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17/1966

IN THE JUDICIAL COMMITTEE OF 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

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RECORD OF PROCEEDINGS

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(i)

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No. 50 of 1964

ON APPEAL  
FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN :

RASIAH MUNUSAMY

Appellant

- and -

THE PUBLIC SERVICES  
COMMISSION

Respondent

RECORD OF PROCEEDINGS

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UNIVERSITY OF  
INSTITUTE OF ADVANCED  
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24  
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1.

IN THE JUDICIAL COMMITTEE OF 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

---

RECORD OF PROCEEDINGS

---

10

No. 1.

In the High  
Court

NOTICE OF MOTION

No. 1.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Notice of  
Motion

ORIGINATING MOTION 1959 No. 2.

27th February  
1959.

In the matter of an application  
by Rasiah Munusamy for leave to  
apply for an order of certiorari.

And

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In the matter of the termination by  
the Public Services Commission of  
the appointment of Rasiah Munusamy  
as Assistant Passport Officer in  
the External Affairs Services of  
the Government of the Federation  
of Malaya.

Between

Rasiah Munusamy

... Applicant

And

The Public Services  
Commission

... Respondent.

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In the High  
Court

NOTICE OF MOTION

No. 1.  
Notice of  
Motion  
(continued)

27th February,  
1959.

Take notice that this Honourable Court will be moved on Monday the 30th day of March 1959 at 9 o'clock in the forenoon, or so soon thereafter as counsel can be heard, by Mr. C.C. Rasa Ratnam of Counsel for the above named Applicant that:

(a) The Court be pleased to grant leave to the applicant to apply for an order of certiorari quashing a decision made by the Public Services Commission, terminating with effect from 23rd May 1958, the appointment of the Applicant as an Assistant Passport Officer in the External Affairs Service and reverting him to his previous post of Immigration Officer which decision was conveyed to the Applicant by letter No. P.S.C. 2702/3/20 dated 23rd May, 1958 from the Secretary Public Services Commission to the Applicant, and the subsequent decision of the said Commission not to vary that previous decision which subsequent decision was conveyed to the Applicant by letter No. 2702/3/49 dated 13th November, 1958, from the Secretary Public Services Commission, to the Applicant's then Solicitor Dato R.P.S. Rasjasooria and by letter No. P.S.C. 2702/3/53 dated 12th December, 1958 from the Secretary, Public Services Commission, to the Applicant's then said Solicitor Dato R.P.S. Rasjasooria.

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(b) That the Court be pleased to extend or enlarge the time for making the application for leave if the application for leave is considered by the Court as being made later than six months after the date of the proceeding.

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(c) That the costs of this application be costs in the cause or in the discretion of the Court.

Dated this 27th day of February 1959.  
Sd: C.C. Rasa Ratnam

Applicant's Solicitor.

Senior Assistant Registrar,  
Supreme Court, Kuala Lumpur. 40

The Statement pursuant to Order I Rule 2 of the Rules of the Supreme Court 1957 of the Federation of Malaya read with Order LIX Rule 3 (2) of the Rules of the Supreme Court 1883 of England and the Affidavit of Rasiah Munusamy

dated the 27th day of February, 1959 and the exhibits to the said Affidavit, all filed herewith will be read in support of the above motion at the hearing of the above motion.

This notice of motion is taken out by C.C. Rasa Ratnam of Kuala Lumpur whose address for service is No. 59, Klyne Street, Kuala Lumpur Solicitor for the Applicant who resides at No.202, Travers Road, Kuala Lumpur.

In the High Court

No. 1.  
Notice of Motion  
(continued)

27th February, 1959.

10 To: The Public Services Commission, Young Road, Kuala Lumpur.

Sd: C.C. Rasa Ratnam  
Solicitor for the Applicant.

No. 2.

STATEMENT IN SUPPORT OF NOTICE OF MOTION

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
ORIGINATING MOTION 1959 No. 2.

No. 2.

Statement in support of Notice of Motion

27th February, 1959.

20 In the matter of an application by Rasiah Munusamay for leave to apply for order of Certiorari

and

In the matter of the termination by the Public Services Commission of the Appointment of Rasiah Munusamy as Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya

30

Between

Rasiah Munusamy - Applicant

And

The Public Services Commission - Respondent.

In the High  
Court

STATEMENT

No. 2.

Statement in  
support of  
Notice of  
Motion  
(continued)

27th February,  
1959.

1. The Applicant is Rasiah Munusamy of No. 202, Travers Road, Kuala Lumpur.

11. The relief sought is:-

An order of certiorari quashing a decision made by the Public Services Commission, terminating with effect from 23rd May, 1958, the appointment of the Applicant as an Assistant Passport Officer in the External Affairs Service and reverting him to his previous post (of Immigration Officer) which decision was conveyed to the Applicant by letter No. P.S.C. 2702/3/20 dated 23.5.1958 from the Secretary, Public Services Commission to the Applicant, and the subsequent decision of the said Commission not to vary that previous decision which subsequent decision was conveyed to the Applicant by letter No. P.S.C. 2702/3/49 dated 13th November, 1958, from the Secretary, Public Services Commission, to the Applicant's then Solicitor Dato R.P.S. Rasjasooria and by letter No. P.S.C. 2702/3/53 dated 12th December, 1958 from the Secretary, Public Services Commission, to the Applicant's then said Solicitor Dato R.P.S. Rajasooria.

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111. The grounds upon which the said relief is sought are as follows:-

111(A) There is error in law on the face of the said decisions and on the face of the record and absence of jurisdiction in or excess of jurisdiction by the Public Services Commission in terminating in the circumstances in which it did the Applicant's appointment as an Assistant Passport Officer.

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(1) By an erroneous view as to a general right in law of the Government as an employer, the Public Services Commission terminated the Applicant's appointment as an Assistant Passport Officer in the External Affairs Service.

If the Public Services Commission had regard to the written law of the Federation of Malaya, which has modified the common law, as regards the rights of the Government as an employer, the said Commission would not have fallen into error in points of law which are apparent on the face of the said decisions and

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of the record. In view of section 3(1) of the Civil Law Ordinance 1956 and Article 132 (2) of the Constitution of the Federation of Malaya, the rights of the Government as an employer are governed by the Constitution of the Federation of Malaya and by the Public Officers (Conduct and Discipline) Regulations 1956.

In the High  
Court

No. 2.

Statement in  
support of  
Notice of  
Motion  
(continued)

27th February,  
1959.

10 (2) The powers and the restrictions on the powers of the Public Services Commission to terminate the appointment of a Federal Officer are set out in the Public Officers (Conduct and Discipline) Regulations 1956, but are subject to the provisions of the said Constitution. The termination of the Applicant's appointment as an Assistant Passport Officer (a) was not in any of the circumstances in which, according to the Public Officers (Conduct and Discipline) Regulations 1956, the said Commission was entitled to terminate a Federal Officer's appointment and (b) was in violation of the restrictions placed on the Commission by the said Constitution and by the Public Officers (Conduct and Discipline) Regulations 1956. The Public Services Commission is a body created by the said Constitution.

30 (3) (a) Indeed, the said termination by the said Commission was contrary to Regulation 44 of the Public Officers (Conduct and Discipline) Regulations 1956 in that the Applicant was dismissed on a charge upon which he had been acquitted by the Sessions Court and the High Court.

(b) He was tried and acquitted of the following charge in Summons Case No.1 of 1958 by the Sessions Court at Kuala Lumpur, and Criminal Appeal No.11 of 1958 to the High Court at Kuala Lumpur against his acquittal on the following charge was dismissed:-

40 "That you on or about the 16th May, 1957 at Kuala Lumpur, in the State of Selangor, gave to a public servant namely Mr. Singaram, a permanent member of the Public Services Commission, an information, namely, that you have passed the School Certificate Examination in 1949, which information you knew to be false intending thereby to cause the said public servant to do a thing which such public servant ought not to have done if the true state of facts respecting such information was known to him to wit to recommend you for the appointment of Assistant Passport

In the High  
Court

No. 2.

