

P.C.
~~Supp. G~~ 2

17,1966

IN THE PRIVY COUNCIL

No. 50 of 1964

ON APPEAL FROM THE FEDERAL COURT
OF MALAYSIA

B E T W E E N :

RASIAH MUNUSAMY Appellant

- and -

THE PUBLIC SERVICES
COMMISSION Respondent

CASE FOR THE APPELLANT

Record

- 10 1. This is an appeal from the Judgment and Order of the Federal Court of Malaysia, dated the 21st February 1964, whereby the Federal Court (Barakbah J.A. being for dismissing the appeal and Thomson, Lord President of the Court, being for allowing it) dismissed, under Section 16 of the Courts Ordinance, the Appellant's appeal from the Judgment and Order of the High Court (Ong J.), dated the 3rd May 1960, whereby the High Court refused the Appellant's applications for an order of certiorari and an order for mandamus.
pp.205 ll. 20-25

pp.145-163

- 20 2. In his application for an order of certiorari (Originating Motion 1959 No.2) of 27th February 1959, the Appellant prayed for an order to quash a decision of the Respondents, dated 23rd May 1958, to terminate the appointment of the Appellant as a Probationary Assistant Passport Officer in the External Affairs Service of the Federation of Malaysia. The grounds upon which the Appellant asked for the Order were, inter alia.
pp.1-32
p.92 ll.1-43
 - (a) That the decision was contrary to natural justice for the reason that the Appellant was not given an opportunity of being heard; and
 - (b) That the failure to hear the Appellant was a contravention of the provisions in the Constitution of Malaysia.

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p.40 1.25-
p.59 1.15

3. The Appellant also sought consequential relief, in the form of an order in the nature of an order of mandamus, under Section 44 of the Specific Relief (Malay States) Ordinance 1950, requiring the Respondents to reinstate the Appellant to the post from which he was removed by the Respondents said decision of the 23rd May 1958.

4. The facts, as stated by the Appellant in his applications and not contested by the Respondents at the hearing, may be briefly summarized as follows - 10

p.87 1.20-
p.88 1.20

p.59 1.20-
p.60 1.10

p.89 1.1-

(a) On an application made by the Appellant in response to an advertisement calling for applications for posts of Assistant Passport Officer for service in the Overseas Missions, the Appellant was appointed on August 21st 1957 and was very soon thereafter sent to fill the post of Assistant Passport Officer in the office of the High Commission for the Federation of Malaya in Pakistan.

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p.67 11.1-
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(b) On November 30th 1957 the Appellant was recalled for re-posting but on his return, he was charged with an offence under Section 182 of the Penal Code for making in his application for the post a false representation to the Respondents in regard to his educational qualifications. 20

p.77 11.24-
26 p.84 1.30

(c) On January 27th 1958, the Appellant was acquitted and on May 5th 1958, an appeal from this acquittal was dismissed.

p.92 11.1-40

(d) On May 23rd 1958, without giving the Appellant an opportunity of being heard, the Public Services Commission, terminated the appointment of the Appellant, and ordered him to revert to a post previously held by him. 30

p.147 11.2-3

(e) Apart from the said acquittal, the High Court has held that "There was no question of wilful misrepresentation" on the Appellant's part; and this finding has been accepted by the Court of Appeal. It has been conceded by Counsel appearing for the Respondents that the Appellant "gave every satisfaction" as Assistant Passport Officer. 40

p.151 11.42-
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5. At the hearing before the High Court which commenced on July 21st, 1959, the two applications were consolidated and the Court (Ong J.), having heard Counsel for the parties, delivered judgment on May 3rd 1960 dismissing the applications.

p.145 l.1-
p.161 l.50

The reasons, as stated in the Judgment, may be summarized as follows -

10 (a) The termination of the Appellant's appointment did not amount to a "dismissal" within the meaning of Article 135(2) of the Constitution, because the termination was not a punishment imposed upon the Appellant; and

p.157 ll.28-
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(b) The decision of the Public Services Commission to order the Appellant to revert to his former post does not amount to a reduction in rank within the meaning of Article 135(2) of the Constitution.

p.160 l.47-
p.161 l.6

(Art. 135(2) of the Constitution reads as follows:

20 "No member of such a service as aforesaid shall be dismissed or reduced in rank without a reasonable opportunity of being heard".)

