

Full Length Research Paper

Examination of post Primary Educators' utility of the due methodology of law in scholastic Dismissal

Ohwovoriole V. James

School of Law, Faculty of Management and Law, Delta State University, Abraka, Delta state. Email: dr.james33@yahoo.com

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This paper focused on the utility of the due process of law by teachers as a protection and corrective measures on academic dismissal in Nigerian post primary schools. It reviewed how 'right' and 'due process' are related as well as the essence of the due process in considering the crucial aspect of law by reviewing statutes, laws, edicts and decrees to improve some problematic areas faced by teachers in the teaching profession. This approach did not only ensure and allow harmony, peace and promote respect for each individual's right in the teaching profession but, also ensured satisfaction among teachers. In view of the technicality of the term 'due process', experts who are lawyers, judges and trained administrators read and interpret this term without difficulty. However, the layman can be kept well above water to know the essence of due process by simply following the definition and explanations provided. 'Due process' is subdivided into three areas which include constitutional, procedural and substantive due process.

Key words: Due process, academic dismissal, Nigerian post primary schools.

INTRODUCTION

It is recognized that just as appraisal is utilized for the necessity of promoting personnel on the job, so is due process applied before an employee could be dismissed. The essence of due process (fair hearing) in Nigerian school system is to avoid unnecessary dismissal of employees and getting involved in litigation. This will prevent the arbitrary abuse of power by employees.

The interpretation of due process by courts is a check that could be placed on the legislative, executive and administrative actions that trample on employees' rights (Harris et al., 1979). It may be possible that such an action could be arbitrary, capricious and very unreasonable in nature. Hence Nwagwu (1987) alerts teachers and administrators that dismissal from service not only damages one's standing, reputation and association with others in the system, but also hurt the dismissed employee chances of being employed into other government and community services within a state. Therefore, Nwagwu suggested that in most contract letters, it is clearly stated on what is acceptable and unacceptable according to the civil code (Nwagwu, 1987). However, employees that have had their appointments confirmed and regularized will be protected from such dismissal in service. Casteller shares such protective view and when discussing the necessary formal steps to be followed before dismissal. These include charged notification, a hearing, an appeal and a de-

cision (Castetter, 1981).

"Teachers, as employees of the state, need to be fully aware of the application of the due process" which a clause included in the Nigerian constitution for their protection. This is to disallow any possible dismissal without following both the administrative and judicial processes by administrators. In following the principle of due process (fair hearing), the judiciary encourages and makes it possible for education authorities to enforce all statutory requirements as enforced by the ministry of education and the state school board that is within their reach. This can allow for an effective use of a noble discretionary power that is available in both the formulation and execution of education policies (Kemerer and Walsh, 1996). This could be reflected through the enforcement of proper rules and regulation in the schools. The teachers and administrators who do not comply properly with the statutory requirements can be brought to book through the "due process".

Types of due process

Due process is subdivided into three sub-areas. These include; constitutional, procedural and substantive due process (Kaplan and Lee, 1995).

Constitutional due process

The constitutional due process can be seen from two angles which include the positive and negative aspects. The positive aspects states that nobody may be deprived of life, liberty and property without being exposed to the process which is entrenched in the Nigerian constitution. On the other hand, the negative aspects of due process is considered by the writer as a process whereby the state cannot take away life, liberty and property from an individual without granting the person a fair hearing, through the due process of law. The difference between the positive and negative is that the former does make provision for people's safety and protection while the later indicates that though the state is ultimate yet the benefit of doubt is given to individuals to defend oneself in case of a crime. Invariably, it should be realized that teachers have access to the due process strictly as a safety valve in the teaching profession. However, the writer wants to examine how well this process has been utilized and followed. The Nigerian constitution of 1999 has sections 33 and 36 (Nigerian constitution, 1999) that bear relevance to a person being fairly tried before either a right may or may not be taken away from the individual.

Procedural due process

The procedural due process relates more to the 36th section of the Nigerian constitution of 1999. In the section, it summarily states that every body should be informed of the offence, giving a fair chance both an impartial hearing and defense before a judgment is passed on the individual. The essence of the procedural due process is that it excludes bias and allows for natural justice to prevail in any administrative set up whereby either a teacher or a group of teachers are faced with either a problem or problems in the system.

Substantive due process

The substantive due process relates more to section 34 of the Nigerian constitution of 1999. This summarily states that everybody should be given some dignity especially by avoiding any element of inhuman treatment. The individual may not be held in captivity and should not be made to do any compulsory labour. Though, substantive due process normally involves a calculated cost and achieving an objective that include problems which are addressed to create comfort for citizens. In summary, it is a means to an end which enables the individuals to be very much aware of the occurrence of events.

