



NATIONAL OPEN UNIVERSITY OF NIGERIA
14/16 AHMADU BELLO WAY, VICTORIA ISLAND, LAGOS
SCHOOL OF LAW
MARCH/APRIL 2014 EXAMINATION

COURSE CODE: LAW443
COURSE TITLE: ADMINISTRATIVE LAW 1
TIME ALLOWED: 3 HOURS

INSTRUCTION: QUESTION ONE IS COMPULSORY AND YOU ARE TO ANSWER ANY OTHER THREE (3) QUESTIONS. **All questions carry 17.5 marks**

COMPULSORY QUESTION

1. The National Assembly of Kosovo Republic created the Kosovo Forest Service. Naturally, the question of recruitment to the newly formed Kosovo Forest Service came up. Rules and Regulations were framed to provide for recruitment.

It was laid down that the Central Government would recruit from amongst the members of the State Forest Services who might be adjudged suitable. For the purpose of selection, special selection Boards would be constituted for different areas. The special Selection Board was constituted for the State of Kalcutta and Kashmir. The Board consisted of the following members: -

- (i) Jomo Kenyatta, the nominee of the Chairman, UPSC
- (ii) Inspector-General of Forests, Govt. of Kosovo.
- (iii) Chief Secretary to the Govt. of Kosovo.
- (iv) One Joint Secretary to the Govt. of Kosovo
- (v) Mr. Pam Pam, the Acting Chief Conservator of Forests, Kalcutta and Kashmir.

The Board met in May 1967. No interview was conducted. The Board consulted the relevant records and selected 25 officers. The list was then published. The name of Pam Pam appeared at the top of List. In that list, the names of Basu, Baig and Kaul did not find any place. They felt very much aggrieved at their exclusion. They filed an application before the Supreme Court, challenging the validity of that

list. They attacked it on various grounds the thrust of the arguments being that the selections, as reflected in the aforesaid list, were vitiated by gross violation of the principles of Natural Justice. They contended that Pam Pam himself was a candidate for being considered in the context of such selection Board. His membership of the Board and participation in the process of selection introduced personal bias and militated against the Natural Justice, resulting in gross failure of Justice. It was also argued that the list in question was liable to be quashed on account of subversion of Natural Justice, arising out of personal bias of a member of the Selection Board. The Respondents pointed out that Mr. Pam Pam wholly withdrew himself from the deliberation of the Board when his case came up before it for consideration. He, therefore, did not take any part whatsoever in any discussion involving him and did not in any manner influence the decision of the other members.

Upon the pleadings of the parties and the rival contentions they raised before the Supreme Court, the points that fell for determination may be expressed as follows:-

- (i)** What is meant by “Natural Justice and what are the basic principles of the doctrine?
 - (ii)** Do they apply to proceedings of administrative/executive nature?
 - (iii)** Is there any distinction between quasi-judicial and administrative powers from the angle of applicability of the principles of Natural Justice?
 - (vi)** Was real likelihood of bias or even reasonable suspicion of bias sufficient to disqualify a person from deciding anything to the prejudice of anybody?
 - (vii)** Did the facts of the case attract the operation of the principle “a person should not be the Judge in his own cause.”
 - (viii)** Was there any violation of Natural Justice in the case under consideration?
 - (x)** Was the entire list prepared by the Selection Board liable to be quashed?
- Prepare a submission on the points for the applicants on the above mentioned points.

SECTION B

ANSWER ANY THREE

2. There is great divergence of opinion regarding concept of administrative Laws. Why Administrative Law is an endeavor to check

arbitrariness of governmental power. Explain with the help of constitution & other allied concepts like Rule of Law, Separation of power & ***droit administratif***.

3. Administrative rule-making or delegated legislation is become inevitable. How far do you agree with this statement? What are the limitations upon delegation of legislative power and how the delegated legislation is controlled? OR

Delegated legislation is both inevitable and indispensable. How far do you agree with the statement that the unlimited right of delegation is inherent in the legislative power itself?

4. Ogayemi was charged with committing offences under Regulation 6 and 42 of the *Banking (Foreign Exchange) Regulations*. He sought a declaration that the regulations were invalid or inoperative at all times during the commission of the offences.

The Acts Interpretation Acts. 48 (1) says (Herein AIA):

“Where an Act confers power to make regulations, then unless the contrary intention appears, all regulations made accordingly –

- (a) shall be published in the Gazette
- (b) shall, subject to this section, take effect from the date of notification, or, where another date is specified in the regulations, from the date specified; and
- (c) shall be laid before each house of the Parliament within fifteen sitting days of that House after making the regulations.”

The *Rules Publication Act* s. 5(3) says (herein RPA):

“Where any statutory rules are required by any Act to be published or notified in the Gazette, a notice in the Gazette of the rules having been made, and of the place where copies of them can be purchased, shall be sufficient compliance with the requirements.”

He has retained your services as his counsel and you need to address the following issues:

Issue 1: when should the regulation take effect?

Issue 2: what constitutes notification and publication?

Issue 3: Is following the procedure mandatory or discretionary?

5. Classification of administrative power is an illusion. This is because administrative agencies are not the three arms of government to which constitutional powers of legislating, executing and adjudicating have primarily being assigned to. Discuss.
6. If it is inconsistent to the principle of law that discretionary authority should be granted to public agencies or public officers, then the rule of law applies to no modern constitution. Discuss