Adedeji v. Police Service Commission* (1968) NMLR 102; (1967) 1 All NLR 67.”*

As Karibi- Whyte, J.S.C. also succinctly put it at page 461 of the report:-

“It is important to observe the difference in status between these contracts of personal service, and contracts of service which enjoy statutory protection. The latter can only be terminated in the manner prescribed by the governing statutory provision. A breach of the enabling statutory provision cannot result in a unilateral repudiation. It effects no change in the contractual relationship of the parties. The act is ultra vires and void. The contract cannot be discharged on the agreement of the parties without compliance with the enabling statutory provision. This is the fundamental differ-

ence between contracts having a statutory flavour to which the instant case belongs, and ordinary contracts of personal service.”

The general principle therefore is that where the contract of service is protected by statute (in this case, by section 9(1) of Decree No. 10 of 1985 (ibid) and the removal of the respondent is predicated upon compliance with
5 these statutory provisions, non-compliance with the statutory provisions thereof rendered the respondent’s removal ultra vires and void. See *Olaniyan v. University of Lagos* (supra). *Olatunbosun v. N.I.S.E.R. Council* (supra) and *Samuel O. U. Igbe v. The Governor of Bendel State & ors* (1983) 2 S.C. 114. A fortiori, all the questions considered collectively herein by me are accordingly
10 resolved against the appellants.

On the fifth issue for determination which is related to the respondent’s issue 4 and concomitant with additional ground six, the poser is whether the Justice of the case called for the reinstatement of the respondent to her employment in the 2nd appellant. It is enough for me to observe that
15 appellant’s premises founded as they were on paragraphs 38, 39, 40 and 41 in their brief upon which their argument hung, are entirely misconceived. The legal position is that once the trial court found that the respondent had proved her case, there can be no other just remedy than to grant her the reliefs which she specifically claimed in paragraphs 19(1)-(4) of her statement of claim and
20 earlier set out by me in this judgment at pages 2 and 3 ante. I also adopt all I have said in respect of the other issues I have considered above. The court has no jurisdiction to award a relief to a party in an action which the party has not sought. Nor was it open to the trial court to award to the respondent what she did not ask for. See *Ehosie v. Phil-Ehosie* (1976) 7 S.C. 119. where this court
25 had warned that in no circumstance can court find for a plaintiff other than in accordance with his final pleadings whatever evidence may have been offered at the trial. See also *Ohioma v. Olomi* (1978) 3 S.C.1.

In the instant case, the order of reinstatement granted by the trial court and rightly affirmed by the court below was indeed sought by the re-
30 spondent. Whereas the traditional common law rule which is applicable in Nigeria, as held in the case of *P. C. Imoloame v. W.A.E.C.* (1992) 9 NWLR (Pt.26S) 303 by this court (per Karibi- Whyte, J.S.C.) is that the courts will not grant specific performance in respect of a breach of contract of service. this court has put the matter beyond conjecture thus:

35 “*The principle is that where there has been a purported termination of a contract of service a declaration to that effect that the contract of service still subsists will rarely be made- See Bankole v. N.B.C. (1968) 2 All NLR 370; Francis v. Municipal Council of Kuala Lumpur (1962) 3 All ER 633. As a general rule reinstatement is not ordinarily the remedy for breach*

of contract of service. Specific performance or reinstatement is not generally the remedy in respect of personal service."

The distinguishing feature of the instant case as clearly and correctly stated by the court below is that

"It is now very well established that when an office or employment has a statutory flavour in the sense that its conditions of service are provided for by statute or regulations made thereunder, any person in that office or employment enjoys a special status over and above the ordinary master and servant relationship. In the matter of discipline of such an employee, the procedure laid down by such statute must be fully complied with. If not, any decision affecting the right or reputation or tenure of office of that employee will be declared null and void. See Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C. 40 at 56-57; Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.9) 599 at 612-613; 622-623; Eperokun v. University of Lagos (1986) 4 NWLR (Pt.34) 162 at 201; Olatunbosun v. NISER Council (1988) 3 NWLR (Pt.80) 25 at 41."

Since the respondent was 45 years old when she was prematurely retired from her office or employment and that act of termination from the service of the appellants was rightly, in my view, declared null and void, the effect is that the respondent is entitled to return to her duty post. The court below (per Uwaifo J.C.A.) in affirming the decision of the trial court in this regard in his lead judgment put the matter admirably beyond peradventure thus:

"A look at the reliefs sought by the plaintiff reveals that they are for declarations that her retirement was invalid; that she was entitled to continue in her employment: and also for orders setting aside the letter of retirement and restoring her rights and benefits in the course of continuing in her employment. Once the retirement was declared null and void, that is to say, that the decision retiring her from the services of the UNTH was declared to be no decision. I do not see how and why the other reliefs could be denied her. It is, as if she was never retired from the services. The plaintiffs, contract of employment was in the circumstances of this case unilaterally repudiated by the defendants. She refused to accept the repudiation in the prompt manner she wrote to the defendants to that effect. There is nothing legally standing in her way to have her job or office back with all the attendant rights, privileges and benefits. In other words, she is entitled to be restored to her status quo ante."