Statement in  
support of  
Notice of  
Motion  
(continued)

27th February,  
1959.

Officer in the Government Oversea Missions, and you did thereby commit an offence punishable under Section 182 of the Penal Code."

(c) The applicant was informed by letter No. IMM/C/PER/177 dated 10.2.1958 from the Controller of Immigration to the Applicant that the Applicant was interdicted in connection with the said case with effect from 24.1.1958.

(d) The said Commission in its Secretary's said letter of termination No. PSC/2702/3/20 dated 23.5.1958 stated as follows:- 10

"I am directed to refer to Chief Secretary's Office letter under reference C.S.O.58/28 dated the 21st August, 1957 notifying you of your selection for the above mentioned post and also to your acceptance of the appointment".

"2. I am to say that it has come to the knowledge of this commission that you have not passed the School Certificate required as claimed by you and that you are therefore underqualified for the appointment. After due consideration of the circumstances and of the necessity to maintain the standards of the External Affairs Service and in fairness to other properly qualified candidates and appointees, it has been decided to terminate your appointment as Assistant Passport Officer, External Affairs Service on Probation, with effect from the date of this letter." 20

"3. You will revert to your former post in the Immigration Department on the terms and conditions under which you were serving before appointment to the External Affairs Service." 30

(4) In view of the term in paragraph 4 of the Chief Secretary's Office letter No. C30.58/28 dated 21.8.1957 of the Deputy Chief Secretary offering to the Applicant the appointment of Assistant Passport Officer on the terms and conditions set out in the said letter that the Applicant would be eligible for confirmation in his Appointment at the end of one year from the date of appointment subject to the Applicant's work and conduct being satisfactory, which offer was accepted by Applicant, and in view of the fact and admission by the said Commission, that no question of the quality of the Applicant's work or conduct arises, the said Commission was not 40



entitled to terminate the appointment of the Applicant as an Assistant Passport Officer in the circumstances in which it did terminate. The said termination was a breach of a contract made by the authority of the Government and by the Applicant.

In the High  
Court

No. 2.

Statement in  
support of  
Notice of  
Motion  
(continued)

27th February,  
1959.

10 (5) The reason assigned by the said Commission for the said termination in the said letter No. P.S.C. 2702/3/20 dated 23.5.1958, was that it had come to the knowledge of the said Commission that the Applicant had not passed the School Certificate required as claimed by him, and was therefore underqualified for the Appointment. The said reason means that there was a unilateral mistake of fact on the part of the appointing authority. The said termination for the said reason, was, even if there was such a unilateral mistake of fact which is not admitted by the Applicant, contrary to section 23 of the Contracts (Malay States) Ordinance 1950.

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30 (6) (a) The advertisements inviting applications for the posts of Assistant Passport Officer for service in the Federation of Malaya Government Oversea Missions invited applications also from "All serving Government Officers who have had 5 years' service and who possess School Certificate." The said advertisements did not mention the Senior Cambridge Certificate of Education, or the Senior Cambridge Certificate or the Cambridge School Certificate or the Cambridge Overseas School Certificate as a qualification for intending applicants unlike certain other advertisements which invited applications for Federal Government Vacancies or Study Leave or Scholarships.

40 (b) The Applicant had already had more than five years' service as an Immigration Officer, prior to the said advertisements. The Applicant had a certificate issued by his school, The Methodist Boys' School, Kuala Lumpur, dated 14.12.1949, stating as "Standard at time of Leaving. Sch. Certificate Class (Camb).", and as "Reason for Leaving. Graduated". With reference to this certificate Mr. Derick William Bigley, Controller of Immigration, stated on 27.1.1958 in his evidence in Summons Case No. 1 of 1958 against the Applicant in the Sessions Court at Kuala Lumpur, as follows:-

In the High  
Court

No. 2.

Statement in  
support of  
Notice of  
Motion  
(continued)

27th February,  
1959.

"In my opinion the word 'Graduate' conveys to me that defendant has passed his school certificate examination. I would agree that the word 'graduated' would convey the impression that the defendant has completed the course. It might be capable of other interpretations."

(c) The Applicant applied for the post. He was interviewed by an interview Board in May 1957. By the Chief Secretary's Office letter No. C.S.O. 58/28 dated 21.8.57 of the Deputy Chief Secretary, the Applicant was offered the post, and the Applicant accepted it.

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(d) There was been no statement or evidence by the then High Commissioner of the Federation of Malaya, the appointing authority before Merdeka Day under Clause 14(1)(a) of the Federation of Malaya Agreement 1948 as to the reasons why the Applicant was appointed an Assistant Passport Officer, or as to whether the said High Commissioner considered the Applicant's certificate a School Certificate or not within the meaning of the said advertisements inviting applications for the posts of Assistant Passport Officers. This Honourable Court held in the said Criminal Appeal No. 11 of 1958 that there was no Public Services Commission in May, 1957.

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(e) The Public Services Commission in its Secretary's letter No. P.S.C./2702/3/40 dated 16.9.1958 to the Applicant's then Solicitor Dato R.P.S.Rajasooria stated: "The appointing authority does not and did not consider a School Leaving Certificate in the form held by your client as a "School Certificate" such as was required by the advertisement relating to the competition referred to above. The meaning of the 'School Certificate' required by the Government is well known and only those applicants who were thought to or claimed to have a Cambridge Overseas School Certificate or its equivalent and who were thought to be fully qualified for the post were considered for interview".

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(f) But it is respectfully submitted that the post might have been offered to the Applicant because the appointing authority might have considered that the said certificate dated 14.12.1949 issued by the Methodist Boys' School was a School Certificate as required by the said advertisements inviting applications for the post of Assistant

Passport Officers for service in the Federation of Malaya Government Oversea Missions, or because there was in fact no scheme of service for Assistant Passport Officers at that time, or because under the scheme of service for Junior Assistant Passport Officers and Assistant Passport Officers which was issued on 27.1.1958 but as "effective from 1st January 1957" and which classified these posts in Division III no educational qualification was specified for Assistant Passport Officers although it was specified for junior Assistant Passport Officers or because the appointing authority might have acted under Common Regulation 13 in the Federation of Malaya Schemes of Service 1956, which says, "Government reserves the right to appoint Government Officers serving under other schemes, or serving in a Government appointment not covered by any scheme of service, to posts governed by any scheme in this volume provided they are considered suitable even though they are not possessed of all the qualifications laid down for normal entry to the scheme or are above the normal age limit."

In the High  
Court

No. 2.

Statement in  
support of  
Notice of  
Motion  
(continued)

27th February,  
1959.

(7) (a) Dato R.P.S. Rajasooria the Applicant's then Solicitor in paragraph 2 of his letter dated 18.9.1958 invited "the Public Services Commission to point out any provision under the Public Officers (Conduct and Discipline) Regulations 1956, or in any other Federal Law, or in the Constitution, or in any conditions of service regulated by His Majesty the Yang di-Pertuan Agong subject to Federal Law, under which the purported termination of Mr. Munusamy's appointment as an Assistant Passport Officer is justified."

(b) The Public Services Commission in its Secretary's letter No. 2702/3/49 dated 13.11.58 to the applicant's then Solicitor Dato R.P.S. Rajasooria stated in paragraph 2(5) of that letter: "A serving Government Officer is subject to General Orders, one of which, General Order A 25 (d) gives expression to Government's right to terminate probation if necessary, without reason assigned." This is the only provision specifically referred to in that reply No. P.S.C./2702/3/49 dated 13.11.1958 to justify the termination. General Order A. 24(d) reads as follows:-

In the High  
Court

No. 2.

Statement in  
support of  
Notice of  
Motion  
(continued)

27th February,  
1959.

"Notwithstanding the provisions of paragraph (c) above the appointment of an officer serving on probation may be terminated by a Commission or other appointing authority without any reason being assigned."

