

**SUPREME COURT OF NIGERIA**  
15TH JULY, 2005. SC. 45/2001  
**CORAM:- S. U. ONU, A. I. KATSINA-ALU, U. A. KALGO,**  
**D. O. EDOZIE, G. A. OGUNTADE, JJSC**

E. P. IDERIMA ..... PLAINTIFF/APPELLANT  
AND  
RIVERS STATE CIVIL ..... DEFENDANT/RESPONDENT  
SERVICE COMMISSION

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MASTER & SERVANT - Civil Service Rules - Discipline of officers -  
Should be strictly in accordance with the provision of the Rules - So that  
disciplinary steps against appellant - By an unauthorized body or person  
- Is of no effect (H1)

MASTER & SERVANT - Civil servant - Investigation - Where query did  
not emanate from the Commission - Which is the appropriate authority -  
It is improper that the investigation was not done by the Commission -  
And reliance on it is improper (H2)

MASTER & SERVANT - Employment - Termination of - Where employ-  
ment has statutory backing - It can only be terminated in the way and  
manner - Prescribed by the relevant statute (H3)

COURTS - Justice - Issues before the court - Lack of understanding of  
the case by the court - May lead to total failure of justice (H4)

MASTER & SERVANT - Appeals - Civil Servant - Appointment that has  
statutory flavour - Where terminated wrongfully - The servant will be  
restored to his post (H5)

**FACTS**

Before the High Court of Rivers State at the Port Harcourt Judicial  
Division, the plaintiff/appellant commenced an action against the defend-  
ant/respondent. The appellant was a Principal Accountant in the Rivers

State public service and was also the chief Accountant at the State Ministry of works and transport. On the 27th of August, 1986, he was dismissed from service by the respondent. The appellant's dismissal was consequent upon the theft of the sum of N32,037.29 which was in his custody and forming part of public revenue. The cause of the theft was investigated by a Board of Inquiry set up by the Accountant General of Rivers State. The Board attributed the theft to the negligence and carelessness of the appellant and his failure to take necessary precautions.

The appellant was issued with a query by the respondent asking him to show cause why he should not be dismissed from the service. The appellant responded to the query but his response was considered inadequate by the respondent which held him responsible for the loss and proceeded to dismiss him from service. Dissatisfied with the dismissal, the appellant commenced this case. The trial court dismissed the appellant's case. Dissatisfied with the trial court's decision, the appellant appealed to the Court of Appeal. The appeal was dismissed on the ground that reliance by the Civil Service Commission on the report of the Board of Inquiry set up under the Financial Instructions/Regulations was in compliance with the Civil Service Rules. Appellant has further appealed to the Supreme Court.

**ISSUES FOR DETERMINATION**

(1) Whether the non-compliance by the Rivers State Civil Service Commission, with the Civil Service Rules in failing to investigate the allegations of impropriety against the appellant can be excused by reliance on the report of a Board of Inquiry that does not form part of the Civil Service Rules in terms of personnel, procedure and mission intendment.

(2) Whether the admission by the Court of Appeal that the trial Judge made a mistake by "treating the matter as if it was a simple case of master and servant" does not amount to concession that there was a failure of justice, no consideration having been given to the statutory provisions which gave the appointment of the appellant "a statutory flavour."

**HELD** (Unanimously allowing the appeal per **ONU JSC**)  
***Civil Service Rules - Discipline of officers***

1. Firstly, the appellant is a senior civil servant of pensionable cadre and matters of discipline appertaining to such officers are governed by Rule 04107 of the Civil Service Rules. By the provision of Rule 04107 of the said Rules the aforesaid disciplinary proceedings are to be conducted in accordance with the provisions of the Civil Service Rules.

In other words, strict adherence to the provisions of the Rules is enjoined. It was further pointed out that by paragraph 4 of the Table under Rule 04106(e) the inscription is boldly written upper case for discipline against officers of pensionable establishment. Consequently, it is stressed, the Civil Service Commission is disentitled to delegate the performance of any of the procedural steps highlighted under Rule 04107 and a fortiori where another department of government other than the Civil Service Commission, ignorantly veers into matters of discipline by recommending disciplinary steps against an officer in the cadre of the appellant, such step issued is of no effect. It is not material, that it is a responsible government department as the Justices of the court below termed the Accountant General. Similarly, the Civil Service Commission cannot supplant the proceedings of the Board of Inquiry with the inquiry under Rule 04107. The court below was therefore, in my opinion, in error when it held that the appellant as plaintiff having pleaded in paragraph 25 of the Statement of Claim that the Board of Inquiry was to determine the correct amount of loss and recommend disciplinary or preventive remedies, he cannot complain when the Civil Service Commission decided to use the report of the Board of Inquiry to dismiss him.

With due respect to the court below, it failed to distinguish between the factual state of the instrument setting up the Board of Inquiry and the requirement, purport and intendment of the Financial Instruction, on the one hand, and the mandatory provisions of the Civil Service Rules on the other hand.

Adverting to the Civil Service Rules, neither the Accountant General nor the Board of Inquiry set up by the Accountant General has the power to discipline the appellant and until the Civil Service Rules otherwise provide no other method of discipline or extraneous recommendation that should be adopted in the exercise. This is so expressed in Rule 04107 of

the Civil Service Rules. (p. 2285 A)

***Civil servant - Investigation***

2. What that Rule stipulates is that the matter should be investigated by the  
B appropriate authority with the aid of the head of the appellant's department  
and such other officers as the appropriate authority may appoint.

Following from the provision of Rule 04106(e) paragraph 'A',  
above, the appropriate authority in this case is none other than the Civil  
C Service Commission. The court below with due respect, was therefore  
clearly in error to hold as it did that:

*"The Accountant General set up the Board of Inquiry and passed  
the result to the Civil Service Commission. This was substantial compli-  
ance with Rule 04107 of the Civil Service Rules."*

D In this wise, I agree with the appellant's submission that the  
Accountant-General is not the appropriate authority in paragraph (ii) of  
Rule 04107; rather he should aid the panel appointed by the Commission.  
Furthermore, the Civil Service Rules does not prescribe that the Board of  
E Inquiry's Report can be substituted for the investigation highlighted above  
to enable the said report to be in substantial compliance. Be it noted that  
substantial compliance here should be construed within the context of the  
provisions of the Civil Service Rules.

F With utmost respect, the court below adopted a rule of convenience  
instead of the rule of law which has the effect of compromising the right  
of a citizen to fair hearing.

For the same reasons, I endorse this court's rationale as pro-  
G pounded in Federal Civil Service Commission v. Laoye (supra) to the  
effect that the query did not emanate from the Commission and therefore  
it is improper that the investigation was not done by the Commission and  
reliance on it by it (Commission) is improper and entirely misplaced.  
(p. 2287 H)

H

***Employment - Termination of***

3. I hold that appellant rather than conceding that even when reliance is  
placed on the report of the Board of Inquiry by the Civil Service

Commission, the investigation should dwell on matters arising from the query, namely, that the query should precede the disciplinary action after the investigation. If as in this case the investigation precedes the query and the investigation was done by the head of department, the accuser, and the query later issued by a witness to the accuser to whom a protest was raised B by the appellant at the Board of Inquiry, that without investigation by the Civil Service Commission, would result in a total failure of natural justice. Consequently, by the application by this court of the principles enunciated in the case of Federal Civil Service Commission v. Laoye (supra), this appeal should be allowed vide page 714, paragraphs C-D wherein Oputa, C JSC., made the following pronouncement:

*“The 1st defendant (meaning the Civil Service Commission) is a creation of statute and for the dismissal of the respondent to be intra vires it has to comply strictly with all the Rules (it made) governing the dismissal D of its staff - here the Federal Civil Service Rules 04107. Failure to do that renders the dismissal ultra vires, null and void. This is the main plank of the court’s decision in Olaniyan v. The University of Lagos (supra) as well as Eperokun v. The University of Lagos (supra). Since Shitta-Bey’s case E (supra), officers in pensionable cadre of our Civil Service whose term and conditions of service are governed by the Civil Service Rules made under the Constitution are therefore having a constitutional flavour, acquired distinct status which places their employment over and above the common F law relationship of master and servant and introduced in these relationships the vires element of administrative law.”*