I cannot agree more.

My answer to this issue cannot be any other than in the affirmative. It is for the reasons set out above that I dismiss the appeal.

BELGORE JSC

The statutory provisions establishing a corporate body hardly overlooks provisions for the body to employ staff and to discipline them. Once the
 5 statutory provisions are clear as to how to deal with erring servant they must be adhered to strictly including clear observation of the principle of fair hearing. An employee must be clearly told he is being tried for disciplinary action and mere presence in a manner of an ordinary witness cannot be substitute to
 10 v. Federal Public Service Commission (1981) 1 S.C. 40; Bankole v. NB.C. (1968) All NLR 736 (Reprint); Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.9) 599; Olatunhosun v. NISER Council (1988) 3 NWLR (Pt.80) 25. Certainly first, appellant never complied with fair hearing and was as well in violation of S.9(1) of the University of Nigeria Hospital Management Act. I therefore agree
 15 with Onu, J.S.C. whose reasons for judgment in this appeal I had privilege of reading in advance that the appeal lacks merit. I also for the reasons adumbrated therein dismissed this appeal on 17th day of July, 1994 and made same orders as to costs.

20

WALI JSC

I have been privileged to have a preview of the lead Reasons for Judgment of my learned brother, Onu J.S.C. with which I agree and endorse as mine.

My learned brother has adequately dealt with issues raised in this
 25 appeal and I have nothing to add.

It is for these same reasons ably stated in the lead Reasons for Judgment, that I also dismissed the appeal on 11th July, 1994.

30

OGUNDARE JSC

This appeal, after oral hearing on 11th July 1994, was dismissed by me and I intimated then that I would give my reasons for the decisions today, 7th
 October, 1994. I now proceed to give my reasons for dismissing the appeal.

35 The respondent, Hope Chinyelu Nnoli was at all times material to this case, the Assistant Chief Pharmacist in the employ of the University of Nigeria

Teaching Hospital, the 2nd appellant in these proceedings. The 1st appellant is the governing body of the 2nd appellant and both are creations of statutes, that is, the University of Nigeria Teaching Hospital Act, 1974 (as respects the 2nd appellants) and the University of Nigeria Teaching Hospital Management Board Act, 1977 and the University Teaching Hospitals (Re-Constitution of Boards etc) Act, 1985 Cap. 463 Laws of the Federation of Nigeria 1990 (as respects the 1st appellant). The status, functions, duties, rights and obligations of both appellants are set out in the statutes creating them including, in the case of the 2nd appellant, to operate as a teaching hospital in addition to providing facilities as a health service institution and, in the case of the 1st appellant, to act as the Board charged with the management of the 2nd appellant, performing such functions as the employment and termination of employment of staff for the 2nd appellant.

At the time the respondent was Assistant Chief Pharmacist, one Mr. A. U. Nwuzor was a pupil pharmacist undergoing his internship in the 2nd appellant; he was under the supervision of the respondent, particularly in the compounding of medicines for dispensation to the public. On 20th February, 1987 when Mr. Nwuzor was barely 18 days on the job, he prepared chloroquine syrup on his own without any supervision from the respondent. The syrup was dispensed to some children at least four of whom died soon after taking it. There was public outcry. It was subsequently established that the syrup preparation by Mr. Nwuzor contained an overdose of chloroquine phosphate equivalent to seven to ten times the normal dose. The parents of the deceased children claimed heavy damages from the appellants.

The 1st appellant was, quite naturally, disturbed by the development and in consequence held a meeting on 18th May, 1987 to “consider the matter of the deaths of the children.” The respondent, Mr. Nwuzor and the Chief Pharmacist who was head of the pharmacy Department were summoned to this meeting. After questioning the three officers 1st appellant decided that the respondent be retired compulsorily with full benefits from the service of the 2nd appellant. This decision was conveyed to the respondent by a letter dated 19th May 1987 and issued by Director of Administration in the 2nd appellant. The respondent sought legal advice and following an exchange of correspondence between her counsel and the Director of Administration, she instituted, in the High Court of the then Anambra State, Enugu Division the action leading to this appeal, claiming as per paragraph 19 of her Statement of Claim.