(c) General Order A.25(d) is part of the General Order's Chapter A which Chapter A purports to "have been issued under the authority of the Yang di-Pertuan Agong in accordance with Article 132(2) of the Constitution" and was issued with effect from 1.7.1958 but the purported termination of the Applicant's appointment as an Assistant Passport Officer was on 23.5.1958 - reference letter No. P.S.C./2702/3/20 dated 23.5.1958 from the Secretary, Public Services Commission to the Applicant. Further, in view of the term in paragraph 4 of the Chief Secretary's Office letter No. C.S.O. 58/28 dated 21st August, 1957 of the Deputy Chief Secretary offering the post of Assistant Passport Officer to the Applicant that subject to the Applicant's work and conduct being satisfactory the Applicant would be eligible for confirmation in his appointment at the end of the probationary period of one year, it would be a breach of contract to terminate the Applicant's appointment without assigning reason or for any reason other than his work or conduct being not satisfactory. Further the Public Services Commission in its Secretary's said letter No. P.S.C./2702/3/20 dated 23.5.1958 terminating the Applicant's appointment as an Assistant Passport Officer did not terminate without assigning any reason the Applicant's appointment as an Assistant Passport Officer but purported to terminate his said appointment and set out the reason for the termination. But in view of the said term in the said paragraph 4 of the Chief Secretary's Office letter No. C.S.O. 58/28 dated 21.8.1957 of the Deputy Chief Secretary, and in view of the written law of this country namely the Public Officers (Conduct & Discipline) Regulations 1956 - particularly Regulation 44 thereof, and Section 23 of the Contracts (Malay States) Ordinance 1950, and the Constitution of the Federation of Malaya, particularly Articles 132 (1) (c) 132 (2), 135(2), and 144 (1) and, as would be submitted hereinafter, Article 136 of the said Constitution, the Public Services Commission was not entitled to terminate the Applicant's appointment as an Assistant Passport Officer in the circumstances in which it

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terminated that appointment.

In the High Court

No. 2.

Statement in support of Notice of Motion (continued)

27th February, 1959.

10 In view of Article 132 (2) and/or Article 135 (2) and/or Article 144 (1) of the said Constitution and/or General Order. A.1, the said General Order A.25(d) means that subsequent to an officer who is on probation being given a reasonable opportunity of being heard the Public Services Commission may make a decision terminating that Officer's appointment without stating in that

20 decision the reason for the termination. If General Order A.25(d) means that the Commission can terminate the appointment of an Officer during his period of probation without giving him a reasonable opportunity of being heard, General Order A.25(d) is void from its inception and is of no force or avail in law in view of Article 132 (2) and/or Article 135(2) and/or Article 144 (1) of the said Constitution and/or General Order A.1 and/or because it is unreasonable. It is

30 respectfully submitted that if an inferior tribunal sets out the reasons which led it to its decision this Honourable Court will be pleased to consider the question whether the reasons are right in law and if the reasons are wrong in law will quash the decision. It is respectfully submitted that there is error in law on the face of the said decisions and of the record and that the Public Services Commission acted without jurisdiction or in excess of jurisdiction in terminating the Applicant's appointment as an Assistant Passport Officer in the circumstances in which it did.

(8) (a) By an erroneous view of the law in Article 135 (2) of the said Constitution, the said Commission terminated the Applicant's appointment as an Assistant Passport Officer without giving the Applicant any opportunity of being heard and thereby acted in the absence or in excess of jurisdiction.

40 (b) The said decision of the Public Services Commission communicated to the Applicant by the said letter No. P.S.C.2702/3/20 dated 23.5.1958 dismissed the Applicant from the post of Assistant Passport Officer and reduced him in rank to the post of Immigration Officer.

(c) The Public Services Commission contends in paragraph 2 (11) of its Secretary's said letter No. P.S.C. 2702/3/49 dated 13.11.1958 as follows:-

In the High Court

No. 2.

Statement in support of Notice of Motion (continued)

27th February, 1959.

"Mr. Munusamy was not 'dismissed' or 'reduced in rank', both of which are disciplinary punishments. Article 135(2) of the Constitution does not therefore apply to his case."

(d) It is respectfully submitted that the decision of the Public Services Commission contained in the said letter No. P.S.C./2702/3/20 dated 23.5.1958 was a dismissal and a reduction in rank: for a "man may dismiss his servant if he refuses by word or conduct to allow the servant to fulfill his contract of employment ..... if the conduct of the employer amounts to a basic refusal to continue the servant on the agreed terms of the employment, then there is at once a wrongful dismissal and a repudiation by the defendants of their contractual obligations and 'a wrongful dismissal' in the ordinary sense of the phrase."

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(III) (B) The said decision contained in the said letter of 23.5.1958 was made contrary to natural justice because the Applicant was not given notice of the intention of the Public Services Commission to make this decision and he was not given an opportunity to show cause against it before such decision was arrived at and before such decision was made and because the said decision was made without "due inquiry".

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(III) (C) The Applicant infers and therefore submits that the Public Services Commission in terminating the Applicant's appointment as an Assistant Passport Officer acted with bias and capriciously and arbitrarily and therefore against natural justice.

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(1) As early as in November 1957 or earlier there was already an investigation which resulted in the said Summons Case No. 1 of 1958 against the Applicant.

(2) By letter dated 30.11.57 the Permanent Secretary, Ministry of External Affairs, Kuala Lumpur, wrote to the Applicant, when he was serving in Karachi, Pakistan, in the Office of the Commissioner for the Federation of Malaya in Pakistan, as follows:-

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"I am directed to inform you that you are

to be recalled for re-posting .....

In the High  
Court

"On your return to the Federation, you should report direct to the Controller of Immigration, Penang."

No. 2.

Statement in  
support of  
Notice of  
Motion  
(continued)

27th February,  
1959.

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(3) On the evening of 14.1.1958 the Applicant returned to Kuala Lumpur from Karachi. When the Applicant reported at the Immigration Office, Kuala Lumpur, on 15.1.1958 in pursuance of a message from the Immigration Office, Kuala Lumpur, that he should report at the Immigration Office, Kuala Lumpur, Mr. D.W. Bigley the Controller of Immigration was there with Ohe Mahmood Assistant Superintendent of Police. The Controller told the Applicant that the Police wanted the Applicant.

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(4) The Applicant was tried in the Sessions Court at Kuala Lumpur on 23.1.1958 and was acquitted and discharged on 27.1.1958 on the charge set out in paragraph III (A) (3) (b) above.

(5) By letter dated 10.2.1958 the Controller of Immigration informed the Applicant as follows:-

"I am directed to inform you that you are interdicted from duty on half-monthly emoluments with effect from 24th January, 1958: authority P.S.C. 2702/3/2 dated 25th January, 1958."

"2. Your interdiction is in connection with the criminal proceedings which were instituted against you which are, I understand, still sub-judice in view of an appeal having been lodged."

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"3. The reason you have not been officially informed of your interdiction previously is because it was thought that the Ministry of External Affairs had informed you."

(6) The appeal against the acquittal and discharge was dismissed by the High Court at Kuala Lumpur on 5.5.1958.

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(7) In spite of the acquittal and in spite of the dismissal of the appeal against the acquittal, the Public Services Commission terminated the Applicant's appointment as Assistant Passport Officer on 23.5.1958.

(8) The Public Services Commission did so

In the High Court

No. 2.

Statement in support of Notice of Motion (continued)

27th February, 1959.

without giving the Applicant any opportunity of being heard and without "due inquiry".

(9) One Mr. Yap Fook Sang was appointed a Junior Assistant Passport Officer and was subsequently promoted as Assistant Passport Officer although he has not passed the Cambridge Senior Certificate (the Cambridge Overseas School Certificate) or its equivalent.

(10) The Public Services Commission in its Secretary's letter No. P.S.C. 2702/3/29 dated 6.8.1958 to the Applicant's then Solicitor Dato R.P.S. Rajasooria stated that Mr. Yap Fook Seng was "promoted to Assistant Passport Officer as provided for in his Scheme of Service on the Service Principle that once an Officer is admitted to a Scheme of Service he is treated on his merits for any promotion within that Scheme of Service."