See also the case of Union Bank of Nigeria Limited v. Chukwuelo Charles Ogbob (1995) 2 NWLR (Pt. 380) 647 at page 669 where this court held- “Except in employment governed by statute wherein the procedure G for employment and discipline including dismissal of an employee are clearly spelt out, any other employment outside the statute is governed by the terms under which the parties agreed to be master and servant. Employment with statutory backing must be terminated in that way and H manner prescribed by the relevant statute and any other manner of termination inconsistent therewith is null and void and of no effect. (p. 2289 B)

***COURTS - Justice - Issues before the court***

4. I am therefore not in agreement with what the learned Justices of the court below referred to as “the little mistake the court made towards the  
 B end of the judgment.” It is not little after all. It assists to measure the extent of understanding by the learned trial Judge of the issues for determination before him, for lack of understanding of the issues led to a total failure of justice. It must be emphasized at this juncture that the learned trial Judge  
 C did not consider the provisions of the Civil Service Rules especially on non-delegation of disciplinary powers in relation to officers of pensionable cadre, definition of misconduct and procedure for the exercise of disciplinary action. He indeed totally misinterpreted the appellant’s case when he said “I observe that the plaintiff’s contention on wrongful  
 D dismissal is only on technical ground and that is that the query Exhibit B did not refer to Rule 04107.” There is nowhere else in the record except in the judgment where this claim appears.

The learned trial Judge actually asserted that misconduct is not  
 E defined in the Rules. But Rule 04201 defines misconduct as a specific act of wrong doing, susceptible to investigation and proof and includes willful act or omission or general misconduct to the scandal of the public or to the prejudice or discipline and proper administration of the government  
 F e.g. corruption, dishonesty, negligence.

This definition is to guide the determination of disciplinary measures against civil servants; noteworthy among which is that misconduct must be investigated and proved in accordance with the Civil Service Rules. This was woefully not done in this case. In this wise, what was  
 G dubbed “little mistake” had a profound effect on the final decision of the learned Judge. It is for this reason that I am of the opinion that the court below was in error when it failed to probe, and pronounce on this. I therefore accordingly answer Issue No. 1 in the negative. (p. 2290 G)

H

***Appointment that has statutory flavour***

5. As the argument proffered under Issue 1 is adopted by the appellant in his brief for an answer to Issue 2, I too will give a ditto answer by allowing

the appeal and setting aside the judgment of the two courts below. I will also make an order that the dismissal of the appellant from the Rivers State Civil Service contained in the letter CPSC/6/3468/97 dated 27th August, 1986, is null and void and of no effect whatsoever. The appellant is accordingly restored to his post in the Rivers State Civil Service and he is also entitled to all the rights and privileges attached thereto. (p. 2291 F)

## **NOTABLE POINTS OF INTEREST**

### **KATSINA-ALUJSC**

#### *1. Dismissal contrary to procedure is improper*

The proper procedure to be adopted in accordance with Rule 04107 is this. The Ministry complaining of a misconduct shall report the matter to the Civil Service Commission, which shall on examination of the report, notify the affected officer in writing of the proposal to dismiss him and the grounds for doing so. He shall be called upon to state his defence in writing before a date to be specified.

The Civil Service Commission shall thereafter set up a panel of inquiry to investigate the matter with the accusing Ministry, and such other officer or officers as the appropriate authority (Civil Service Commission) may appoint, giving assistance. The affected officer will be entitled to be at the investigation before the panel and to cross-examine, if he chooses, all those called to testify. He must also be given access to any documents that will be used against him.

The procedure in the instant case did not follow the procedure stated above. In other words the respondent did not comply with the provision of Rule 04107 which applies to the appellant. What this means is that the appellant was not properly dismissed from the Rivers State Public Service. He must therefore -be deemed to be still in that service. (p. 2293 F)

### **EDOZIEJSC**

#### *2. Employment with statutory flavour - How terminated*

In the above excerpt, the trial court appears to have lost sight of the fact that in the law of master and servant, employment falls into three

categories viz:

- (1) A pure master and servant relationship under common law.
- (2) Employment where officer is held at pleasure.
- (3) Employment protected by statute

B In the instant case, since the appellant's employment is governed by the Civil Service Rules, his employment comes under the 3rd category, that is, the employment protected by statute or employment with statutory flavour.

C It is settled law that once the dismissal of a civil servant is declared null and void, the effect of such a pronouncement is that the civil servant was always and still is a civil servant.

In the case of Union Bank of Nigeria Ltd. v. Chukwuelo Charles Ogboh (1995) 2 NWLR (Pt. 380) 647 at 664 this court per Belgore JSC.,  
D observed, thus:-

*“Employment with statutory backing must be terminated in the way and manner prescribed by that statute and any other manner of termination inconsistent with the relevant statute is null and void and of no effect.”*

E In the instant appeal, the appellant's contention is that the procedure clearly spelt out in the Rule 04107 of the Civil Service Rules was not strictly complied with before his dismissal. There is, in my view, merit in that contention. (p. 2296 G)

F **REPRESENTATION**

E. U. John Esq., for the Appellant

Dr. B. A. M. Ajibade, for the Respondent.

G **CASES REFERRED TO**

Federal Civil Service Commission & Ors v. Laoye (1989) 4 S.C. (Pt. II) 1; (1989) 2 NWLR (Pt. 106) 652

Otapo v. Sunmonu (1987) 2 NWLR 605; Olatunbosun v. NISER (1988)

H 3 NWLR (Pt 80) 25

Union Bank of Nigeria Limited v. Chukwuelo Charles Ogboh (1995) 2 NWLR (Pt. 380) 647

Union Beverages Ltd. v. Owolabi (1988) 1 NWLR (Pt. 68) 128



Ridge v. Baldwin & Ors (1964) A C 40

Olarewaju v. Afribank (Nig.) Plc (2001) 13 NWLR (Pt. 731) 691 at p. 705

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

Akintemi v. Onwumechili (1985) 1 NWLR(Pt. 1)68

Aiyetan v. NIFOR (1987) 3 NWLR (Pt.59) 48

B

Garba v. Federal Civil Service Commission (1988) 1 NWLR (Pt.71) 449

### **STATUTE & RULES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1979 ss. 33(1) & 236

C

Rivers State Civil Service Rules rr. 04104, 04106(e) & 04107

### **LEAD JUDGMENT BY ONUJSC**

The appellant was the Principal Accountant in the Rivers State Ministry of Works, and he was dismissed from service by the respondent, the Rivers State Civil Service Commission on 27th August, 1986. Appellant's dismissal was consequent upon the theft of the sum of N32,037.29 which was in his custody and forming part of public revenue. The cause of the theft was investigated by a Board of Enquiry set up by the Accountant General of Rivers State pursuant to the Rivers State Financial Instructions/ Regulations and after a thorough investigation by the Board of Enquiry in which the appellant participated, the Board attributed the theft to the negligence and carelessness of the appellant and his failure to take necessary precautions.

A report containing a record of the proceedings of the Board of Enquiry in which the appellant participated and its findings was forwarded to the respondent, being the body responsible for the discipline of public officers of the appellant's cadre.

Subsequently, the appellant was issued with a query by the respondent asking him to show cause why he should not be dismissed from the service of the Rivers State Civil Service in view of the carelessness, negligence and failure to take necessary precautions leading to the loss of Government funds. The appellant responded to this query but his response was considered inadequate by the respondent which then held

him, (appellant) solely responsible for the loss and proceeded to dismiss him from service.