“1. A declaration of this Honourable Court that the purported termination of plaintiff’s employment with the University of Nigeria Teaching

Hospital, contained in a letter reference number UNTH/PF. 2166/163 and dated 19th May, 1987 addressed to the plaintiff by one Mrs. M. Ohaegbulam, the Director of Administration of the University of Nigeria Teaching Hospital, is null and void or ineffectual or unlawful by reason of gross irregularity, lack of reasonable cause, denial of natural justice and non-compliance with the enabling statutes establishing the defendants, and breach of section 33 of the Constitution of the Federal Republic of Nigeria 1979.

2. *An order of this Honourable Court setting aside the said letter reference UNTH/PF.2166/163 dated 19th May 1987 by which defendants purported to retire the plaintiff from her employment as Assistant Chief Pharmacist with the University of Nigeria Teaching Hospital.*

3. *A declaration that the plaintiff is entitled to remain and continue in employment at University of Nigeria Teaching Hospital, until she attains the retirement age as prescribed by law or until earlier retired on grounds of ill-health or other lawful cause.*

4. *An order of this Honourable court setting aside the purported retirement of the plaintiff and restoring to the plaintiff all her rights and benefits including her right to continue in employment at the University of Nigeria Teaching Hospital until she attains the age of retirement as prescribed by law or until she is otherwise earlier retired on grounds of ill-health or other lawful causes."*

At the conclusion of trial, the learned trial Judge found for the respondent and entered judgment in her favour in terms of her claims. Concluding his judgment the learned Judge observed:

25 *"Whether the plaintiff is negligent in his chloroquine syrup affair is, stricto sensu, not relevant to this judgment. She may or may not have been negligent. This judgment is concerned with the fact that the plaintiff was removed from her employment without observing the pre-conditions set down for that purpose by the law that established the University of Nigeria Management Board.*

30 *Even if I accept the notice of appearance before the Board given by the Chief Pharmacist as sufficient. the breach of the statutory requirement will still be manifest as s.13 of Decree No. 10 of 1985 makes it mandatory that such notice must be in writing, And such notice must be given by the secretary to the Board who, by virtue of the provisions of s.5(3)(a) of Decree No.10 of 1985 is also the Director of Administration. There was no notice from the Secretary let alone being in writing.*

All in all, I am satisfied that the retirement of the plaintiff was not in accordance with the law and therefore I am bound to hold that the plaintiff

has proved her case on the balance of probabilities.”

Being dissatisfied with the trial court’s judgment the appellants appealed unsuccessfully to the Court of Appeal. They have now further appealed to this court. And in their Brief of argument, they set out the following five questions as calling for determination, that is to say:

“(1) *Does mere non-compliance with the formalities prescribed by s.9(1) of the-University Teaching Hospitals (Reconstitution of Boards, etc) Decree 1985 for the removal of officers or similar sections in other laws ipsofacto mean a denial of fair hearing to the officer affected so as to nullify the removal’?*

(2) *Was the plaintiff as a matter of law or of fact denied a fair hearing before she was retired?* 10

(3) *Was it fair hearing for the court below to ignore the complaint of the defendants in their appeal to the said court that as the reliefs claimed by the plaintiffs were declaratory it was incumbent on the trial court to consider whether on the facts before it the plaintiff was fully entitled to the exercise of its discretion in her favour?* 15

(4) *Was the construction put on the opening words of s. 9(1) of the University of Teaching Hospitals (Reconstitution of Boards, etc.) Decree No. 10 of 1985 in its application to the facts of this case correct?*

(5) *Did the justice of this case call for the re-instatement of the plaintiff to her employment in the hospital?”* 20

The questions set down by the respondent in her Brief are identical.

The submissions made by learned Senior Advocate for the appellants and by learned counsel for the respondent are fully set out in my learned brother Onu J.S.C.’s reasons for judgment. 25

It is well settled by a long line of cases that the court will not order specific performance of a contract of personal service except where the contract is tinged with statutory flavour, in which case a servant over whom statutory provisions prevail is said to be invested with a legal status which makes his relationship with his master beyond the ordinary master and servant relationship -See: (1) Vine v. National Dock Labour Board (1956) 3 All ER 939, 948; (2) Francis v. Municipal Councillor’s of Kuala Lumpur (1962) 3 All ER 633; (3) Imoloame v. W.A.E.C. (1992) 9 NWLR (Pt.265) 303, 318; (4) Bankole v. NBC (1968) All NLR 736 (Reprint); (5) Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C. 40. 30 35

The contention of the respondent in these proceedings is that by virtue of the various statutes governing the appellants her appointment is protected by statute to wit, University Teaching Hospital (Reconstitution of Boards etc.), thus investing her with a legal status. It is not disputed that she could be

removed from office but her contention is that before such removal, there must be compliance, by the 1st appellant, with the provisions of the statutes, particularly, University Teaching Hospitals (Reconstitution of Boards, etc.) Act, she complains that there was noncompliance with the relevant statute.