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(11) As pointed out by Dato R.P.S. Rajasooria in paragraph 9 of his letter dated 12.8.1958 to the Secretary, Public Services Commission, once the Applicant had been admitted to the Scheme of Service for Assistant Passport Officers which happened with effect from the Applicant's appointment as Assistant Passport Officer the Applicant should be treated on the same service principle and he should be treated on his merits for any promotions within that Scheme of Service and a fortiori for retention within that Scheme.

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(12) The said principle should be recognised and applied impartially to the Applicant also in accordance with Article 136 of the said Constitution. The said Article 136 reads as follows:-

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"All persons of whatever race in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment, be treated impartially."

(13) But the Public Services Commission has not re-instated the Applicant as an Assistant Passport Officer.

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(14) It is therefore respectfully submitted that the Public Services Commission has acted with bias and capriciously and arbitrarily and therefore against natural justice with regard to



the Applicant.

In the High Court

(D) (1) The Applicant through his then Solicitor Dato R.P.S. Rajasooria made representations to the Public Services Commission by a series of letters pointing out the illegality and injustice of the termination of the Applicant's appointment as an Assistant Passport Officer and requesting the said Commission to reinstate the Applicant as an Assistant Passport Officer.

No. 2.

Statement in support of Notice of Motion (continued)

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(2) The Public Services Commission by its Secretary's letter No. P.S.C./2702/3/49 dated 13.11.58 and letter No.P.S.C./2702/3/53 dated 12.12.1958 declined to vary its decision contained in the said letter No. P.S.C./2702/3/20 dated 23.5.1958.

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(IV) The application for an order of certiorari will be made together with an application under Sections 44 and 45 of the Specific Relief (Malay States) Ordinance 1950 for an order requiring the Public Services Commission to reinstate the Applicant as an Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya.

Dated this 27th day of February, 1959.

Sd. C.C. Rasa Ratnam  
Applicant's Solicitor

Sd. Rasiah Munusamy  
Signature of Applicant.

No. 3.

No. 3.

AFFIDAVIT OF RASIAH MUNUSAMY .

Affidavit of Rasiah Munusamy

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IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
ORIGINATING MOTION 1959 NO. 3.

27th February, 1959.

In the matter of an application by Rasiah Munusamy for leave to apply for an order of Certiorari

and

In the matter of the termination by the Public Services Commission of the appointment of Rasiah Munusamy as Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya.

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In the High  
Court

Between

Rasiah Munusamy - Applicant

No. 3.

And

Affidavit of  
Rasiah  
Munusamy  
(continued)

The Public Services  
Commission - Respondent.

AFFIDAVIT.

27th February,  
1959.

I, Rasiah Munusamy, of No. 202 Travers Road, Kuala Lumpur, solemnly and truly affirm and say as follows:-

I. I am the Applicant above named. 10

II.(A) (1) An advertisement appeared in page 4 of "The Malay Mail" of 19.2.1957 inviting applications for posts of Assistant Passport Officer for service in the Federation of Malaya Government Oversea Missions. A copy of the said page 4 of "The Malay Mail" of 19.2.1957 containing the said advertisement is an exhibit hereto marked "RM - 1". Advertisement No. 506H appeared in page 221 B of the Federation of Malaya Government Gazette - Federal - of 7th March, 1957, inviting applications for posts of Assistant Passport Officer for service in Federation of Malaya Government Oversea Missions. A copy of the said Gazette containing the said advertisement No. 506 H is an exhibit hereto marked "RM-2". 20

(2) The said advertisements stated inter alia: "Applicants will be selected according to the following order of preference: (i) Serving Assistant Passport Officers and serving Junior Assistant Passport Officers in the Immigration Department who have had not less than 5 years' service and possess School Certificate (ii) All serving Government Officers who have had 5 years' Service and who possess School Certificate (iii) Persons not in Government Service who have School Certificate with credit in English, and who have attained the age of 22 but have not attained the age of 30". 30

(B) (1) At the time of the said advertisements I was a serving Government Officer who had had more than 5 years' service as an Immigration Officer. 40

(2) (a) I had a certificate issued by my

school, The Methodist Boys' School, Kuala Lumpur, dated 14.12.1949, stating as "Standard at time of Leaving. Sch. Certificate Class (Camb)" and as "Reason for leaving. Graduated." A photostat copy of the said Certificate is an exhibit hereto marked "RM-3".

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Affidavit of  
Rasiah  
Munusamy  
(continued)

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10 (b) With reference to this certificate Mr. Derick William Bigley, Controller of Immigration stated on 27.1.1958 in his evidence in Summons Case No. 1 of 1958 against me (in the Sessions Court at Kuala Lumpur as follows:-

"In my opinion the word 'graduated' conveys to me that defendant has passed his school certificate examination. I would agree that the word 'graduated' would convey the impression that the defendant has completed the course. It might be capable of other interpretations." A certified copy of the proceedings in the said Summons Case No. 1 of 1958 is an exhibit hereto marked "RM-4".

20 (c) The said advertisements did not mention the Senior Cambridge Certificate of Education, or the Senior Cambridge Certificate or the Cambridge School Certificate or the Cambridge Overseas School Certificate as a qualification for intending applicants unlike certain other advertisements which invited applications for Federal Government Vacancies or Study Leave or Scholarships, e.g., advertisement No. 506 A in the said Federation of Malaya Government Gazette - Federal - of 7.3.1957, advertisements Nos. 747A, 747B, and 747C in Federation of Malaya Government Gazette - Federal - of 28.3.1957, a copy of which is an exhibit hereto marked "RM - 6", advertisement No. 93G in Federation of Malaya Government Gazette - Federal - of 24.1.1957 a copy of which is an exhibit hereto marked "RM - 28", and advertisement No. 3552A in Federal Government Gazette of 16.10.1958 a copy of which is an exhibit marked "RM - 29".

40 (3) I applied for a post of Assistant Passport Officer by letter dated 21.2.1957. A photostat copy of my said letter of application dated 21.2.1957 is an exhibit hereto marked "RM - 7". The photostat copies "RM - 3" and "RM - 7" which are exhibits to the original of this affidavit were received by my present Solicitor Mr. C.C. Rasa Ratnam from the Secretary, Public Services Commission, together with the

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said Secretary's letter No. P.S.C.2702/3/55 dated 22.1.1959 a copy of which is an exhibit hereto marked "RM - 26" in reply to Mr. Rasa Ratnam's letter dated 6.1.1959 a copy of which is an exhibit hereto marked "RM - 25".

(4) With regard to the kind of candidates whom the Government was looking for, the said Mr. Bigley said in the course of his evidence in the said Summons Case No. 1 of 1959 as follows:-

"I passed on to the P.S.C. 14 applications from members of my staff who were applying for the post of Assistant Passport Officers. All 14 did not have Cambridge School Certificates. Government were looking for persons with passport experience to work in the Malayan Overseas Mission. My department was the only department in Government which had persons experienced in passport work. It was decided that priority would be given to persons in the Immigration Department provided they were suitably qualified educationally. A few of the applicants from my department had not passed School Certificate but they had passed Standard 8, they had done a minimum of 5 years in the department and it was only fair to pass on their applications which were addressed to P.S.C. and not to myself."

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(5) With regard to the confidential report the Controller of Immigration made on the applications of members of his staff Mr. Bigley said in the course of his evidence in that case as follows:-

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"I made no recommendation in respect of all the Candidates. Confidential reports were on their conduct and qualification. As far as I remember I gave defendant a satisfactory report."

(6) There was interview by an interview Board and I was interviewed in May, 1957.