The relationship of right and due process

The application of natural justice by teachers indicates that generally, teachers should be exposed to a right,

based on the due process of law. The concept denotes an advantage which accrues to a person who is guided by specific regulations in an organization such as the school system. Since people in the school system are exposed to rules and regulations, one would sometimes be compelled to tolerate certain imposing views and sanctions which could be trampling on each individuals right. The point of disagreement between the individual and possibly the employer can encourage conflict as well as create unhealthy situations for the employee and the immediate superiors. Eze sees it as an act of an infringement which calls for a legal sanction in most cases (Eze, 2000). This is why such acts are considered to be compelling somebody specifically either from doing or not performing an action against another person's interest. In other words, the fundamental rights of people not only just exist but are protected and sanctioned by the rule of law since relationship between individuals are involved.

However, though, due process has been earlier established in the paper, it may be amplified that it simply involved exposing an individual to a normal course of action in seeking for redress and justice. This includes protecting one's interest and providing peace to all human beings as required by law. The similarities and differences that exist may be viewed based on the following explanations.

Both 'right' and 'due process' protect the common man's existence, disallow unnecessary interference, humiliation and creates peaceful existence. This is so, since certain basic rules, regulations and laws are followed to ensure that nobody is oppressed. In case of interference on somebody's peace, such a person would possibly seek for both protection of the law and redress in court. On the other hand, the differences that exist between 'right' and 'due process', appear very thin yet meaningful. A person's right would involve moral obligations, interests and duties all which are backed up by the law without which it becomes difficult to accomplish. However, a person's right does not have to infringe on another person's right which means, where one's right stops another person's right begins.

The difference between 'due process' and 'right' is mainly when one considers that before any of the rights are taken from an individual, somebody is exposed to a course of administrative and judicial process. In most cases, consideration is given strongly to the three aspect of 'due process' which include constitutional, procedural and substantive. It is only when 'due process' is not followed that abuse of a person's human right has been violated. However, a person's right is absolute since such a person is an integral part of the society organization. The society or organization provides law, rules and regulations which comply with an attempt not to either intentionally or unintentionally hurt others which is regarded as an infringement of people's right. In reality, all persons have certain rights which individuals must respect so as to allow for peaceful existence and harmony. However, when a

right is abused under specific conditions, it may be either a state, organization or another individual's certain procedures must be followed before such a right can be withdrawn. Cransten is of the opinion that nobody can be denied human right except proper justice is carried out. The author further specified that certain elements which include some deeds, which need not be done. Also, peoples' freedom should not be encroached upon especially since certain rights are considered very precious (Cransten, 1907).

In the light of this emphasis is made on how 'due process' is utilized by teachers in Nigerian schools in case of professional misconduct, termination of appointment, dismissal from service, teachers' disciplinary process through possible suspension, interdiction, demotion and revocation of teaching certificate.

Identifying cases of due process

The situation that will be analyzed to demonstrate the areas as per the school setting may vary from state to state but are backed by similar statutes ensuring the enforcement of 'due process'.

The elements of 'due process' can be established from two angles which include:

(a) Setting up administrative machinery to investigate such an offence. In this case, the investigation proves such an employee of committing such an offence. Thereafter, such a person is initially warned, later suspended, sequentially demoted and finally dismissed. In most situations, such an employee is not satisfied with such an administrative decision at the administrative level, since the members are senior administrative officials who are in the same organization.

(b) Requiring a judicial process to rule on the issue. During such a conflict, the courts normally stay out until a formal request is sought by the aggrieved employee who seeks the court to examine such an issue that is at stake and provide clarification (Alexander et al., 1969).

Method of due process

Due process involves a long process since it involves both administrative and judicial processes. Though the method is lengthy, it is the way to seek redress which has been proven and decided by cases that have been found useful in research. In a similar research, Iyayi (2002) utilized the decision making model that involved two personnel cases and relocation. The case had been influenced by the Lammers and Hickson's (1981) approach. This indicated that a decision made at the top was based on superior-subordinate relationship. Although, a one-man's decision, as Iyayi indicated, is far easier to carry out.

In this work, Iyayi (2002) has utilized cases which have been decided judicially. This is to indicate that before property, life and liberty can be taken away from an indivi-

dual, due process needs to be followed. The first two cases involved termination and dismissal of employees respectively, while the other two cases involved injury and acquisition of property. In all four cases, the judicial process was followed and the judgments were guided by the Nigerian constitution.