Dissatisfied with his dismissal, the appellant commenced an action in the Port-Harcourt Judicial Division of the High Court of Rivers State claiming as follows:-

“1. *Declaration that-*

(a) *The plaintiff is still Principal Accountant in the Civil Service of the Rivers State of Nigeria.*

(b) *The purported dismissal of the plaintiff from the Rivers State Civil Service contained in the letter CPSC/6/3468/97 dated 27th August, 1986, is ultra vires the defendant and therefore null and void and of no effect whatsoever.*

2. *An injunction restraining the defendant, its servants and/or agents from preventing the plaintiff from performing the functions and duties of the office of Principal Accountant in the Civil Service of the Rivers State or from interfering with his enjoyment of the rights, privileges and benefits attached to the said office.*

3. *An order of the court restoring the plaintiff to his post and office or offices and to all rights and privileges attaching thereto.”*

After the exchange of pleadings by both parties, evidence was led by either side. The learned trial Judge (late Chief Judge of Bayelsa - KD. Ungbuku, CJ.), dismissed the appellant’s claim in its entirety.

The appellant, being dissatisfied with the said decision, appealed to the Court of Appeal, Port-Harcourt Division (hereinafter referred to as the court below), canvassing that the Rivers State Civil Service Commission did not comply with its own rules before dismissing the appellant. The learned Justices of the Court below nevertheless dismissed the appeal, holding that reliance by the Civil Service Commission on the report of the Board of Inquiry set up under the Financial Instructions was in substantial compliance with the Civil Service Rules, thereby rendering the statutorily prescribed and mandatory investigation under the Civil Service Rules unnecessary.

In his Notice of Appeal dated 15th June, 2000, containing four grounds, the appellant submitted two issues as arising for determination.

ISSUES FOR DETERMINATION:

(1) Whether the non-compliance by the Rivers State Civil Service Commission, with the Civil Service Rules in failing to investigate the allegations of impropriety against the appellant can be excused by reliance on the report of a Board of Inquiry that does not form part of the Civil Service Rules in terms of personnel, procedure and mission intendment. B

(2) Whether the admission by the Court of Appeal that the trial Judge made a mistake by “*treating the matter as if it was a simple case of master and servant*” does not amount to concession that there was a failure of justice, no consideration having been given to the statutory provisions C which gave the appointment of the appellant “a statutory flavour.” The respondent proffered from the two remaining grounds (the third having been abandoned) of appeal a sole issue for determination, to wit:

“Whether the finding made by the court below to the effect that the procedure by which the appellant was dismissed from service was in “*substantial compliance*” with Rule 04107 of the Civil Service Rules was not a sufficient ground upon which to base its judgment dismissing the appellant’s appeal. D

In my consideration of the appeal I am of the view that appellant’s Issues 1 and 2 would suffice to dispose of the appeal. I shall therefore proceed hereafter shortly to consider the appellant’s two issues as follows: E

Statement of Facts

Facts which gave rise to this case may be briefly summarized as follows:- F

On 8th December, 1985, at about 10.50 a.m. the appellant herein, a Principal Accountant, had gone to his office at the Ministry of Works and Transport to clear a backlog of work, and this was not long after his posting to the said Ministry where he was covering the duties of a Chief Accountant, his higher office than his substantive post. G

Upon getting to his office, he found to his dismay that the office was burgled and the safe therein vandalized. At all times material to this incident, H there were security guards on the ground floor housing the appellant’s said office.

The appellant complied with the Financial Regulations in the Civil

Service by reporting the loss of the sum of N32,037.29 to the Permanent Secretary, Ministry of Works and Transport.

Thereafter, the Accountant-General, Ministry of Finance and Planning, Treasury Division, Port Harcourt, set up a Board of Inquiry as required by  
B the Financial Instruction to determine the amount of loss and recommend preventive and remedial measures.

By the report of the Board of Inquiry the appellant was recommended for transfer to Treasury Headquarters for deployment on Treasury duties since, in their opinion, he (the appellant) is not conversant with  
C treasury duties. It is pertinent to observe that the appellant was not surcharged for the loss.

Be that as it may, subsequently, one Mrs. Kambi- Selema who testified against the appellant at the Board of Inquiry was transferred to the  
D Civil Service Commission and she was the one who eventually issued a query to the appellant under Rule 04107 of the Civil Service Rules to which the appellant replied.

Without complying with the mandatory provisions of sub-rule  
E 04107 the respondent proceeded to summarily dismiss the appellant, relying as it were, on the report of the Board of Inquiry.

Sequel to his dismissal, however, the appellant sued the respondent claiming inter alia that the dismissal was ultra vires the respondent and  
F therefore null and void. The trial court dismissed appellant's claim. Being aggrieved, the appellant appealed to the court below.

On 17th May, 2000, the court below dismissed the appellant's appeal holding that the appellant, whose employment is governed by the Constitution of the Federal Republic of Nigeria and the procedural rules  
G contained in the Civil Service Rules, was properly dismissed when there was non-compliance with the said Rules.

Further aggrieved by this decision, the appellant has appealed to this court by filling an appellant's Notice of Appeal containing three grounds  
H at pages 139-141 of the Record.

In my consideration of this appeal, I am of the view that a consideration of the appellant's arguments contained in his grounds 1,2 and 3 distilled into Issues 1 and 2 will be enough to dispose of the appeal.

I will therefore proceed to consider appellant's two issues as follows:-

**Firstly, the appellant is a senior civil servant of pensionable cadre and matters of discipline appertaining to such officers are governed by Rule 04107 of the Civil Service Rules. By the provision of Rule 04107 of the said Rules the aforesaid disciplinary proceedings are to be conducted in accordance with the provisions of the Civil Service Rules.**

In other words, strict adherence to the provisions of the Rules is enjoined. It was further pointed out that by paragraph 4 of the Table under Rule 04106(e) the inscription is boldly written upper case for discipline against officers of pensionable establishment. Consequently, it is stressed, the Civil Service Commission is disentitled to delegate the performance of any of the procedural steps highlighted under Rule 04107 and a fortiori where another department of government other than the Civil Service Commission, ignorantly veers into matters of discipline by recommending disciplinary steps against an officer in the cadre of the appellant, such step issued is of no effect. It is not material, that it is a responsible government department as the Justices of the court below termed the Accountant General. Similarly, the Civil Service Commission cannot supplant the proceedings of the Board of Inquiry with the inquiry under Rule 04107. The court below was therefore, in my opinion, in error when it held that the appellant as plaintiff having pleaded in paragraph 25 of the Statement of Claim that the Board of Inquiry was to determine the correct amount of loss and recommend disciplinary or preventive remedies, he cannot complain when the Civil Service Commission decided to use the report of the Board of Inquiry to dismiss him.

With due respect to the court below, it failed to distinguish between the factual state of the instrument setting up the Board of Inquiry and the requirement, purport and intendment of the Financial Instruction, on the one hand, and the mandatory provisions of the Civil Service Rules on the other hand.

Adverting to the Civil Service Rules, neither the Accountant

**General nor the Board of Inquiry set up by the Accountant General has the power to discipline the appellant and until the Civil Service Rules otherwise provide no other method of discipline or extraneous recommendation that should be adopted in the exercise. This is so expressed in Rule 04107 of the Civil Service Rules.**

The pleadings, it must be stressed, expressed a factual state of affairs as contained in Exhibit “E” especially paragraph (iv) of the Terms of Reference. With due respect, the court below failed to consider the pleadings of the appellant in its entirety especially paragraph 30, 31, 32, 33 and 34 of the statement of Claim where the non-compliance with Rule 04107 by the respondent was put in issue And in answer to those paragraphs especially paragraphs 31-32, 33 and 34, the defendant/respondent joined issues with the plaintiff/appellant, contending that the appellant was properly dismissed under Rule 04107 and alleging, as it were, that the Financial Instructions supplement the Civil Service Rules in matters of Loss of Government Funds. It is further submitted that even though the respondent conceded that Chapter 35 of the Financial Instructions provides in detail the nature and manner the investigations into the loss of Government Funds should be carried out, contending that compliance with Chapter 35 of the Financial Instructions satisfies the provisions of Rule 04107 of the Civil Service Rules, this contention, it is argued, is made without any evidence that the Civil Service Rules has any provisions in support of the above contention vide Rules 04107 of the Civil Service Rules.