(C) I was offered a post of Assistant Passport Officer in the External Affairs Service (of the Government in the Federation of Malaya) by the Chief Secretary's Office letter No. CSO.58/28 dated 21.8.1957 of the Deputy Chief Secretary to me on the terms and conditions contained in that letter. A copy of the said letter dated 21.8.1957 is an exhibit hereto marked "RM - 8". I accepted the said offer and functioned as Assistant Passport

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Officer. In paragraph 4 of the said letter dated 21.8.1957 the Deputy Chief Secretary states the following term of service:-

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"You will be required to serve a probationary period of one year from the date of your appointment and subject to your work and conduct being satisfactory you will be eligible for confirmation in your appointment at the end of this period."

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Munusamy  
(continued)

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10 (D) I was charged in Summons Case No. 1 of 1958 in the Sessions Court at Kuala Lumpur and tried on 23.1.1958 and 27.1.1958 and acquitted on 27.1.1958 by the said Sessions Court of the following charge:-

20 "That you on or about the 16th May, 1957 - at Kuala Lumpur, in the State of Selangor, gave to a Public Servant namely Mr. Singaram a permanent member of the Public Services Commission, an information, namely, that you have passed the School Certificate Examination in 1949, which information you knew to be false intending thereby to cause the said public servant to do a thing which such public servant ought not to have done if the true state of facts respecting such information was known to him to wit to recommend you for the appointment of Assistant Passport Officer in the Government Oversea Missions, and you did thereby commit an offence punishable under Section 182 of the Penal Code. A certified

30 copy of the charge sheet, notes of evidence, reasons for judgment, Notice of Appeal and Petition of Appeal in the said Summons Case No.1 of 1958 is an exhibit hereto marked "RM - 4". The Appeal against the said acquittal - Criminal Appeal No. 11 of 1958 - was dismissed by the High Court at Kuala Lumpur on 5.5.1958. A certified copy of the judgment of the High Court in the said appeal is an exhibit hereto marked "RM -5".

40 (E) By letter No. IMM/C/PER/177 dated 10.2.1958 the Controller of Immigration informed me that I was interdicted from duty with effect from 24.1.1958 in connection with the said criminal case. A copy of the said letter of interdiction dated 10.2.1958 is an exhibit hereto marked "RM - 9".

(F) The Public Services Commission by its Secretary's Letter No. P.S.C./2702/3/20 dated

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23.5.1958 to me which is an exhibit hereto marked  
"RM - 10" informed me as follows:-

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(continued)

"I am directed to refer to Chief  
Secretary's Office letter under reference C.S.O.  
58/28 dated the 21st August, 1957 notifying you  
of your selection for the above mentioned post  
and also to your acceptance of the appointment.

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"2. I am to say that it has come to  
the knowledge of this Commission that you have  
not passed the School Certificate required as  
claimed by you and that you are therefore under-  
qualified for the appointment. After due  
consideration of the circumstances and of the  
necessity to maintain the standards of the External  
Affairs Service and in fairness to other properly  
qualified candidates and appointees, it has been  
decided to terminate your appointment as  
Assistant Passport Officer, External Affairs  
Service on probation, with effect from the date  
of this letter."

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"3. You will revert to your former post  
in the Immigration Department on the terms and  
conditions under which you were serving before  
appointment to the External Affairs Service."

(G) (1) I, acting by my then Solicitor Dato  
R.P.S. Rajasooria, made representations to the  
Public Services Commission by a series of letters  
pointing out the illegality and injustice of the  
termination of my appointment as Assistant Pass-  
port Officer and requesting the said Commission  
to reinstate me as an Assistant Passport Officer.  
Copies of Dato R.P.S. Rajasooria's letters to  
the Secretary, Public Services Commission, which  
are dated 28.5.1958, 12.6.1958, 22.7.1958,  
12.8.1958, 2.9.1958, 18.9.1958, 20.10.1958 and  
21.11.1958 are exhibits hereto marked "RM - 11",  
"RM - 13", "RM - 14", "RM - 16", "RM - 17",  
"RM - 19", "RM - 20", and "RM - 22" respectively.  
The copies of the letters from the Public Services  
Commission by its Secretary to my then Solicitor  
Dato R.P.S. Rajasooria which bear No. P.S.C./2702/  
3/23 dated 7.6.1958, No. P.S.C.2702/3/29 dated  
6.8.1958, No. P.S.C.2702/3/40 dated 16.9.1958 and  
the letters from the said Commission by its  
Secretary which bear No. P.S.C.2702/3/49 dated  
13.11.1958 and No. P.S.C.2702/3/53, dated 12.12.1958  
are exhibits hereto marked "RM - 12", "RM - 15",  
"RM - 18", "RM - 21" and "RM - 23" respectively.

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(2) The Public Services Commission by its Secretary's said letter No. P.S.C.2702/3/49 dated 13.11.1958 to Dato R.P.S. Rajasooria my then Solicitor which letter is an exhibit hereto marked "RM - 21", stated that my "representations have been considered and no grounds are seen to vary the decision" and "that the matter is now regarded as closed."

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10 (3) By letter dated 21.11.1958 to the Secretary, Public Services Commission, a copy of which is an exhibit hereto marked "RM - 22", my then Solicitor Dato R.P.S. Rajasooria gave notice that unless I was reinstated as an Assistant Passport Officer within two weeks from date thereof legal proceedings would be instituted to secure my re-instatement and the vindication of my rights.

20 (4) The Public Services Commission by its Secretary's said letter No. P.S.C.2702/3/53 dated 12.12.1958 to my then Solicitor Dato R.P.S. Rajasooria, which letter is an exhibit hereto marked "RM - 23" stated that the "Commission has nothing to add to its letter (49) in this series dated 13th November 1958."

30 III.(A) I am advised and I verily believe that, and I respectfully submit to this Honourable Court that, there is error in law on the face of the said decisions in the letters of 23.5.1958, 13.11.1958 and 12.12.1958 and on the face of the record and absence of jurisdiction in or excess of jurisdiction by the Public Services Commission in terminating in the circumstances in which it did my appointment as an Assistant Passport Officer.

40 (1) By an erroneous view as to a general right in law of the Government as an employer, the Public Services Commission terminated my appointment as an Assistant Passport Officer in the External Affairs Service. If the Public Services Commission had regard to the written law of the Federation of Malaya which had modified the common law, as regards the rights of the Government as an employer, the said Commission would not have fallen into error in points of law which is apparent on the face of the said decisions and of the record. In view of section 3(1) of the Civil Law Ordinance 1956 and Article 132(2) of the Constitution of the Federation of Malaya, the

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rights of the Government as an employer are governed by the Constitution of the Federation of Malaya and by the Public Officers (Conduct and Discipline) Regulations 1956.

(2) The powers and the restrictions on the powers of the Public Services Commission to terminate the appointment of a Federal Officer are set out in the Public Officers (Conduct and Discipline) Regulations, 1956, but are subject to the provisions of the said Constitution. The termination of my appointment as an Assistant Passport Officer (a) was not in any of the circumstances in which, according to the Public Officers (Conduct and Discipline) Regulations 1956, the said Commission was entitled to terminate a Federal Officer's appointment, and (b) was in violation of the restrictions placed on the said Commission by the said Constitution and by the Public Officers (Conduct and Discipline) Regulations 1956. The Public Services Commission is a body created by the said Constitution. 10

(3) Indeed, the said termination by the said Commission was contrary to Regulation 44 of the Public Officers (Conduct and Discipline) Regulations 1956 in that I was dismissed on a charge upon which I had been acquitted by the Sessions Court and the High Court. 20

(4) In view of the term in paragraph 4 of the Chief Secretary's Office letter No. CSO. 58/28 dated 21.8.1957 of the Deputy Chief Secretary offering to me the appointment of Assistant Passport Officer on the terms and conditions set out in the said letter that I would be eligible for confirmation in my appointment at the end of one year from the date of appointment subject to my work and conduct being satisfactory, which offer was accepted by me, and in view of the fact and admission by the Public Services Commission, that no question of the quality of my work or conduct arises, the said Commission was not entitled to terminate my appointment as an Assistant Passport Officer in the circumstances in which it did terminate. The said termination was a breach of a contract made by the authority of the Government and by me. The Commissioner for the Federation of Malaya in Pakistan had designated me as Passport Officer and Administrative Assistant. A copy of letter No. FMC. in P.23/57(9) dated 17.9.1957 from the Commissioner 30 40



for the Federation of Malaya in Pakistan to the Permanent Secretary, Ministry of External Affairs, Kuala Lumpur informing the said Permanent Secretary of the said act by the said Commissioner is an exhibit hereto marked "RM - 24". This shows how highly I have been rated. The Public Services Commission by its Secretary's said letter No. P.S.C.2702/3/29 dated 6.8.1958 a copy of which is an exhibit hereto marked "RM - 15", stated in paragraph 3 thereof.