Section 9 of the University Teaching Hospital (Reconstitution of Boards etc.) Act, Cap. 463, 1990 edition of the laws of the Federation of Nigeria provides:

“9(1) If it appears to the Board that there are reasons for believing that any person employed as a member of the clinical, administrative or technical staff of the Hospital, other than the Chief Medical Director should be removed from his office or employment, the Board shall require the Secretary to:

(a) give notice of those reasons to the person in question;

(b) afford him an opportunity of making representations in person on the matter to the Board; and

(c) if the person in question so requests within a period of one month beginning with the date of the notice, make arrangements:-

(i) for a committee to investigate the matter and report on it to the Board and

(ii) for the person in question to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter, and if the Board, after considering the report of the investigating committee, is satisfied that the person in question should be removed as aforesaid, the Board may so remove him by a letter signed on the direction of the Board.

XXX

(6) Nothing in the foregoing provisions of this section shall prevent the Board from making such regulations not inconsistent with the provisions of this Act for the discipline of students and all other categories of employees of the Hospital as the Board may prescribe.

(7) Regulations made under subsection (6) above need not be published in the Federal Gazette but the Board shall bring them to the notice of all affected persons in such manner as it may from time to time determine.”

It does not appear that regulations were made by the 1st appellant under ss. (6) and (7) above. From the pleadings, evidence and admissions by the appellants it is not disputed that there was non-compliance with ss(1) of section 9 before the respondent was compulsorily retired from service. Although the respondent fought this case essentially on the grounds of breach of natural justice, in my respectful judgment however, 1st appellant’s transgression is one of procedural ultra vires rather than breach of natural justice.

I agree with Akintan, JCA when in his judgment he observed:-

“The position in the instant case therefore is not just whether the decision to retire the respondent was arrived at without giving her a fair hearing but that the Board did not follow the statutory provisions which confers on the Board the power to remove the respondent from her office in the Institution. Her purported retirement was therefore rightly declared null and void.” 5

It is my view that this case is better approached on this ground rather than on the ground of breach of natural justice which is better reserved for procedural requirements which are based on common law. As Lord Diplock observed in *Council Civil Service Unions v. Minister for the Civil Service* (1985)AC 374, 411 A-B: 10

“I have described the third head as ‘procedural impropriety’ rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.” 15

Where a public body fails to comply with certain procedural safeguards in an enabling Act or Regulations, there is a breach of a duty imposed on it and its decision in such circumstance is ultra vires. To render the decision void, however, the procedural provision must be mandatory and not merely directory. I shall refer here to another speech of Lord Diplock this time in *O’Reilly v. Madman* (1983) 2 AC 237, 275H, 237, 276A where the noble Lord opined: 20 25

“Where the legislation which confers upon a statutory tribunal its decision-making powers also provides expressly for the procedure it shall follow in the course of reaching its decision, it is a question of construction of the relevant legislation, to be decided by the court in which the decision is challenged, whether a particular provision is mandatory, so that its non-observance in the process of reaching the decision makes the decision itself a nullity, or whether it is merely directory, so that the statutory tribunal has a discretion not to comply with it if, in its opinion, the exceptional circumstances of a particular case justify departing from it.” 30

There seems to be not much difficulty where the procedural provision is mandatory. A breach of it by the public body renders its decision ultra vires and void. I share Lord Diplock’s view when in *F. Hoffmann-La Roche & Co. AG v. Secretary of State for Trade and Industry* (1975) AC 295. 263, 365 C- 35

D, he observed:-

"I entertain no doubt that the courts have jurisdiction to declare it to be invalid if they are satisfied that in making it the Minister who did so acted without the legislative powers conferred upon him by the previous Act of Parliament under which the order purported to be made, and this is so whether the order is ultra vires by reason of its contents (patent defects) or by reason of defects in the procedure' followed prior to its being made (latent defects)."

See also *Grullwid Processing Laboratories Ltd. v. Advisory Conciliation & Arbitration Service* (1978) AC655; *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt.9) 599; *Shitta-Bey v. Federal Public Service Commission* (supra); *Adeniyi v. Governing Council of Yaba College of Technology* (1993) 6 NWLR (Pt.300) 426.