See again Rule 04104 and 04107

Secondly, it is appellant’s submission that the conclusion by the Justices of the court below that Investigation under the Civil Service Rules was unnecessary should not be sustained. During the Board of Inquiry, it was pointed out, Mrs. Kambi-Selema who was an Under Secretary in the Ministry of Works and Transport, testified that she was satisfied that fraud and negligence were involved in the loss. The same Mrs. Kambi - Selema was later transferred to the Civil Service Commission and she issued the query, Exhibit B. The appellant then went ahead to allege unfairness against him by the said Mrs. Kambi - Selema in Exhibit D, the reply to the query.

The said Under Secretary has sought to influence investigation against the appellant, poisoning the minds of those who had responsibility to take decision in the matter. The appellant, as indeed transpired, raised the same issue in his Brief in the court below.

Such matter, as alleged above, it is further added, touches on fair hearing and would have agitated the mind of the courts below nudging their lordships in the inner recesses of their minds that the respondent ought to have investigated the allegations with an independent panel. Having not investigated the allegations, it is further maintained, the fear of the appellant that his dismissal was a foregone conclusion was, in my view, confirmed when he received Exhibit C, stressing that this court when faced with a similar situation in the case of Federal Civil Service Commission & Ors v. Laoye (1989) 4 S.C. (Pt. II) 1; (1989) 2 NWLR (Pt. 106) 652 at page 683 paragraph G- H made it to arrive at the conclusion.

*“It was not the Commission that investigated the respondent. It was the accuser - The Ministry of External Affairs. And so the question of the Commission applying the rules of natural justice could never have arisen.”*

The situation could not have been more apt for the two courts below to apply the sound decision above and appropriately nullify the dismissal of the appellant especially in the face of the cry for justice apparent in Exhibit D. (Answer to query of 6/6/86).

It is for the above reasons that the appellant has urged us to consider his entire Statement of Claim and to hold that even though paragraph 25 thereof was admitted in paragraph 5 of the Statement of Defence, it does not mean that the Board of Inquiry set up by the Accountant General had the power to discipline the appellant in the face of the Civil Service Rules 04104,04106(e) paragraph “A and 04107. The admission was to the extent that there was in existence such instrument having such content. I am of the firm view and so hold that such conclusion does not agree with paragraph (ii) of Rule 04107. **What that Rule stipulates is that the matter should be investigated by the appropriate authority with the aid of the head of the appellant’s department and such other officers as the appropriate authority may appoint.**

Following from the provision of Rule 04106(e) paragraph ‘A’, above, the appropriate authority in this case is none other than the Civil Service Commission. The court below with due respect, was therefore clearly in error to hold as it did that:

B *“The Accountant General set up the Board of Inquiry and passed the result to the Civil Service Commission. This was substantial compliance with Rule 04107 of the Civil Service Rules.”*

C In this wise, I agree with the appellant’s submission that the Accountant-General is not the appropriate authority in paragraph (ii) of Rule 04107; rather he should aid the panel appointed by the Commission.

D Furthermore, the Civil Service Rules does not prescribe that the Board of Inquiry’s Report can be substituted for the investigation highlighted above to enable the said report to be in substantial compliance. Be it noted that substantial compliance here should be construed within the context of the provisions of the Civil Service Rules.

E With utmost respect, the court below adopted a rule of convenience instead of the rule of law which has the effect of compromising the right of a citizen to fair hearing. See *Otapo v. Sunmonu* (1987) 2 NWLR 605; *Olatunbosun v. NISER* (1988) 3 NWLR (Pt 80) 25. See also Sections 236 and 33(1) of the 1979 Constitution of Nigeria.

G For the same reasons, I endorse this court’s rationale as propounded in *Federal Civil Service Commission v. Laoye* (supra) to the effect that the query did not emanate from the Commission and therefore it is improper that the investigation was not done by the Commission and reliance on it by it (Commission) is improper and entirely misplaced.

H Besides, there is no evidence that the Board placed its report before the Civil Service Commission. At best, it can only amount to a mere presumption arising from Exhibit “C” - the letter of dismissal. However, in the absence of direct evidence in this regard. I hold the view that the presence of Mrs. Kambi-Selema at once, as a witness in the Board of



Inquiry and the Judge in the Commission, is more apposite. What is more, no witness was called from the Commission to say what happened. Mrs. Kambi - Selema simply picked the report of the Board of Inquiry and fused it into the query which she issued and finally got the appellant dismissed from service despite all the circumstances begging for investigation by an independent body both in the report of the Board and the reply to the query by the appellant which could have salvaged the situation. B

**I hold that appellant rather than conceding that even when reliance is placed on the report of the Board of Inquiry by the Civil Service Commission, the investigation should dwell on matters arising from the query, namely, that the query should precede the disciplinary action after the investigation. If as in this case the investigation precedes the query and the investigation was done by the head of department, the accuser, and the query later issued by a witness to the accuser to whom a protest was raised by the appellant at the Board of Inquiry, that without investigation by the Civil Service Commission, would result in a total failure of natural justice. Consequently, by the application by this court of the principles enunciated in the case of Federal Civil Service Commission v. Laoye (supra), this appeal should be allowed vide page 714, paragraphs C-D wherein Oputa, JSC., made the following pronouncement:** C D E

*“The 1st defendant (meaning the Civil Service Commission) is a creation of statute and for the dismissal of the respondent to be intra vires it has to comply strictly with all the Rules (it made) governing the dismissal of its staff - here the Federal Civil Service Rules 04107. Failure to do that renders the dismissal ultra vires, null and void. This is the main plank of the court’s decision in Olaniyan v. The University of Lagos (supra) as well as Eperokun v. The University of Lagos (supra). Since Shitta-Bey’s case (supra), officers in pensionable cadre of our Civil Service whose terms and conditions of service are governed by the Civil Service Rules made under the Constitution are therefore having a constitutional flavour, acquired distinct status which places their employment over and above the common law relationship of master and* F G H

*servant and introduced in these relationships the vires element of administrative law.”*

See also the case of **Union Bank of Nigeria Limited v. Chukwuelo Charles Opboh** (1995) 2 NWLR (Pt. 380) 647 at page 669 where this court held-

*“Except in employment governed by statute wherein the procedure for employment and discipline including dismissal of an employee are clearly spelt out, any other employment outside the statute is governed by the terms under which the parties agreed to be master and servant. Employment with statutory backing must be terminated in that way and manner prescribed by the relevant statute and any other manner of termination inconsistent therewith is null and void and of no effect. But in other cases governed only by agreement of parties and not by statute, removal by way of termination of appointment or dismissal will be in the form agreed to. Any other form connotes only wrong termination or dismissal but not to declare such dismissal null and void. The only remedy is a claim for damages for that wrong dismissal. This is based on the notion that no servant can be imposed by the court on an unwilling master even where the master’s behaviour is wrong. For his wrongful act, he is only liable in damages and nothing more. (See Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.9) 599; FCSC v. Laove (1989) 4 S.C (Pt. II) (1989) 2 NWLR (Pt. 106) 652; Akintemi v. Onwumechili (1985) 1 NWLR (Pt. 1) 68; Eperokun v. University of Lagos (1986) 4 NWLR (Pt.34) 162; Aiyetan v. NIFOR (1987) 3 NWLR (Pt.59) 48; Garba v. FCSC (1988) 1 NWLR (Pt. 71) 449; Sapara v. UCH Management Board (1988) 7 S.C. (Pt. II) 116; (1988) 4 NWLR (Pt. 86) 581; Union Beverages Ltd, v. Owolabi (1988) 1 NWLR (Pt. 68) 128.....”*

**I am** therefore not in agreement with what the learned Justices of the court below referred to as “the little mistake the court made towards the end of the judgment.” It is not little after all. It assists to measure the extent of understanding by the learned trial Judge of the issues for determination before him, for lack of understanding of the issues led to a total failure of justice. It must be emphasized at this juncture that the learned trial Judge did not

consider the provisions of the Civil Service Rules especially on non-delegation of disciplinary powers in relation to officers of pensionable cadre, definition of misconduct and procedure for the exercise of disciplinary action. He indeed totally misinterpreted the appellant's case when he said "I observe that the plaintiff's contention on wrongful dismissal is only on technical ground and that is that the query Exhibit B did not refer to Rule 04107." There is nowhere else in the record except in the judgment where this claim appears. B