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"No question of the quality of Mr. Munusamy's work or his conduct arises."

(5) The reason assigned by the said Commission for the said termination in the said letter No. P.S.C.2702/3/20 dated 23.5.1958 was that it had come to the knowledge of the said Commission that I had not passed the School Certificate required as claimed by me, and was therefore under qualified for the appointment. The said reason means that there was a unilateral mistake of fact on the part of the appointing authority. The said termination for the said reason was, even if there was such a unilateral mistake of fact which is not admitted by me, contrary to section 23 of the Contracts (Malay States) Ordinance, 1950.

(6) (a) The advertisements inviting applications for the posts of Assistant Passport Officer for service in the Federation of Malaya Government Oversea Missions invited applications also from "All serving Government Officers who have had 5 years' service and who possess School Certificate". The said advertisements did not mention the Senior Cambridge Certificate as a qualification for intending applicants, unlike certain other advertisements in the same and other Gazettes, which invited applications for Federal Government vacancies and study leave.

(b) There has been no statement or evidence by the then High Commissioner of the Federation of Malaya, the appointing authority before Merdeka Day under the Clause 14 (1) (a) of the Federation of Malaya Agreement 1948 as to the reasons why I was appointed an Assistant Passport Officer, or as to whether he considered my certificate a School Certificate or not within the meaning of the said advertisements inviting

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applications for the posts of Assistant Passport  
Officer.

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(c) The Public Services Commission in its Secretary's letter No. P.S.C.2702/3/40 dated 16.9.1958 to my then Solicitor Dato R.P.S. Rajasooria a copy of which is an exhibit hereto marked "RM - 18" states:- "The appointing authority does not and did not consider a School Leaving Certificate in the form held by your client as a 'School Certificate' such as was required by the advertisement relating to the competition referred to above. The meaning of the 'School Certificate' required by the Government is well known and only those applicants who were thought to or claimed to have a Cambridge Overseas School Certificate or its equivalent and who were thought to be fully qualified for the post were considered for interview." But this Honourable Court held in the said Criminal Appeal No. 11 of 1958 that there was no Public Services Commission in May, 1957.

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(d) I respectfully submit that the post might have been offered to me because the appointing authority might have considered that the said certificate dated 14.12.1949 issued by the Methodist Boys' School was a School Certificate as required by the said advertisements inviting application for the posts of Assistant Passport Officer for service in the Federation of Malaya Government Overseas Missions, or because there was in fact no scheme of service for Assistant Passport Officers at that time, or because under the Scheme of Service for Junior Assistant Passport Officers and Assistant Passport Officers which was issued on 27.1.1958 but as "Effective from 1st January, 1957" and which classified these posts in Division III no educational qualification was specified for Assistant Passport Officers although it was specified for Junior Assistant Passport Officers or because the appointing authority might have acted under Common Regulation 13 in the Federation of Malaya Schemes of Service 1956 which says: Government reserves the right to appoint Government Officers serving under other schemes, or serving in a Government appointment not covered by any scheme of service, to posts governed by any scheme in this volume provided they are considered suitable even though they are not possessed of all the qualifications laid down for normal entry to the scheme or are above

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the normal age limit." A copy of Service Circular No. 14 of 1958 dated 27.5.1958 which draws attention to this Common Regulation 13 is an exhibit hereto marked "RM - 27".

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10 (7) (a) Dato R.P.S. Rajasooria my then Solicitor in paragraph 2 of his said letter dated 18.9.1958, a copy of which is an exhibit hereto marked "RM - 19", invited "the Public Services Commission to point out any provision under the Public Officers (Conduct and Discipline) Regulation 1956, or in any conditions of service regulated by His Majesty the Yang di-Pertuan Agong subject to Federal Law, under which the purported termination of Mr. Munusamy's appointment as an Assistant Passport Officer is justified".

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20 (b) The Public Services Commission in its Secretary's said letter No. 2702/3/49 dated 13.11.1958 to my then Solicitor Dato R.P.S. Rajasooria, which is an exhibit hereto marked "RM - 21", stated in paragraph 2(5) of that letter: "A serving Government Officer is subject to General Orders one of which, General Order A 25(d), gives expression to Government's right to terminate probation, if necessary, without reason assigned." This is the only provision specifically referred to in that reply No. P.S.C. 2702/3/49 dated 13.11.1958 to justify the termination.

30 (c) General Orders A.1, A.2 and A.25(c) and (d) which are part of Chapter A of General Orders read as follows :-

General Order A.1.

40 "Subject to the provisions of part X of the Constitution this chapter will be applicable to all appointments and promotions to Federal posts and services, to posts on the Federation Establishment and to State posts and services to the extent that it may be adopted by the State Governments, save as specified in General Order 2."

General Order A.2 :

"The procedure laid down in this chapter for making appointments to posts and services within the purview of a Commission shall apply

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to all permanent and temporary appointments excluding only such temporary appointments of officers in Division III and IV and such appointments of daily rated Officers as may from time to time be delegated by a Commission under Article 144 (6) of the Constitution."

General Order A.25(C)

"Where consideration is being given to the termination of the appointment of an officer on probation the officer will normally be informed of the grounds upon which such a course is contemplated and shall be permitted to submit such representations as he may wish, for which purpose he shall be allowed a reasonable period of not less than fourteen days. The Disciplinary Authority as defined in Chapter D shall then take such action as may seem just."

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General Order A.25(d)

"Notwithstanding the provisions of paragraph (c) above the appointment of an Officer serving on probation may be terminated by a Commission or other appointing authority without any reason being assigned.

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(d) General Order A.25 (d) is part of the General Orders' Chapter A when Chapter A purports to "have been issued under the authority of the Yang di-Pertuan Agon in accordance with Article 132(2) of the Constitution" and was issued "with effect from 1st July, 1958", but the purported termination of my appointment as an Assistant Passport Officer was on 23.5.1958 - reference letter No. P.S.C.2702/3/20 dated 23.5.1958 from the Secretary Public Services Commission to me, which is an exhibit hereto marked "RM -10". Further, in view of the term in paragraph 4 of the said Chief Secretary's Office letter No. C.S.O.58/28 dated 21.8.1957 of the Deputy Chief Secretary offering the post of Assistant Passport Officer to me that subject to my work and conduct being satisfactory I would be eligible for confirmation in my appointment at the end of the probationary period of one year, it would be a breach of contract to terminate my appointment without assigning reason or for any reason other than my work or conduct being not satisfactory. Further the Public Services Commission in its Secretary's said