Where the Statutory provision is, however, directory or the statute is silent as to the procedure to be adopted, the courts have supplemented the legislative mandate with the rules of natural justice. I refer in this respect to *Cooper v. Wandsworth Board of Works* (1863) 14 CB (NS) 180 per Byles J at p.194. Where the learned Judge said:

".....a long course of decisions.... (which) establish, that, although there are no positive words, in a statute requiring that the parties shall be heard, yet the justice of the common law will supply the omission of the legislature."

And in *Lloyd v. McMahon* (1987) AC 625, 702H-703-A, Lord Bridge observed:

"..... it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness" See also *Ceylon University v. Fernando* (1960) 1 WLR 223 per Lord Jenkins at 233; *Olatunbosun v. NISER Council* (1988) 3 NWLR (Pt.80) 25 per Oputa, J.S.C. at 47.

I will at this stage consider whether the procedure laid down in section 9(1) of the University Teaching Hospitals (Reconstitution of Boards, etc.) Act is mandatory or directory. After a careful reading of the subsection I have no doubt in my mind, and I so decide, that the subsection is mandatory. I am reinforced in my view by the provisions of Ss(6) which though empower the 1st appellant to make other regulations for the discipline of students and all other categories of employees of the Hospital, but enact that such regulations must not be

inconsistent with the provisions of the Act and this include ss(1) of section 9.

There was admittedly non-compliance by the 1st appellant with ss(1) of section 9. 1st appellant, therefore acted ultra vires in compulsorily retiring the respondent in the manner it did. Its decision is consequently void. It does not matter that its decision was desirable in the circumstance, as strenuously argued by learned Senior Advocate for the appellants. This, as rightly observed by the learned trial Judge, is, *stricto sensu*, not relevant. What is relevant is that in arriving at its decision the 1st appellant followed the procedure laid down in the Act empowering it to act. For where a statutory requirement for the exercise of a legal authority is laid down it is expected that the public body invested with the authority would follow the requirement to the details. The non-observance in the process of reaching its decision renders the decision itself a nullity. So it is in the case on hand. Having failed to observe the statutory requirement laid down in section 9(1) of the Act, the decision of the 1st appellant to compulsorily retire the respondent was taken ultra vires and the decision itself is a nullity. The effect is that the respondent remains in the employ of the 2nd appellant -see: *Shitta-Bey v. Federal Public Service Commission* (supra) where at page 57 of the Report, Idigbe, J.S.C in his judgment said:

“Although, pursuant to the said investigation the appellant was retired from the public service by the respondent, the High Court (Bada J.) declared the said retirement ‘invalid’ null and void.’ (Exhibit ‘D’ in these proceedings refers.) There exists, therefore, a declaratory judgment in a suit to which the respondent was a party and before whom a court of competent jurisdiction duly exercising its supervisory powers, had made a pronouncement declaring its action invalid and the effect of which pronouncement is that the appellant was always, at all times material to that proceedings in Exhibit ‘D’ aforesaid, and still is, an officer in the Federal Public Service.”

It is for above reasons that I dismissed the appeal of the appellants and affirmed the judgment of the court below with N1,000.00 costs to the respondents.

OGWUEGBUJSC

On 11:7:94, I dismissed this appeal after hearing oral arguments from learned counsel. I reserved my reasons for doing so until today 7:10:94. I now give my

reasons.

The respondent was retired from her employment as Assistant Chief Pharmacist with the 2nd appellant. The 1st appellant is the governing board of the 2nd, appellant which was created by the university Teaching Hospitals (Reconstitution of Boards, etc) Act, No. 10 of 1985.

5 She was employed as a temporary pupil pharmacist in 1972 (Exhibit “B”). As at 1st January 1987, she attained the post of Assistant Chief Pharmacist. In February, 1987 she was head of the compounding unit of the Pharmacy Department of the 2nd appellant. Chloroquine syrup was compounded in that department. One Mr. A. U. Nwuzor was serving internship in that department
10 under the respondent and being on internship he was not to compound medicine on his own without supervision.

On 20:2:87, Mr. Nwuzor compounded chloroquine syrup which caused the deaths of children aged 1-4 years who took it. Post mortem examinations on the bodies of the children confirmed the cause of death. Analysis of the said
15 syrup by the Central Drug Control Unit of the Federal Ministry of Health revealed that the said chloroquine syrup contained about eight times more chloroquine phosphate than a normal dose and thereby resulted in the deaths of the children.

It was the case of the appellants that the event caused public outcry. In
20 paragraph 7 of their statement of defence, the appellants averred as follows:-

“7. *In the heat of the public outcry against the hospital for criminal negligence, the First Defendant called the plaintiff, the said Mr. A. U. Nwuzor and the Chief Pharmacist and head of the Pharmacy department to its meeting held on 18th May, 1987, to consider the matter of the death of these*
25 *children.*”

After the meeting of 18:5:87, the respondent on 19:5:87 received a letter Exhibit “J” retiring her from the services of the 2nd appellant with immediate effect. There were exchanges of letters between the parties after Exhibit “J”.