6. The Appellant appealed from the Judgment and Order of the High Court to the Federal Court of Malaysia. The hearing of the Appeal commenced on August 14th 1963 before Thomson (Lord President) Barakbah J. Malaya and Neal J. but before the Court gave Judgment, Neal J. ceased to be a judge. Counsel for the parties having agreed that the appeal should be dealt with under Section 16 of the Civil Procedure Code, the Appellant's appeal was dismissed on February 21, 1964 upon Thomson, Lord President and Barakbah J. disagreeing in regard to the Court's order on appeal.

p.166 l.1-
p.169 l.20

p.172 ll.10-
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p.205 ll.19-
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7. Thomson, Lord President, delivered judgment in favour of allowing the appeal in regard to the application for an order of Certiorari. His Lordship's reasons may be summarized as follows:-

p.183 l.12-
p.197 l.3

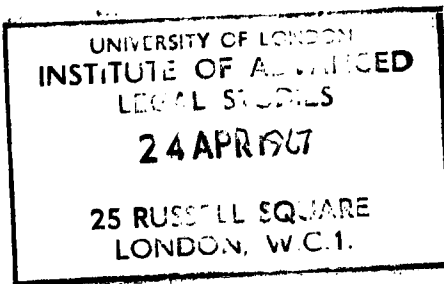
40 (a) There can be no question of his (Appellant) being given a reasonable, or indeed any, opportunity of being heard.

p.191 ll.9-
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- p.195 1.37-
p.196 1.24
- (b) The termination of the Appellant's appointment amounted to a "dismissal" within the meaning of Art.135(2) of the Constitution.
- p.192 11.4-
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- (c) The fact that the Appellant was ordered to revert to a former post does not alter the character of the dismissal.
- p.149 1.38-
p.195 1.21
- (d) The Indian authorities relied upon by the High Court have no application for the reason that persons appointed on probation are expressly excluded from the protection afforded by the Constitution to members of the Public Service of India. 10
- p.196 11.2-6
- (e) No artificial or restricted meaning should be given to the language of Art. 135(2) of the Constitution.
- p.193 11.27-
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- (f) That having regard to the history of the matter the Appellant's dismissal could not be regarded as nothing more than an administrative order.
- p.196 11.39-
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8. In regard to the application for an order of mandamus, Thomson, Lord President, expressed the opinion that the appeal should be dismissed because the Appellant's appointment was for a period of 3 years and would in any case have terminated on August 24, 1960. 20
9. Further to the view of the Lord President referred to in paragraph 7(f) above, it is respectfully submitted that in view of -
- (a) The fact that it was open to the Respondents to let the Appellant continue in the post of Assistant Passport Officer even though he did not possess the qualification which they normally considered requisite; 30
- (b) The fact that the Appellant gave "every satisfaction" as Assistant Passport Officer, and
- (c) The fact that a consideration of circumstances other than non-qualification led to the Respondent's decision to terminate the Appellant's appointment, 40
- p.92 11.21-
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the Respondents were under a duty to act judicially and acted contrary to the principles of natural justice when they considered and decided matters relevant to the termination of the Appellant's appointment without giving him a hearing.

10. Barakbah L.J. gave judgment against the Appellant. His Lordship's reasons may be summarized as follows -

p.197 l.8-
p.204 l.30

10 (a) The Appellant was not reduced in rank (within the meaning of Art.135(2) of the Constitution) because he had not been promoted to the post of Assistant Passport Officer from the post he previously held.

p.201 l.28-
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(b) The Appellant was not "dismissed" within the meaning of Art.135(2) of the Constitution because it cannot be said he suffered a punishment when he was removed on the ground of being under qualified for the post from which he was removed.

p.201 l.36-
p.203 l.37

20 11. The Appellant humbly submits that the orders of the High Court and of the Federal Court of Malaysia dated May 3, 1960 and February 21, 1964 respectively should be set aside and an order of certiorari quashing the decision of the Respondents, dated May 23, 1958, be issued with costs throughout for the following among other

R E A S O N S

- 30 1. BECAUSE the Judgment of the Lord President of the Federal Court is right for the reasons stated by him.
2. BECAUSE the Respondents' decision to terminate the Appellant's appointment without giving him an opportunity of being heard is contrary to natural justice and should be quashed whether or not it falls within Art.135(2) of the Constitution.
- 40 3. BECAUSE Ong J. erred in holding that no reduction in rank was involved in the Respondents' order that the Appellant should revert to his former post.

6.

4. BECAUSE the Judgment of Ong J. refusing the Appellant's application for an order of certiorari was wrong and should be set aside.

E.F.N. GRATIAEN

WALTER JAYAWARDENA

No. 50 of 1964

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- and -

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