Fourteenth amendment due process

Most academic challenges cases from public institutions are brought into federal courts under 42 USC and 1983 and under the fourteenth amendment due process clause. The civil rights act provides a federal mandate for the preservation of rights. In cases of academic dismissal, students typically claim that they have been deprived of liberty or property rights. This violates the right to procedural and substantive due process according to the fourteenth Amendment. Procedural due process involves the right of the individual to receive adequate notice of his or her deficiencies and to have a reasonable opportunity to be heard on the matter. Substantive due process implies that due process is accorded in a fair and equitable manner without bad faith, arbitrariness, or capriciousness.

In dealing with these cases, the courts typically have several questions to consider:

- (i) Do students have a liberty or property interest in continued enrollment in the education program?
- (ii) Did the dismissal from the program deprive the students of the constitutional right to procedural due process?
- (iii) Was the dismissal done in an arbitrary and capricious manner, thereby causing deprivation of substantive due process?

These concepts of liberty and property rights and due process are described in greater detail following the law of natural justice (*Nemo Iudex in Casua Sua*) (Nakpodia, 2007).

Liberty and property interest

Liberty interest in the context of academic dismissals include the freedom to pursue employment in a related field or to be considered without bias for enrollment in another academic institution. A rare case in which a liberty interest was recognized by the courts was the case of *Greenhill vs Bailey* (519 F2d 5, 1975) as pointed out by Howe and Strauss (2003). In this case, a medical student was dismissed due to poor clinical performance. The assistant dean of the medical school reported in written documentation to the association of American medical colleges that the dismissal was due to a "lack of intellectual ability or sufficient preparation". The court held that the students had been deprived of significant interest in liberty because of the denigrating nature of the comments about his intellectual capabilities (rather than his academic

preparation). They agreed that this could result in an ability to take advantage of other opportunities for advancement in the medical field.

Courts have often addressed the issue of students' property interest in education. In most cases, the courts have ruled that a property interest in continued enrollment and graduation exists by virtue of the students' payment of tuition and fees and by implied contract based on the catalog and institutional literature. This property interest does not detract, however, from the right of the academic institution to establish reasonable standards for academic performance or to dismiss students who do not meet those standards.

Substantive due process

The issue of substantive due process was significant in the case *Connelly vs university of Vermont and state agricultural college*. This case also provided important validation of the role of the faculty in setting academic and clinical standards and in evaluating student competence. In *Connelly vs university of Vermont and state agricultural college*, the court considered whether a third-year medical student was dismissed unfairly from his medical school. The student, which was dismissed from the college of medicine after failing a pediatrics/obstetrics clinical rotation, brought suit stating that he was failed based upon bad faith of the instructor. He stated that the decision to award a failing grade was made prior to the completion of the rotation. The college policy required dismissal for failure of 25% or more of the year's major course work. Due to illness, Connelly had missed a portion of the 12 week clinical rotation, which was subsequently made up. Prior to his illness, his grades had been acceptable. Connelly alleged that he had been informed by his clinical instructor (CI) that the CI had decided early in the rotation not to give a passing grade, regardless of the quality of prior work or of performance during the make-up period. When Connelly was advised of his failing grade, he petitioned the college's committee on advancement for permission to repeat his third year's work. This request was denied and he was dismissed from the medical college. The district court found that there was sufficient evidence that the decision to dismiss Connelly was arbitrary and capricious. The court described its role and the academic institution's legal responsibilities in the following statement.

Where a medical student has been dismissed for failure to attain a proper standard of scholarship, two questions may be involved. The first is, was the student in fact delinquent in his studies, or unfit for the practice of medicine? The second question is, were the school authorities motivated by malice or bad faith in dismissing the student, or did they act arbitrarily or capriciously? In general the first question is not a matter for judicial review. However, a student dismissal motivated by bad faith, arbitrariness, or capriciousness may be actionable.

The court described its role and the responsibilities of the school authorities and the students as follows, "The

effect of these decisions is to give the school authorities absolute discretion in determining whether a student has been delinquent in his studies, and to place the burden on the student by showing that his dismissal was motivated by arbitrariness, capriciousness, or bad faith.

Note that the court was careful to state that academic decisions are best kept in the purview of academicians rather than the judicial system: "...in matters of scholarship the authorities are uniquely qualified by training and experience to judge the qualifications of a student and efficiency of instruction depends in no small degree upon the school faculty's freedom from interference from other non-educational tribunal. It is only when the school authorities abuse this discretion that a court may interfere with their decision to dismiss a student".