The learned trial Judge actually asserted that misconduct is not defined in the Rules. But Rule 04201 defines misconduct as a specific act of wrong doing, susceptible to investigation and proof and includes willful act or omission or general misconduct to the scandal of the public or to the prejudice or discipline and proper administration of the government e.g. corruption, dishonesty, negligence. C D

This definition is to guide the determination of disciplinary measures against civil servants; noteworthy among which is that misconduct must be investigated and proved in accordance with the Civil Service Rules. This was woefully not done in this case. In this wise, what was dubbed "little mistake" had a profound effect on the final decision of the learned Judge. It is for this reason that I am of the opinion that the court below was in error when it failed to probe, and pronounce on this. I therefore accordingly answer Issue No. 1 in the negative. E F

## ISSUE 2

As the argument proffered under Issue 1 is adopted by the appellant in his brief for an answer to Issue 2, I too will give a ditto answer by allowing the appeal and setting aside the judgment of the two courts below. I will also make an order that the dismissal of the appellant from the Rivers State Civil Service contained in the letter CPSC/6/3468/97 dated 27th August, 1986, is null and void and of no effect whatsoever. The appellant is accordingly restored to his post in the Rivers State Civil Service and he is also entitled to all the rights and privileges attached thereto. Respondent shall pay costs of N10.000.00 to the appellant. G H

**KATSINA-ALUJSC**

I have had the advantage of reading in draft the judgment delivered by my learned brother, Onu, JSC. I entirely agree with it.

B The appellant was the Principal Accountant in the Rivers State Ministry of Works. The appellant being a senior civil servant of pensionable cadre, matters of discipline appertaining to such officers are governed by Rule 04107 of the Civil Service Rules. The said Rule 04107 provides inter alia as follows”

C “An officer in the Federal Public Service may be dismissed by the Federal Public Service Commission only in accordance with the following rules unless the method of dismissal is otherwise provided for in these Civil Service Rules:-

D (i) The officer shall be notified in writing of the grounds on which it is proposed to dismiss him, and he shall be called upon to state in writing, before a day to be specified (which day must allow a reasonable interval for the purpose) any ground upon which he relies to exculpate himself;  
E The matter shall be investigated by the appropriate authority with the aid of the Head of the Officer’s Department, and such other officer or officers as the appropriate authority may appoint;

(i) If any witnesses are called to give evidence, the officer shall be entitled to be present and to put question to the witnesses;

F (ii) No documentary evidence shall be used against the officer unless he has previously been supplied with a copy thereof or given access thereto.

G (iii) If the officer does not furnish any representations within the time fixed, the Federal Public Service Commission may take such action as it deems appropriate against him.

(iv) If the officer submits his representations and the Commission is not satisfied that he has exculpated himself, and considers that the officer should be dismissed, it shall take such action accordingly.”

H This court when faced with a similar situation held that failure to investigate the allegation by the Civil Service Commission itself amounted to a denial of natural justice. I refer to the case of federal Civil Service

Commission v. Laoye (1989) S.C. (Pt. II) 1; (1989) 2 NWLR (Pt. 106) 652. This court, per Eso, JSC., noted thus:

*“It was not the Commission that investigated the respondent. It was his accuser - the Ministry of external Affairs. And so the question of the Commission applying the rules of natural justice could never have arisen.”* B  
This court then dismissed the appeal by the Commission.

In the instant case, it is not in dispute that the Commission did not establish any inquiry to go into the matter. The Commission did not investigate the appellant. If it took evidence from any witnesses, the appellant did not know and was not informed. Rather it was the Accountant-General of the Rivers State that set up a Board of Inquiry to investigate the matter. The Board sent its report to the Commission. C

By the Report of the Board of Inquiry the appellant was recommended for transfer to Treasury Headquarters for deployment in treasury duties since, in their opinion, he was not conversant with treasury duties. D  
The appellant was not surcharged for the loss.

In the course of inquiry, one Mrs. Kambi-Selema testified against the appellant. She was later transferred to the Civil Service Commission. E  
It is interesting to note that she was the officer who issued a query to the appellant Exhibit ‘B’ The appellant alleged unfairness against the said Mrs. Kambi-Selema in Exhibit ‘D’, his reply to the query.

It is disturbing that there is nothing on the record to indicate that F  
Mrs. Kambi- Selema was contacted for her reaction. If she was, the appellant was entitled to be present during her testimony and to cross-examine her if he chose. This clearly was not done.

The proper procedure to be adopted in accordance with Rule 04107 G  
is this. The Ministry complaining of a misconduct shall report the matter to the Civil Service Commission, which shall on examination of the report, notify the affected officer in writing of the proposal to dismiss him and the grounds for doing so. He shall be called upon to state his defence in writing before a date to be specified. H

The Civil Service Commission shall thereafter set up a panel of inquiry to investigate the matter with the accusing Ministry, and such other officer or officers as the appropriate authority (Civil Service Commission)

may appoint, giving assistance. The affected officer will be entitled to be at the investigation before the panel and to cross-examine, if he chooses, all those called to testify. He must also be given access to any documents that will be used against him.

- B The procedure in the instant case did not follow the procedure stated above. In other words the respondent did not comply with the provision of Rule 04107 which applies to the appellant. What this means is that the appellant was not properly dismissed from the Rivers State Public Service. He must therefore -be deemed to be still in that service.
- C I would also, for the foregoing reasons and for the fuller reasons given by my learned brother, Onu, JSC, in the leading judgment, allow this appeal. The judgments of the trial court and the Court of Appeal are hereby set aside. The dismissal of the appellant is null and void and of no effect
- D whatsoever. I also abide by the order for costs.

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### **KALGO JSC**

- E I have had the opportunity of reading in draft the judgment just delivered by my learned brother, Onu, JSC. I entirely agree with him that there is merit in the appeal and it ought to be allowed.

- F The Board of Inquiry set up by the Accountant General of the Rivers State under the Financial Instructions is not in compliance with the requirements of Civil Service Rules 04107 and the compliance with this rule is mandatory and not delegatable. It is also to be noted that the Accountant General is not an “appropriate authority” as mentioned in paragraph 11 of the said Civil Service Rules. See Federal Civil Service Commission v. Laoye (1989) 4 S.C. (Pt.II) 1; (1989) 2 NWLR (Pt. 106)
- G 652 at 714.

- H Therefore the recommendation of the said Board of Inquiry cannot properly be used to discipline any erring civil servant like the appellant. In any case the report of the said Board of Inquiry did not order any disciplinary action but only recommended the redeployment of the appellant. It was therefore absolutely wrong for the Civil Service Commission to act on the report by raising queries to the appellant on it which finally culminated in dismissing him from the government service. It is well

settled that if any disciplinary action is to be taken pursuant to any statute, law or rule, there must be full compliance with them or any of them as required, before such disciplinary action can be properly based or justified. See *United Bank of Nigeria v. Ogboh* (1995) 2 NWLR (Pt. 380) 647 at 669. There has been no such compliance in this case, and therefore the dismissal of the appellant based on the Board of Inquiry report alone cannot stand.

For the above the more elaborate reasons given in the leading judgment, I find merit in this appeal. I accordingly set aside the decision of the trial court and the Court of Appeal and abide by the consequential orders made in the leading judgment including the order as to costs.

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### EDOZIE JSC

The appellant was a Principal Accountant in the Rivers State Public Service and at all material times deployed in that State's Ministry of Works and Transport as a Chief Accountant. On December 8th, 1985, at about 10.50 a.m., he went to his office to clear a backlog of work. On getting there, he found to his amazement that his office had been burgled and the safe there in vandalized resulting in the loss of the sum of N32,037.29. He promptly reported the matter to the police and later to the Permanent Secretary, Ministry of Works and Transport.