The respondent therefore brought the action which resulted in the present
30 appeal. She claimed the following reliefs in paragraph 19 of her statement of claim:-

“1. *A declaration of this Honourable court that the purported termination of plaintiff’s employment with the University of Nigeria Teaching Hospital, contained in a letter reference number UNTH/PF.2166/163 and*
35 *dated 19th May, 1987 addressed to the plaintiff by one Mrs. Ohaegbulam, the Director of Administration of the University of Nigeria Teaching Hospital, is null and void or ineffectual or unlawful by reason of gross irregularity, lack of reasonable cause, denial of natura] justice and non-compliance*

with the enabling statutes establishing the defendants, and breach of section 33 of the Constitution of the Federal Republic of Nigeria 1979.

2. An order of this Honourable court setting aside the said letter reference UNTHIPF. 2166/183 dated 19th May 1987 by which defendants purported to retire the plaintiff from her employment as Assistant Chief Pharmacist with the University of Nigeria Teaching Hospital. 5

3. A declaration that the plaintiff is entitled to remain and continue in employment at University of Nigeria Teaching Hospital, until she attains the retirement age as prescribed by law or until earlier retired on grounds of ill-health or other lawful cause. 10

4. An order of this Honourable Court setting aside the purported retirement of the plaintiff and restoring to the plaintiff all her rights and benefits including her right to continue in employment at University of Nigeria Teaching Hospital until she attains the age of retirement as prescribed by law or until she is otherwise earlier retired on grounds of ill-health or other lawful cause." 15

At the close of the case, Ononiba, J. sitting at the Enugu Judicial Division of the then Anambra State High Court in a well considered judgment granted all the plaintiff's claims in terms of paragraph 19 of the statement of claim set out above. Aggrieved by the said decision, the appellants appealed to the Court of Appeal, Enugu Division. The appeal was dismissed hence they further appealed to this court. 20

Five questions were submitted for determination in the appellants' brief of argument:

1. Does mere non-compliance with the formalities prescribed by s.9(1) of the University Teaching Hospitals (Reconstitution of Boards, etc) Decree, 1985 for the removal of officers or similar sections in other laws ipso facto mean a denial of fair hearing to the officer affected so as to nullify the removal? 25

2. Was the plaintiff as a matter of law or of fact denied a fair hearing before she was retired? 30

3. Was it fair hearing for the court below to ignore the complaint of the defendants in their appeal to the said court that as the reliefs claimed by the plaintiff were declaratory it was incumbent on the trial court to consider whether on the facts before it the plaintiff was fully entitled to the exercise of its discretion in her favour. 35

4. Was the construction put on the opening words of s.9(1) of the University Teaching Hospitals (Reconstitution of Boards, etc.) Decree No. 10 of 1985 in its application to the facts of this case correct? Did the justice

of this case call for re-instatement of the plaintiff to her employment in the hospital?"

5 The respondent in her brief of argument identified four issues for determination which in my view are covered by those formulated by the appellants. In arguing questions one and four, Mr. Anyamene, S.A.N. submitted that the court below disabled itself from an unbiased appraisal of the arguments of the appellants before it by the words used at the beginning of the lead judgment which beclouded the real issue submitted to it for determination. The said words read:-

10 *"The main issue which calls for determination can be put thus: Was the plaintiff who held a particular official status under contract of employment with a statutory flavour justifiably removed from the office without complying with the laid down conditions and the rules of natural justice under any circumstance? Appellants seem to argue that under the "special circumstances" that prevailed both the conditions laid*
 15 *down and the strict observance of natural justice became irrelevant and therefore could be over-looked. In other words, that the circumstances which led to the removal of the plaintiff were so obvious that she cannot be heard to complain that she was denied a fair hearing."*

20 The learned Senior Advocate contended that from the above passage of the judgment of the court below, that court proceeded on the wrong premises that the plaintiff was denied natural justice and that the case of her employers was that the circumstances were an exception to the application of the rules of natural justice. It was his submission that that was not the issue submitted to that court for determination.