The case of *Connelly vs university of Vermont and state agricultural college* reinforces the importance of fairness and equity in evaluating student performance. The process of evaluating student performance must be clearly defined and performance issues must be objectively documented. Good communication between the academic institution and the clinical education faculty is imperative in order to ensure substantive due process.

Procedural due process

The issue of procedural due process in academic dismissals is considered in many cases. In *Gaspar vs Bruton* a nursing student was dismissed from a school of practical nursing due to poor clinical performance. While Gaspar had acceptable grades on written class work, multiple clinical faculty members noted problems with her organization, clinical problem solving, safety, failure to properly perform clinical documentation and extreme nervousness. Numerous attempts had been made to counsel the students in order to facilitate improvement in clinical performance, without success. She was then dismissed from the nursing program. Gaspar filed suit alleging deprivation of her due process rights under the fourteenth amendment. The court held.

Gaspar was provided much more due process than that which we hold must be accorded to cases involving academic termination or suspension. We hold that school authorities in order to satisfy due process prior to termination or suspension of a student for deficiencies in meeting minimum academic performance need only advise that students with respect to such deficiencies in any form. All that is required so that the student be made aware prior to termination of his failure or impending failure to meet those standards.

The courts restated that the legal system was not equipped to evaluate students' academic performance. The judgment in *Connelly vs university of Vermont and state agricultural college* was reaffirmed. The only reason for the court to intervene in academic matters could be in cases in which bad motive or ill will could be demonstrated.

In *Stretton vs Wadsworth* veterans hospital a pathology resident was dismissed from a 4 year residency program after 1 year due to incompetence and unwillingness to deal with co-workers in a professional and collegial manner. Stretton had been informed of inadequate progress by supervisors prior to the dismissal. Following notification of dismissal, he filed suit claiming that his fifth amendments rights were abridged when he was not given a full adversary hearing prior to termination. The appellate court found that Stretton had received due to academic issues.

These findings reinforce the need for physical therapy faculty to be clear with students about potential academic or clinical failures student should be provided with verbal feedback identifying areas of strength and areas of deficiency. Consequences, including the possibility of failure, must be made to the student. Routine documentation of incidents and advising, adds to the evidence in the event of student's failure. Where possible, students should be asked to sign and date such documentation in order to demonstrate that they have received the information and feedback described.

Cases of due process

Case number 1: Suit AB/90/73 - Wrongful termination of a suit appointment by an employer (E. A. Oyediji, plaintiff vs J. O. Fashuen, defendant).

The case relates on Mr. Oyediji (the plaintiff) who was employed and a termination of the contract was abrupt. This was because Mr. Oyediji was away from school as the principal without "proper" clearance from the proprietor of Ebenezer grammar school Abeokuta, Mr. Fashuen. The contract of employment that was wrongfully terminated by the defendant was based on the grounds that the plaintiff allegedly left school to mark the West African school certificate examination scripts at Ile-Ife. This assignment is regarded as an official request from the examination body of the nation.

The issues raised before the court included the following, whether the contract that was prematurely terminated was proper? Is it justifiable to dismiss an employee because an employee was absent from duty on a particular occasion? What damages would the plaintiff be entitled to for wrongful termination of his appointment before the expiration of the contract? (Peretomode, 1992).

In the light of the above questions, the court ruled that the plaintiff had been carrying out his functions properly and received the prescribed remunerations. The verdict was in favour of the plaintiff, Mr. Oyediji and was awarded the sum of N2, 722.40 as special and general damages. In the process of ruling, the presiding judge cited the precedent case of *Baster vs London and county printing works* (1899) 1, Q. B 901. Furthermore, the *Garabedine vs Jame-Kani* (1961) all N.L.R. 177 to substantiate the ruling. In it, the judge stated that an employee cannot be dismissed simply because a mistake was made.

However, it was pointed out that the case before the court was neither that of forgetfulness nor one of incompetence but that of absence from duty. Consequently, it leads to abrupt termination of appointment.

This is also typical in a case of case number 2: Suit N B/320/86 dismissal of a teacher from the teaching service (Mrs. Ufua Grace Omonigbo, plaintiff vs teaching service board, Benin City, defendant).

Possible utilization and implications of the cases to school administration

There have been previous discussions on disciplinary measures, which focused on teachers who did not comply with the professional conducts. These measures included suspension, interdiction and demotion.