Thereafter, and in compliance with the Financial Instructions, the Accountant-General, Ministry of Finance and Planning, Treasury Division Port-Harcourt set up a Board of Inquiry to determine the amount of the loss and recommend preventive measures. The appellant appeared before and made representations to the Board which received evidence from witnesses including Mrs. Kambi-Salema. The Board in its report Exhibit 'E' found against the appellant. Based on that, the Rivers State Civil Service Commission issued a query, Exhibit B to the Appellant who responded thereto in a reply Exhibit D. Apparently not satisfied with the appellant's reply, the respondent by its letter dated 27/8/86 Exhibit C dismissed the appellant. It is against the foregoing background that the appellant as plaintiff sued the defendant herein respondent before the High Court of Rivers State praying for the following reliefs:-

*“(a) A declaration that the plaintiff is still Principal Accountant in the Civil Service of the Rivers State of Nigeria.*

*(b) The purported dismissal of the plaintiff from the Rivers State Civil Service contained in the letter Exhibit “C” dated 27th August, 1986, is ultra vires the defendant and therefore null and void and of no effect whatsoever.*

*2. An injunction restraining the defendant, its servants and/or agents from preventing the plaintiff from performing the function and duties of the office of Principal Accountant in the Civil Service of the Rivers State or from interfering with his enjoyment of the rights and benefits attached to the said office.*

*3. An order of the court restoring the plaintiff to the post and office or offices and to all rights and privileges attaching thereto.”*

D After due trial, the trial court, coram, Ungbuku, CJ., on 11/11/93 dismissed the plaintiff’s claims. His appeal against that judgment was on 17/5/2000 similarly dismissed by the Court of Appeal, Port Harcourt Division.

E In the present appeal by the plaintiff/appellant, the central issue is whether the appellant was lawfully dismissed from his employment. In this regard, the trial court, at p. 64 of the record commented thus:-

*“In the law of master and servant, a misconduct is what the employer considers to be a misconduct. In the instant case the defendant has held the plaintiff’s conduct to be amounting to serious misconduct and this court cannot query that decision. All the court can do is to enquire into the procedure by means of which the servant was dismissed, terminated or retired, for example, whether prescribed procedure, if any, was followed and whether the servant has been paid his statutory or common law entitlements such as appropriate months’ salary in lieu of notice.”*

G In the above excerpt, the trial court appears to have lost sight of the fact that in the law of master and servant, employment falls into three H categories viz:

- (1) A pure master and servant relationship under common law.
- (2) Employment where officer is held at pleasure.
- (3) Employment protected by statute



See Ridge v. Baldwin & Ors (1964) A C 40; Olarewaju v. Afribank (Nig.) Plc (2001) 75. C. (Pt. III) 1; (2001) 13 NWLR (Pt. 731) 691 at p. 705, Olaniyan v. University of Lagos (1985) 2 NWLR (Pt. 9) 599.

In the instant case, since the appellant's employment is governed by the Civil Service Rules, his employment comes under the 3rd category, B that is, the employment protected by statute or employment with statutory flavour: See University of Calabar v. Inyang (1993) 5 NWLR (Pt. 291) 100 at 117, Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C. (reprint) 26; (1981) 1 S.C. 40 at p.56.

It is settled law that once the dismissal of a civil servant is declared C null and void, the effect of such a pronouncement is that the civil servant was always and still is a civil servant.

In the case of Union Bank of Nigeria Ltd. v. Chukwuelo Charles Ogbob (1995) 2 NWLR (Pt. 380) 647 at 664 this court per Belgore JSC., D observed, thus:-

*“Employment with statutory backing must be terminated in the way and manner prescribed by that statute and any other manner of termination inconsistent with the relevant statute is null and void and of no effect.”* E

See also Akintemi v. Onwumechili (1985) 1 NWLR (Pt. 1) 68, Aiyetan v. NIFOR (1987) 3 NWLR (Pt.59) 48; Garba v. Federal Civil Service Commission (1988) 1 NWLR (Pt.71) 449; Sapera v. University College Hospital Management Board (1988) 7 S.C. (Pt. II) 82; (1988) 4 F NWLR (Pt. 86) 581.

In the instant appeal, the appellant's contention is that the procedure clearly spelt out in the Rule 04107 of the Civil Service Rules was not strictly complied with before his dismissal. There is, in my view, merit in that contention. The Rule requires that the Civil Service Commission should G first notify the officer in writing of the grounds on which it is proposed to dismiss him and call upon him to make a representation within a fixed time. Thereafter, the matter is investigated by the appropriate authority. It seems that after the consideration of the report of appropriate authority and H the representation of the officer that the Commission can proceed to dismiss the officer. That was not what happened in the instant case in which there was no investigation after the query was issued to the

appellant. The dismissal of the appellant was, therefore null and void.

It is for the foregoing reasons as elaborated in the leading judgment of my learned brother, Onu, JSC., that I will allow this appeal, set aside the judgment of the two lower courts and enter judgment for the appellant in terms of his claims with N10,000 costs.

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**OGUNTADE JSC**

The appellant was the plaintiff at the High Court, Port-Harcourt, where he claimed against the respondent, as the defendant, the following reliefs:

“1. Declaration that -

(a) The plaintiff is still principal Accountant in the Civil Service of the Rivers State of Nigeria.

(b) The purported dismissal of the plaintiff from the Rivers State Civil Service contained in the letter CPSC/6/3468/97 dated 27th August, 1986, is ultra vires the defendant and therefore null and void and of no effect whatsoever.

2. An injunction restraining the defendant, its servants and/or agents from preventing the plaintiff from performing the functions and duties of the office of Principal Accountant in the Civil Service of the Rivers State or from interfering with his enjoyment of the rights, privileges and benefits attached to the said office.

3. An order of the court restoring the plaintiff to his post and office or offices and to all rights and privileges attached thereto.”

The parties filed and exchanged pleadings. The case was thereafter tried by Ungbuku, CJ., who on 11/11/93, in his judgment, dismissed the plaintiff’s case. The plaintiff was dissatisfied. He brought an appeal before the Court of Appeal sitting at Port-Harcourt, (hereinafter referred to as ‘the court below’). The court below, in its judgment, on 17/5/2000, dismissed plaintiff’s appeal. The plaintiff has come before this court on further appeal. In the appellant’s brief filed, two issues were formulated for determination. The issues are:

“(1) *Whether the non-compliance by the Rivers State Civil Service Commission, with the Civil Service Rules in failing to investigate the*

*allegations of impropriety against the appellant can be excused by reliance on the report of a Board of Inquiry that does not form part of the Civil Service Rules in terms of personnel, procedure and mission or intendment.*

(2) *Whether the admission by the Court of Appeal that the trial Judge made a mistake by ‘treating the matter as if it was a simple case of master and servant’ does not amount to concession that there was a failure of justice, no consideration having been given to the statutory provisions which gave the appointment of the appellant “a statutory flavour”.*

The respondent’s counsel, in his brief, formulated one issue for determination. That issue reads:

*“Whether the finding made by the court below to the effect that the procedure by which the appellant was dismissed from service was in ‘substantial compliance’ with Rule 04107 of the Civil Service Rules was not a sufficient ground upon which to base its judgment dismissing the appellant’s appeal.”*

I intend to consider together the two issues raised by the appellant. The respondent’s solitary issue is in my view well accommodated under the appellant’s two issues. It is necessary that the facts leading to the dispute, out of which this appeal arose, be examined and exposed.

The plaintiff was a Principal Accountant in the Civil Service of the Rivers State Government. On 18/2/85, plaintiff was deployed from the Rivers State Utility Board to the Ministry of Works and Transport. There, he covered the duties of the Chief Accountant for the Ministry. At his new office, there were a lot of duties to be covered. On Sunday 8/12/85, at about 10.50 a.m. the plaintiff who had gone to the office to clear some back-log of work, discovered that one office, (room 555) had been broken into. Police were called in. It was discovered that a safe had been broken and the sum of N32,037.29 stolen therefrom. On 9/12/85, the plaintiff reported the occurrence, in writing, to the Permanent Secretary of the Ministry of Works and Transport. On 30/12/85, the Accountant-General of the Rivers State set up a Board of Inquiry to determine the correct amount lost, identify the cause, the persons responsible for the loss and recommend disciplinary or preventive/remedial measures.