25 He further submitted that the first question for determination in the court below attacked the reasoning of the trial court where the latter held as follows:

30 *"Indeed, failure of the Board to comply with the statutory prescriptions (i.e. of S.9(1) of Decree No.10 of 1985) has deprived the plaintiff of her right to fair hearing which is guaranteed by S.33 of 1979 Constitution. ...Whether the plaintiff is negligent in this chloroquine syrup affair is strictu (sic) sensu, not relevant to this judgment. She may not have been negligent. This judgment is concerned with the fact that the plaintiff was removed from her employment without observing the preconditions set down*
 35 *for that purpose by the law that established the University of Nigeria Management Board..*

..... Even if I accept the notice of appearance before the Board given by the Chief Pharmacist as sufficient, the

breach of the statutory requirement will still be manifested as s.13 of decree No. 10 of 1985 makes it mandatory that such notice must be in writing. And such notice must be given by the Secretary to the Board who, by virtue of the provisions of s.5(3) (a) of Decree No. 10 of 1985 is also the Director of Administration. There was no notice from the Secretary let alone being in writing.”

Learned Senior Advocate predicated his attack on the dictum of this court in Federal Civil Service Commission & ors. v. Laoye (1989) 4 SCNJ (Pt.11) 146 at 160; (1989) 2 NWLR (Pt.106) 652 at 679 and buttressed by the dicta of the same court in Garba v. University of Maiduguri (1986) 1 All NLR (Pt.1) 124 at 184; (1986) 1 NWLR (Pt.18) 550; and Sule v. Nigerian Cotton Board(1985) 6 S.C. 62 at 80; (1985) 2 NWLR (Pt.5) 17 to the effect that where an employee is confronted with an accusation of misconduct and he admits it, he could face discipline thereafter without further formality. He submitted that the court below failed to consider whether or not the dicta of this court in the above cases applied to the facts of this case.

It was his further contention that even without the dicta of this court, it would be stretching judicial interpretation to the ludicrous to hold that if plaintiff when questioned by her employer admitted blame for the wrong compounding of the chloroquine syrup the employer would then ask its secretary to give her a query and thereafter appoint a committee to investigate the matter and report to the same board.

Chief Udechuku submitted that if the respondent's issue one is resolved in the negative, then the appeal fails. He argued that appellants did not establish that the respondent ever admitted any misconduct or dereliction of duty; that the respondent at the hearing maintained that she did not and the learned trial Judge so found.

We were referred to the evidence of D.W.2 (Professor Oli) where he testified that the respondent admitted her fault of not supervising Mr. Nwuzor and that this admission was recorded in the minute book of the meeting. Learned counsel submitted that the appellants did not plead and produce the minute book where the respondent made the admission and their failure to produce the said record which they admitted to be in existence must lead to the irresistible conclusion that if produced, it would have been adverse to their case. He referred to s.149 (d) of the Evidence Act Cap. 112 Laws of the Federation of Nigeria, 1990. We were urged to resolve the respondent's first issue in her favour.

As to the appellant's issue one or the respondent's issue two, learned counsel for the respondent contended that the appellants offered no excuse in their pleadings and evidence for their failure to follow the procedure prescribed in sections 9(1) (a)-(c) and 13 of Decree No. 10 of 1985.

He urged further that the respondent being an Assistant Chief Pharmacist and therefore, a member of the Clinical Staff of the 2nd appellant, she is a person to whom sections 9(1)-(c) and 13 of Decree No. 10 of 1985 applies. He urged us to dismiss the appeal.

There is no doubt that the respondent in the present case does not hold her office at the pleasure of the appellants or any body at all. Rather, she holds it under the provisions of the University of Nigeria Teaching Hospital Act, 1974 and the University Teaching Hospitals (Reconstitution of Boards, etc.) Act No. 10 of 1985. Both appellants being creatures of statutes, cannot act except within and under the powers conferred on them by the relevant statutes creating them.

The employment, retirement and termination of the employment of the respondent is governed by the University Teaching Hospitals (Reconstitution of Boards, etc.) Act No. 10 of 1985. It invests in the respondent a legal status which makes her relationship with the appellants one of master and servant with a statutory flavour as distinct from the ordinary master and servant relationship. See *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599; *Falomo v. Lagos State Public Service Commission* (1977) 5 S.C. 51; and *Shitta-Bey v. Federal Public Service Commission* (1981) 1 S.C. 40.

The procedure for the removal and discipline of the respondent is set out in sections 9(1) and 13 of University Teaching Hospitals (Reconstitution of Boards, etc) Act No. 10 of 1985 and I will hence forth refer to it as “the Act”. The sections provide as follows:-

“s.9(1) If it appears to the Board that there are reasons for believing that any person employed as a member of the clinical, administrative or technical staff of the Hospital, other than the Chief Medical Director, should be removed from his office or employment, the Board shall require the Secretary to:-

(a) give notice of those reasons to the person in question;
(b) afford him an opportunity of making representations in person on the matter to the Board; and

(c) if the person in question so requests within a period of one month beginning with the date of the notice, make arrangements:-

(i) for a committee to investigate the matter and report on it to the Board, and

(ii) for the person in question to be afforded an opportunity of appearing before and being heard by the investigating committee with respect to the matter, and if the Board, after considering the report of the investigating committee, is satisfied that the person in question should be

removed as aforesaid, the Board may so remove him by a letter signed on the direction of the Board.