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letter No. P.S.C.2702/3/20 dated 23.5.1958 terminating my appointment as an Assistant Passport Officer did not terminate without assigning any reason my appointment as an Assistant Passport Officer but purported to terminate my said appointment and set out the reason for the termination. But in view of the said term in the said paragraph 4 of the Chief Secretary's Office letter No. C.S.O.58/28 dated 21.8.1957 of the Deputy Chief Secretary, and in view of the written law of this country namely the Public Officers (Conduct & Discipline) Regulations 1956 - particularly Regulation 44 thereof, and section 23 of the Contract (Malay States) Ordinance 1950 and the Constitution of the Federation of Malaya, particularly Articles 132(1)(c), 132(2), 135(2), and 144(1) and, as would be submitted hereinafter, Article 136, of the said Constitution, the Public Services Commission was not entitled to terminate my appointment as an Assistant Passport Officer in the circumstances in which it terminated my appointment as Assistant Passport Officer. In view of Article 132(2) and/or Article 135(2) and/or Article 144(1) of the said Constitution and/or General Order A.1, the said General Order A.25(d) means that subsequent to an Officer who is on probation being given a reasonable opportunity of being heard Public Services Commission may make a decision terminating that Officer's appointment without stating in that decision the reason for the termination. If General Order A.25(d) means that the Commission can terminate the appointment of an Officer during his period of probation without giving him a reasonable opportunity of being heard, General Order A.25(d) is void from its inception and is of no force or avail in law in view of Article 132(2) and/or Article 135(2) and/or Article 144(1) of the said Constitution and/or General Order A.1, and/or because it is unreasonable. It is respectfully submitted that if an inferior tribunal sets out the reasons which led it to its decision this Honourable Court will be pleased to consider the question whether the reasons are right in law and if the reasons are wrong in law will quash the decision. It is respectfully submitted that there is error in law on the face of the proceedings and that the Public Services Commission acted without jurisdiction or in excess of jurisdiction in terminating my appointment as an Assistant Passport Officer.

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1959.

(8) (a) By an erroneous view of the law in Article 135(2) of the said Constitution, the said Commission terminated my appointment as an Assistant Passport Officer without giving me any opportunity of being heard and thereby acted in the absence or in excess of jurisdiction.

(b) The said decision of the Public Services Commission communicated to me by the said letter No. P.S.C.2702/3/20 dated 23.5.1958 dismissed me from the post of Assistant Passport Officer and reduced me in rank to the post of Immigration Officer. 10

(c) The Public Services Commission contends in paragraph 2 (11) of its Secretary's said letter No. P.S.C.2702/3/49 dated 13.11.1958 which is an exhibit hereto marked "RM - 21" as follows:-

"Mr. Munusamy was not 'dismissed' or 'reduced in rank', both of which are disciplinary punishments. Article 135(2) of the Constitution does not therefore apply to his case". 20

(d) It is respectfully submitted that the decision of the Public Services Commission contained in the said letter No.P.S.C. 2702/3/20 dated 23.5.1958 was a dismissal and reduction in rank: for a "man may dismiss his servant if he refuses by word or conduct to allow the servant to fulfill his contract of employment..... if the conduct of the employer amounts to a basic refusal to continue the servant on the agreed terms of the employment, then there is at once a wrongful dismissal and repudiation by the defendants of their contractual obligations and 'a wrongful dismissal' in the ordinary sense of the phrase". 30

III (B) I respectfully submit that the said decision contained in the said letter of 23.5.1958 was made contrary to natural justice because I was not given notice of the intention of the Public Services Commission to make such decision and I was not given an opportunity to show case against it before such decision was arrived at and before such decision was made and because such decision was made without "due inquiry". 40

III (C) I infer and I therefore submit that the

Public Services Commission in terminating my appointment as Assistant Passport Officer acted with bias and capriciously and arbitrarily, and therefore against natural justice.

In the High  
Court

No. 3.

(1) On or about 25.8.1957, I left for Karachi, Pakistan, and a few days later on arrival there assumed duties as Assistant Passport Officer in the office of the Commission for the Federation of Malaya in Pakistan.

Affidavit of  
Rasiah  
Munusamy  
(continued)

27th February,  
1959.

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(2) It appears from the evidence of Che Mahmood bin Hj. Nazir, A.S.P., C.I.D., H.Q. Kuala Lumpur in the said Summons Case No.1 of 1958 the Investigating Officer in the said case and from the evidence of Mr. D.W. Bigley the Controller of Immigration that Mr. Bigley forwarded by post to the Police on 6.11.1957 and Che Mahmood received by post on 8.11.1957 my application dated 21.2.1957 for the post of Assistant Passport Officer. It is thus apparent that as early as in November, 1957 there was already an investigation which resulted in the said Summons case No. 1 of 1958.

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(3) The Permanent Secretary, Ministry of External Affairs, Kuala Lumpur, by his letter dated 30.11.1957 wrote to me as follows :-

"I am directed to inform you that you are to be recalled for re-posting and that you should make arrangements for your departure from Karachi within three days of the arrival of your relief who is expected to arrive in Karachi during the second week of December, 1957".

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"On your return to the Federation you should report direct to the Controller of Immigration, Penang". A copy of this letter is an exhibit hereto marked "RM - 24".

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(4) On 11.1.1958 I left Karachi for Malaya.

(5) On the evening of 14.1.1958 I arrived in Kuala Lumpur and planned to leave for Penang on 15.1.1958.

(6) In the morning of 15.1.1958 I

In the High  
Court

No. 3.

Affidavit of  
Rasiah  
Munusamy  
(continued)

27th February,  
1959.

received a message from the Immigration Office, Kuala Lumpur, that I should not proceed to Penang but that I should report at the Immigration Office, Kuala Lumpur.

(7) When I reported at the Immigration Office, Kuala Lumpur on 15.1.1958 the Controller of Immigration Mr. D.W. Bigley was there together with A.S.P. Mahmood. The Controller told me that the police wanted me.

(8) I was tried in the Sessions Court at Kuala Lumpur on 23.1.1958 and 27.1.1958 and was acquitted and discharged on 27.1.1958 on the charge set out in paragraph II (D) above.

(9) On 1.2.1958 the Deputy Public Prosecutor filed notice of appeal dated 31.1.1958 against the order of the learned President of the Sessions Court acquitting and discharging me.

(10) By letter dated 10.2.1958 the Controller of Immigration informed me as follows:-

"I am directed to inform you that you are interdicted from duty on half-monthly emoluments with effect from 24th January, 1958: Authority P.S.C. 2702/3/2 dated 25th January, 1958".

"2. Your interdiction is in connection with the criminal proceedings which were instituted against you which are, I understand, still sub-judice in view of an appeal having been lodged."

"3. The reason you have not been officially informed of your interdiction previously is because it was thought that the Ministry of External Affairs had informed you." A copy of the said letter is an exhibit hereto marked "RM - 9".

(11) The appeal against the acquittal and discharge was dismissed by the High Court at Kuala Lumpur on 5.5.1958.

(12) In spite of the acquittal and in spite of the dismissal of the appeal against the acquittal, the Public Services Commission terminated my appointment as Assistant Passport Officer

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on 23.5.1958.

In the High  
Court

(13) The Public Services Commission did so without giving me any opportunity of being heard and without "due inquiry".

No. 3.

(14) One Mr. Yap Fook Sang was appointed a Junior Assistant Passport Officer and was subsequently promoted as Assistant Passport Officer although he has not passed the Cambridge Senior Certificate (the Cambridge Overseas School Certificate) or its equivalent.

Affidavit of  
Rasiah  
Munusamy  
(continued)

27th February,  
1959.

(15) The Public Services Commission in its Secretary's letter No. 2702/3/29 dated 6/8/1958 to my then Solicitor Dato R.P.S. Rajasooria a copy of which is an exhibit hereto marked "RM 15" stated that Mr. Yap Fook Sang was "promoted to the post of Assistant Passport Officer as provided for in his Scheme of Service on the Service Principle that once an officer is admitted to a Scheme of Service he is treated on his merits for any promotion within that Scheme of Service."

(16) As pointed out by Dato R.P.S. Rajasooria in paragraph 9 of his letter dated 12.8.1958 to the Secretary, Public Services Commission a copy of which is an exhibit hereto marked "RM - 16", I submit that once I have been admitted to the Scheme of Service for Assistant Passport Officer which happened with effect from my appointment as Assistant Passport Officer I should be treated on my merits for any promotions with that Scheme of Service and a fortiori for retention within that Scheme.

(17) The principle should be recognised and applied impartially to me also in accordance with Article 136 of the Constitution. The said Article 136 reads as follows :-

"All persons of whatever race in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment be treated impartially". But the Public Services Commission has not re-instated me as an Assistant Passport Officer.