The Board submitted its report on 20/2/86. The plaintiff was not

given a copy of the report. On 28/5/86, plaintiff received a query, which alleged that he exhibited carelessness, negligence and lack of enough precaution, which led to the burglary of 8/12/85. The plaintiff sent a reply to the query. On 27/8/86, the plaintiff was given a letter dismissing him  
B from service.

In these circumstances, the plaintiff issued his writ against the defendant, contending that the defendant did not follow the procedure laid down under the Civil, Service Rules of Rivers State, for the discipline and dismissal of an officer of his grade. The plaintiff therefore claimed as  
C earlier stated in this judgment.

The defendant did not much contest the facts pleaded by the plaintiff. It asserted that the plaintiff had been negligent and that he was afforded an opportunity to defend himself before the Board of Inquiry  
D which was set up by the Accountant-General of Rivers State. It was contended that the plaintiff was not entitled to receive a copy of the report of the Board of Inquiry. The defendant finally pleaded that it followed the correct procedure in the dismissal of the plaintiff.

The suit was heard on this state of pleadings. The plaintiff testified in support of his case. He did not call any witness. The defendant called one witness. The trial court, in dismissing the plaintiff's suit, reasoned that it was not absolutely compulsory for the defendant to follow the procedure  
E laid down under Civil Service Rule 04107 for the discipline and dismissal of an officer of plaintiff's grade, provided that there was an observance of the principles of fair hearing. At page 64 of the record of proceedings, the trial court in his judgment said:  
F

"In the law of master and servant, a misconduct is what the  
G employer considers to be a misconduct. In the instant case the defendant has held the plaintiff's conduct to be amounting to serious misconduct and this court cannot query that decision. All the court can do is to enquire into the procedure by means of which the servant was dismissed, terminated  
H or retired, for example whether prescribed procedure, if any, was followed, and whether the servant has been paid his statutory or common law entitlements such as appropriate 3 months salary in lieu of Notice. Oyedele v. Ife University Hospital Complex Management Board (1990) 6

NWLR (Pt. 155) 194 at 195 Rule 2 & (sic) at 196.

Thus the court had done in this judgment by reviewing the procedure adopted by the defendant in relation to Rule 04107 of the Civil Service Rules.

I observe that the plaintiff's contention on wrongful dismissal is only on technical ground and that is that the query Exhibit 'B' did not refer to Rule 04107 and the Civil Service Commission also did not set up its own panel under the said rule. Besides, the plaintiff was unable to prove what he suffered from the alleged fault. I am convinced from the pleadings and evidence before the court that the plaintiff has failed to prove a case of wrongful dismissal against the defendant. The plaintiff's case is accordingly dismissed."

The court below reasoned substantially in the same manner with the trial court when at pages 134-135 of the record it said:

"On the 2nd issue the appellant is complaining of non-compliance with the Civil Service Rules. I have already held that there was substantial compliance with the Civil Service Rules. There is no need therefore to repeat the argument under issue 2.

*"On the 3rd issue the appellant is still complaining that the Board of Inquiry set up by the Accountant-General is distinct from the Inquiry required under Rule 04107 of the Civil Service Rules.*

*My reply is that the appellant averred that Board of Inquiry was set up among other things for the purpose of disciplinary action. He cannot now insist on another Panel of Inquiry. In my respectful view, if an Inquiry has already been conducted by a responsible Government Department and placed before the Civil Service Commission and the Commission is satisfied with the report and issues a query based on that report to the officer and the officer replies, there is no need for another separate inquiry.*

*From all I have said in this judgment, I am satisfied that the trial Judge was right in dismissing the appellant's claim. The little mistake the court made towards the end of the judgment in treating the matter as if it was a simple case of master and servant instead of a case of public officer whose appointment has a statutory flavour has not seriously affected the*

*merit of the case. Consequently, I see no merit in this appeal and I..... dismiss it. I make no order as to costs.”*

Were the two courts below right in their approach to this case? I think not. I think that the two courts below had been rather too simplistic about it. They had accepted that the procedure adopted in dismissing the appellant, even if different from that under Civil Service Rule 04107, did not compromise appellant’s right to fair hearing.

In the first place, it cannot be forgotten or overlooked that the appellant was a very senior civil servant in the established pensionable cadre. His status qualified him to be disciplined and or dismissed only in accordance with Rule 04107. In *Bashir Alade Shitta-Bey v. The Federal Public Service Commission* (1981) 1 S.C. 26 (Reprint) at pp. 35-36, this court said of the status of senior civil servant on a pensionable cadre and Rule 04107:

*“The Civil Service Rules of the Federal Public Service govern conditions of service of Federal Public Servants and they are made pursuant to the powers conferred on the respondent by virtue of the Constitutional provisions in the 1963 Constitution; and the rules relevant to these proceedings were made in 1974, pursuant to the provisions of Section 160 (1) of the 1963 Constitution, Act No. 20 of 1912. These Rules, therefore, in my view, have constitutional force and they invest the public servant over whom they prevail, a legal status; a status which makes his relationship with the respondent and the government although one of master and servant certainly beyond the ordinary or mere master and servant relationship. Under these Rules (i.e., the 1974 Civil Service Rules which, as I already pointed out, have a statutory force and, therefore, ought to be ‘judicially noticed’) paragraphs 04107 to 04121 provide the procedure which must be adopted in the removal or retirement from service, as well as general disciplining of public servants in the established pensionable cadre”*

I think, that the error of the two courts below arose because they did not fully comprehend the full binding force of Rule 04107. In other words, they treated the dismissal of the appellant as they would the case of an employee in the ordinary master and servant relationship. In *C. I. O.*

Olaniyan & Ors. v. University of Lagos & Anor (1985) All NLR 363 at 383, the same point was made by this court when Oputa, JSC., said:

*“Given the background of the removal of the appellant on the ground of misconduct, could the respondents have removed the appellant under the common law rules regulating the ordinary master and servant relationship? The answer is No. It is here that the concept of vires comes in. If the powers of a corporation are given or acquired at common law or by custom or by charter, the corporation is a person at common law and may do anything which an ordinary person can do, see Wenlock (Baroness) v. River Dee Co. (1885) 10 App. Cas. 354: See also British South African Co. v. Dee Beers Consolidated Mines (1910) 1 CH. 354. On the other hand, a corporation or company which is created by or under a statute cannot do anything at all, unless authorized expressly or impliedly by the statute or instrument defining its powers. It simply has not got the vires or the powers or authority to act outside the statute. If it so acts, the act will be held to be ultra vires and declared null and void.”*

The same principle upon which this court decided the Olaniyan and Shitta-Bey cases (supra) was followed by this court in Federal Civil Service Commission v. Laoye (1989) 4 S.C. (Pt. II) 1; (1989) 2 NWLR (Pt. 106) 652. The case was cited before the court below. The court below however felt unable to follow the decision of this court on the ground that the facts in the case and those in this case were different. I think, with respect to the court below, that the principle upon which the Laoye case was decided was equally applicable to this case. In the Laoye case, this court per Esq, JSC, in the lead judgment set out in full the procedure prescribed under Rule 04107. He then concluded that the appeal of the Federal Civil Service Commission against the judgments of the trial court and the Court of Appeal must fail, as the Federal Civil Service Commission had not complied with Civil Service Rule No. 04107 before removing the respondent in the case from the Public Service.