13. Any direction, notice, report, representation or request authorized or required to be given or made by or under this Act shall be in writing and may without prejudice to any other method of service, be served by post.”

The question now is whether the provisions of sections 9(1) and 13 5 of the Act were complied with before the respondent was retired with immediate effect? The learned trial Judge was perfectly right when he held that the failure of the 1st appellant to comply with the statutory prescriptions of S.9(1) of the Act deprived the plaintiff of her right to fair hearing which is guaranteed by section 33 of the 1979 Constitution. He also fully appreciated the issue 10 calling for determination in the case when he held:-

“Whether the plaintiff is negligent in this chloroquine syrup affair is, strictu (sic) sensu, not relevant to this judgment. She may not have been negligent. This judgment is concerned with the fact that the plaintiff was removed without observing the preconditions set down for that purpose by the law that established the University of Nigeria Management Board..... 15

_(the italics is for emphasis only).

Indeed, the preconditions set down in sections 9(1) and 13 of the Act were not observed. The court below affirmed the above finding of the learned 20 trial Judge when it held:

“The main issue which calls for determination can be put thus: Was the plaintiff who held a particular official status under contract of employment with statutory flavour justifiably removed from that office without complying with the laid down conditions and the Rules of Natural Justice under 25 any circumstance? If not, what are the consequences and her appropriate remedy?

The court below came to the conclusion that the respondent was denied the procedures under section 9(1) of the Act and thereby affirmed the finding of the learned trial Judge. 30

The interpretation of the word “shall” appearing in section 9(1) of the Act, excludes the idea of discretion and imposes a duty which should be enforced. It is more imperative in this case where the fundamental right of the citizen is involved. The rights and benefits of the respondent depend on its being taken in the imperative sense. 35

It appears to me also that the appellants were carried away by the purported admission of fault by the respondent and the public outcry following the deaths of the innocent children. They were under the erroneous im

pression that under the circumstances that prevailed, it was unnecessary to observe the conditions laid down in the Act as well as the strict observance of the rules of Natural Justice.

The appellants breached both section 9(1) of the Act and the obligations imposed upon them arising from the rules of natural justice namely, that
5 decision makers must act fairly, in good faith and without bias and must afford each party the opportunity to adequately state his case.

In this case, there was a failure by the appellants to comply with all the preconditions set out in section 9(1) of the Act. There was in the circumstance no hearing let alone a fair hearing. The purported interview where the
10 respondent played a role analogous to that of a witness was not in compliance with S.9(1) of the Act. See *Olaniyan v. University of Lagos* (supra); *Aiyetan v. N.I.F.O.R.* (1987) 3 NWLR (Pt.59) 48; and *Eperokun v. University of Lagos* (1986) 4 NWLR (Pt.34) 162.

To borrow the words of Aniagolu, J.S.C. In *State Civil Service Commission & anor. v. A. I. Buzugbe* (1984) 7 S.C. 19 at 40:-
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*"Instances may exist where short cuts may prove invaluable and achieve their objectives. It is, however, generally to be recognized, that in legal matters particularly in matters of natural justice, shortcuts many times prove counter productive, by short circuiting legal norms and norms of
20 natural justice, and rendering the whole exercise a futility. In that case the short-cut becomes the ineffective route."*

That is precisely what has happened in this case.

Judges in all common law countries are agreed that no decision involving property rights of person or any individual should be taken without
25 observing the rule relating to fair hearing. There is a presumption that when the legislature confers a power on an authority to make a determination, it intends that the power shall be exercised judicially, in accordance with the rules of natural justice.

The judgment of the learned trial Judge confers on the respondent a
30 right to be placed de facto in her original position i.e. a right to be reinstated since her retirement was declared invalid, null and void. In law, she was never legally terminated or retired from her employment. The appellants have a duty to see that she is duly reinstated.

The relationship between the appellants and the respondent being
35 that of master and servant with statutory flavour and like other members of the Public Service, the tenure should be jealously guarded and all rules and regulations appertaining to the said relationship, must be strictly followed.

My learned brother Onu, J.S.C., has lucidly set out the facts of the

appeal, the law relevant thereto and the conclusions naturally following therefrom. I am in agreement with his said judgment.

Accordingly, I too, dismiss the appeal. The judgment of the courts below are hereby affirmed. I abide by the rest of the orders as contained in the said judgment of Onu, J.S.C.

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