In each of the above methods that may be applied, spells out the degree of offence and how it dictates the nature of penalty that such an offence may attract. It may also mean that such a panel is set up to review the case of each personnel involved. It may also mean that the proper recommendation to decide the fate of such an employee is required. In case, an individual who is a trained teacher violated the terms of contract, especially where a person makes a careless statement in a radio talk and such a teacher's appointment is up for confirmation, he/she may be denied confirmation if only proper investigations have been carried out and the employee is found guilty (Graham, 1975). The essence is that the educational system needs to be protected from such seditious utterances and ensure the pupils of the system are not influenced. This means that the right of the state paramount precedence and interest over individual's right and especially when such interest have been properly utilized.

However, teachers who have properly maintained good behaviour in the course of performing their duties in Nigeria, certain rights are accorded them in their local government areas. This means that the employee who serves and exhibits good behaviour is accorded all the rights until such an employee resigns, retires or dies. It may also be known that when such a teacher violates a sensitive offence, the teacher should be ready to "face the music".

Unfortunately, in some cases, most teachers have unnecessarily been victims of circumstances and may either be too timid, ignorant and do not want to set precedents for others. This means that personnel of this caliber suffer in silence and are not exposed to the due process of law. It may also be realized that some people who are exposed to administrative due process and are satisfied may be too afraid to go further to seek judicial exoneration level. Personnel who are faced with such difficulty are afraid of harassment, intimidation and unpleasant situations created for their immediate and remote families.

As per the Oyediji's case, in Abeokuta, Nigeria the implication for school administration is that an employee cannot just be terminated by an employer at will. The

terms of contract need be followed before dismissal can be done but if the employee operates outside the range of the contract, then the contract can be terminated. Furthermore, by implication, the *Oyedeki vs Fasheun AB/907 73* has strong backing for the wealth of experience gained by teachers during marking exercise of the West African school certificate examination. This exercise can assist teachers in transmitting instructions during teaching and learning process, which can enhance students' performance in subsequent examinations. Therefore, teachers should be encouraged to be a part of such co-ordinations.

The implication of the *Ufua's* case to administrators is that teaching service board is a creature of the state. Therefore, it is a recognized powerful body in which is the guardian of the educational interest in the state. This interest involves children's custody, progress and their development growth. Hence, the statutory body expects ethical and moral standards from teachers.

The expectance of good behaviour from teachers can raise the hopes of students in teachers especially to discourage students from indulging in forged certificates, fraudulent acts and other criminal involvement. In cases where teachers are found dishonest, immediate sanctions should be taken as to avoid a spread of such action not to influence students negatively.

Generally, the verdict in *Ikhure's* case, which was negatively skewed against the defendants, will forever deter both administrators and teachers in the performance of their duties. Unfortunately, teachers may timidly let a lot of corrective measures go without being addressed. Incidentally, pupils and students may take undue advantages of such extreme leniency and cautiousness of the teachers not to hurt students when carrying out corporal punishment. The possibility of teachers will reduce. Therefore, government and school authorities need to work out modalities to outline relevant punishments that are commensurate to offences committed by students.

Lastly, *Okogie and others vs Lagos state* made it necessary to expose school administrators to know that the fundamental rights possessed by students, parents and teachers matter. School administrators may understand better that while implementing administrative decisions, people should be both mindful and respectful not to infringe on people's constitutional rights, that is, pupils should be allowed to attend schools of their choice. This could neither be public or private schools.

The school system should create an avenue for dissemination of information on constitutionality and legality of laws, rules, policies, circulars and regulations. The essence of this is to avoid ignorance of the law and conflicts amongst parties involved in the schools by following due process of law.

Conclusion

The issues relating to teachers' utility of the due process of law in academic dismissal in Nigeria have been ener-

gized by at many levels under constitutional, procedural and substantive due process. Academic challenges will continue to exist as teachers invest much of their energies, emotions, time and money pursuing education and professional aspiration in this litigious time.

The procedure of due process when compiled with rescued teachers, who are innocent, provides a check against dismissal of teachers in Nigeria. Unfortunately, such arbitrariness could be through victimization and fault finding which may be 'witch - hunting'. Therefore, the 'due process' may be described as a buffer between the employer and employee. The procedure being followed administratively and judicially can discourage unnecessary embarrassment to both parties in case there is recourse.

As employee and employer, there is need to have protective device since frictions often in working environment. In the process of seeking for protection, the due process of law is utilized as cushion to assure that unnecessary punishment is inflicted on individuals. The use of due process may create the climate for harmony, avoid undue squabbles and reduce litigation, especially when enlightened teachers, educators, pupils and possibly parents are involved.

In case, changes need to be made, especially when decrees, edits and laws have equally been revised to show that rapid progress is required. Changes in society portray not only progress but equal development in the judicial system. Hence, due process is the common man's hope, which is strongly advocated and expected to be in use in Nigerian primary and post primary schools.

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