The relevant Civil Servant Rule 04107 to which the present plaintiff was subject reads:

*“An officer in the Federal Public Service may be dismissed by the Federal Public Service Commission only in accordance with the following*

*rules unless the method of dismissal is otherwise provided for in these Civil Service Rules:-*

- (i) The officer shall be notified in writing of the grounds on which it is proposed to dismiss him, and he shall be called upon to state in writing, before a day to be specified (which day must allow a reasonable interval for the purpose) any ground upon which he relies to exculpate himself;*
- (ii) The matter shall be investigated by the appropriate authority with the aid of the Head of the Officer's Department, and such other officer or officers as the appropriate authority may appoint;*
- (iii) If any witnesses are called to give evidence, the officer shall be entitled to be present and to put questions to the witnesses;*
- (iv) No documentary evidence shall be used against the officer unless he has previously been supplied with a copy thereof or given access thereto.*
- (v) If the officer does not furnish any representations, within the time fixed, the Federal Public Service Commission may take such action as it deems appropriate against him.*
- (vi) If the officer submits his representations and the Commission is not satisfied that he has exculpated himself, and considers that the officer should be dismissed, it shall take such action accordingly."*

It is apparent that the opening paragraph of the above Rule 04107 provides that, a public servant, may only be dismissed, in accordance with provisions made under the Rules. "As I stated earlier in this judgment, the Accountant-General of Rivers State, following the burglary, as a result of which the sum of N32,037.29 was stolen, set up a Board of Inquiry. The plaintiff and other persons testified before that board. No allegations had then been made against the plaintiff/appellant. He was therefore not on trial before the Board of Inquiry. The Board wrote its to the plaintiff/appellant. As far as the plaintiff/appellant was concerned, since he had not been summoned before the Board of Inquiry as the one on trial, whether conclusions were arrived at by the Board could only have been meant for the guidance of the Accountant-General.

However on 28/5/86, the Civil Service Commission issued a query Exhibit 'B' to the plaintiff/appellant. Exhibit 'B' reads:



Query

1. The Civil Service Commission recalls that you in your official capacity as the Chief Accountant of the Ministry of Works and Transport exhibited carelessness, negligence and lack of enough precaution thereby violating CSR Nos. 04120 and 04121 which resulted in the loss of B Government funds totaling N32,036.29 (Thirty-two Thousand and Thirty-six Naira, Twenty Nine kobo only) in December, 1985.

2. Consequently, will you explain in writing why the contents of CSR No. 04107 should not be evoked against you by dismissing you from C the Rivers State Civil Service.

3. If in view of the foregoing, you wish to submit any representation why you should not be dismissed from the Rivers State Civil Service as indicated in paragraph 2 above, they should be submitted to the Permanent Secretary, Civil Service Commission through the Accountant-General, D Ministry of Finance & Planning within 7 days of the receipt of this letter. Failure to submit them within the time limit will be taken to mean that you do not wish to make any.

4. You will acknowledge receipt of this letter on the acknowledg- E ment slip attached thereto.

(Sgd.)

C. Kambi-Selema (Mrs.)

For: Permanent Secretary,  
Civil Service Commission”

F

The plaintiff/appellant made a reply Exhibit ‘D’ to Exhibit ‘B’ on 6/6/86. In Exhibit D, the plaintiff/appellant offered his explanation, contending that he had not been negligent. In an attempt to show that the officer who issued Exhibit ‘B’ had shown bias and ill-will against him, the plaintiff/ G appellant in Exhibit ‘D’ said:

*“Sir, you may please permit me to place on record the erratic and indisciplined (sic) behaviour of your officer who signed the query letter. She was in the Ministry of Works and Transport as Under Secretary at the time of this dismal incident. She had stopped at nothing in carrying smearing campaign against me and making such false allegations she cannot defend. She had deposed in public and before the Controller of H*

*Works Services that she saw me leading the officers caught in their attempt to carry money away from the office which was far from the truth. She goes about poisoning minds of officials even the police who are expected to take a detached view of this matter, trying in all sorts of ways to influence the investigation of this crime as though she has a hidden interest to protect. Her recklessness and prejudice is further exposed in the wordings of her query which states in paragraph 2 ..... why the contents of CSR No. 04107 should not be evoked against you by dismissing you from the Rivers State Civil Service' instead of why disciplinary action should not be taken against me."*

What followed Exhibit 'D' was a letter Exhibit 'C' dismissing the plaintiff/appellant from service on 27/8/86. Exhibit 'C' reads:

"DISMISSAL FROM SERVICE

1. I am directed to inform you that after a very careful consideration of your representations to the query No.CPSC/6/3468/79 of 28th May, 1986; the Report of the Board of Inquiry set up by Government on the loss of Government funds to the tune of N32.036.29 at the Ministry of Works and Transport and the conclusions therefrom, the Civil Service Commission has found you solely responsible for the huge loss. It has therefore been found that it is not in the best interest of the public that you remain in the Service to continue to perform the functions of your office, and so the Commission has directed that you should be dismissed from the Service of the Rivers State Government in accordance with Civil Service Rule 04107.

2. You are accordingly dismissed from the Rivers State Civil Service with effect from the date of this letter.

3. You should please hand over all Government Properties still in your possession to your Head of Department/Accountant-General.

4. Please acknowledge the receipt of this letter on the attached acknowledgment slip which should be returned to this office through your Ministry.

(Sgd.)

S. D. Edeh,

For: Permanent Secretary,

Civil Service Commission”

(Underlining mine)

From the contents of Exhibit ‘C’ above, it is apparent that in taking the decision to dismiss the plaintiff/appellant, the Civil Service Commission had taken into account not just plaintiff’s reply to the query given him B but also the Report of the Board of Inquiry set up by the Accountant-General. Although the Civil Service Commission had not followed the procedure prescribed under Civil Services Rule 04107, it stated that it was dismissing the plaintiff in accordance with the Rule 04107.

When the procedure prescribed under Rule 04107, is contrasted C with the procedure adopted in dismissing the plaintiff from service, it is seen that the relevant rule was not followed. Rather, the principle of fair hearing was clearly not followed. When the plaintiff/appellant made appearance before the Board of Inquiry set up by the Accountant-General, D he went there as a witness and not as a person being accused of any wrong doing or misconduct. When the report of the Board of Inquiry was ready, the plaintiff was not given a copy thereof to enable him react to any adverse comments contained therein against him. Although the plaintiff had not E been enabled, to react to the contents of the report of the Board of Inquiry, the Civil Service Commission in deciding to dismiss the plaintiff relied on the contents of the report.

In the procedure set out under Rule 04107, an officer about to be F disciplined or dismissed is first given a query to explain in writing. He is told the grounds upon which it is proposed to dismiss him. After the officer shall have made his representations, the matter is then to be investigated with the aid of the Head of the Officer’s Department and such other officer G or officers as the appropriate authority may appoint. If witnesses are called to give evidence, the officer to be disciplined shall be entitled to be present and put questions to them.

Clearly, it is seen that, it is a query that must precede the setting up of an investigation body in the disciplinary procedure under Rule 04107, H unlike the procedure adopted in dismissing the plaintiff/appellant where a Board of Inquiry preceded the issuance of a query. Rather alarming is the reliance placed on the contents of the Report of the Board of Inquiry which

the plaintiff had not seen nor commented upon.

It is my view, that the procedure adopted in dismissing the plaintiff/appellant is not in consonance with that which his status in the public service qualified him for. The plaintiff/appellant not having been properly  
B dismissed from the Rivers State Public Service must be deemed to be still in that service. A public servant can only be validly removed from service if the procedure prescribed by law was followed.

It needs be pointed out here that the plaintiff/appellant could not be  
C said to have asked for too much, in his insistence that the disciplinary process against him be seen as fair and impartial. In Exhibit ‘D’, plaintiff/appellant reported that the lady, who signed Exhibit ‘B’, the query, had previously made remarks inimical to his (plaintiff’s) interest. The same  
D lady, who worked with the plaintiff at the Ministry of Works, where the burglary took place, had herself been a witness before the Board of Inquiry set up by the Accountant-General. In unexplained circumstances, she emerged as the same officer to issue a query to the plaintiff/appellant. I think, it is important, that public affairs must be conducted with transpar-  
E ency. The Civil Service Commission having been apprised by plaintiff/appellant in Exhibit “D” of the role previously played by the officer, should have, in order to enhance the integrity of the process leading to plaintiff’s dismissal, redressed the situation by issuing a fresh query signed by  
F another officer.

I would therefore allow this appeal as in the lead judgment of my learned brother, Onu, JSC. The judgments of the two courts below are set aside. I make an order that the dismissal of the plaintiff from the Rivers  
G State Civil Service contained in the letter CPSC/6/3468/97 dated 27th August, 1986, is null and void and of no effect whatsoever. The plaintiff is accordingly restored to his post in the Rivers State Civil Service. He is also entitled to all the rights and privileges attached thereto. I subscribe to the order on costs in the lead judgment.

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