(18) It is therefore respectfully submitted that the Public Services Commission has acted with bias and capriciously and arbitrarily

In the High Court

and therefore against natural justice with regard to me.

No. 3.

(IV) (A) The relief sought is:-

Affidavit of  
Rasiah  
Munusamy  
(continued)

27th February,  
1959.

An order of certiorari quashing a decision made by the Public Services Commission, terminating with effect from 23rd May, 1958, my appointment as an Assistant Passport Officer in the External Affairs Service and reverting me to my previous post (of Immigration Officer) which decision was conveyed to me by letter No. P.S.C. 2702/3/20 dated 23.5.1958, from the Secretary, Public Services Commission to me, and the subsequent decision of the said Commission not to vary that previous decision which subsequent decision was conveyed to me by letter No. P.S.C.2702/3/49 dated 13th November, 1958, from the Secretary, Public Services Commission, to my then Solicitor Dato R.P.S. Rajasooria and by letter No. P.S.C. 2702/3/53 dated 12th December, 1958, from the Secretary Public Services Commission, to my then said Solicitor Dato R.P.S. Rajasooria.

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(IV) (B) The application for an order of certiorari will be made together with an application under sections 44 and 45 of the Specific Relief (Malay States) Ordinance 1950 for an order requiring the Public Services Commission to re-instate me as an Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya.

Affirmed by the said  
Rasiah Munusamy at  
Kuala Lumpur this 27th  
day of February, 1959  
at 9.15 a.m.

Sd Rasiah Munusamy

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Before Me: Sd. C.L. Devaser

Commissioner for Oaths

This Affidavit is filed on behalf of the Applicant.

AFFIDAVIT OF MOHAMED I.B.A.  
LATIFF

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
ORIGINATING MOTION 1959 NO. 2.

Affidavit of  
Mohamed Ismail  
Bin Abdul  
Latiff

20th March,  
1959.

Rasiah Munusamy ... Applicant

And

10 The Public Services  
Commission ... Respondent.

AFFIDAVIT

I, MOHAMED ISMAIL BIN ABDUL LATIFF,  
residing at House No. P.W.D. 986, Kia Peng Road,  
Kuala Lumpur, do hereby affirm and say as follows:-

20 1. I am the Secretary to the Public  
Services Commission, which is established pursuant  
to Article 139 of the Constitution of the Federation  
of Malaya and whose jurisdiction extends, inter  
alia, to the general public service of the  
Federation to which the Applicant belongs.

2. I have read the Affidavit and the  
Statement of the Applicant both of which were sworn  
on the 27th day of February 1959 and filed herein.

3. I am advised that the Motion is  
misconceived and that the Applicant has no cause  
of action maintainable in law for the following  
reasons:-

30 (a) the applicant has no property,  
franchise or legal right in respect  
of his appointment on probation as an  
Assistant Passport Officer, as required  
by proviso (a) to Section 44(1) of the  
Specific Relief Ordinance, 1950 ;

(b) the remedy if granted will not be  
complete, as required by Section 44  
(1) (e) of the said Ordinance ;

In the High Court

No. 4.

Affidavit of Mohamed I.B.A. Latiff (continued)

20th March, 1959.

(c) The Applicant is seeking to enforce satisfaction of a claim on the Public Services Commission and is not entitled to do so by reason of Section 44(2)(a) of the said Ordinance.

4.4. If (which is not admitted) the Applicant is entitled in law to maintain his cause of action it is denied that the Applicant is entitled in law to re-instatement as a Probationer Assistant Passport Officer.

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4.5. Wherefore the Respondent prays that this Motion may be dismissed with costs.

Affirmed at Kuala Lumpur } this 20th day of March, } Sd: Mohamed Ismail 1959 at 12.30 p.m. } bin Abdul Latiff.

Before me

Sd. S.S. Gill, Magistrate, Federation of Malaya.

Filed on behalf of the Respondent abovenamed by Federal Counsel, Federation of Malaya, whose address for service is c/o Attorney General's Chambers, Kuala Lumpur.

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Filed this 20th day of April, 1959

No. 5.

Proceedings

30th March, 1959.

No. 5.

PROCEEDINGS

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

ORIGINATING MOTION No. 2/1959

Rasiah Munusamy vs. Public Services Commission

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NOTES OF PROCEEDINGS BEFORE ONG.J.

C.C. Rasa Ratnam for Applicant.

I. Talog Davies (Federal Counsel) for Respondent.

Rasa Ratnam.In the High  
Court

Reads Notice of Motion

No. 5.

R. v. Ashford (1955) 2 A.E.R. 327

Proceedings  
(continued)Refers Order 59 r.4 (2) - applies  
under para (b) ex abundantia cautela.30th March,  
1959.Submits time should be computed from  
13.11.58 and not 23.5.58.

"RM.21" of 13.11.59 @ page 116 para 4.

"RM.10" dated 23.5.58

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Applicant aggrieved - has explored  
every possible avenue to obtain  
redress.P.S.C. Art. 139(1) - Constitution  
Art. 132(c)  
Art. 144  
Art. 135(1) & (2) in particular.  
Art. 132(2)

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The action of P.S.C. is without juris-  
diction - not according to the Public  
Services (Conduct & Discipline)  
Regulations, 1956In manner of termination of service,  
P.S.C. has offended against Art.135  
(2) - which is mandatory - therefore  
decision is void.

(1946) A.I.R. (P.C.) 121 @ 124-127

Re s.240(3) of Govt. of India Act,  
1935 = our art. 135(2)

Error on face of record:

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Decision contrary to prin. of natural  
justice.General Orders : Chapter A.25(d) @ p.7  
(Issued w.e.f.1.7.58) where the order  
of P.S.C. was dated 23.5.58.Public Officers Service (Conduct &  
Discipline) Regulations, 1956 -

In the High Court

No. 5.

Proceedings (continued)

30th March, 1959.

amended in 1958.

(1957) 1 A.E.R. 796 (Re Gilmore's application) @ 799

Not guilty of any undue delay in seeking redress - see p.805

Talog Davies :

It is not intended by the P.S.C. to take advantage of any technical objection - whether in respect of time or otherwise.

Order : (a) Leave.  
(b) extension of time  
(c) costs in the cause.

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Sd: H.T. Ong,  
Judge.

Certified true copy

Sd:

Ag. Secretary to Judge,  
Kuala Lumpur.

No. 6.

No. 6.

Order granting leave to apply for Order of Certiorari

30th March, 1959.

ORDER GRANTING LEAVE TO APPLY FOR ORDER OF CERTIORARI

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IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
ORIGINATING MOTION 1959 NO. 2

In the matter of an application by Rasiah Munusamy for leave to apply for an order of certiorari

And

In the matter of the termination by the Public Services Commission of the appointment of Rasiah Munusamy as Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya.

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Between

Rasiah Munusamy ... Applicant

And

The Public Services  
Commission ... Respondent.In the High  
Court

No. 6.

Order  
granting  
leave to  
apply for  
Order of  
Certiorari  
(continued)  
30th March,  
1959.BEFORE THE HONOURABLE MR. JUSTICE ONG,  
JUDGE, FEDERATION OF MALAYAIN OPEN COURT.This 30th day of March, 1959.

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O R D E R

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UPON HEARING the Notice of Motion of the Applicant dated the 27th day of February, 1959, and the Statement of the Applicant dated the 27th day of February, 1959 and the affidavit of Rasiah Munusamy affirmed the 27th day of February, 1959 and the affidavit of Mohamed Ismail bin Abdul Latiff affirmed the 20th day of March, 1959 filed herein, AND UPON HEARING Mr. C.C.Rasa Ratnam of Counsel for the Applicant and Mr. I. Talog Davies, Federal Counsel for the Respondent.

IT IS THIS DAY ORDERED as follows :-

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- (a) That leave be and is hereby granted to the Applicant to apply for an order of certiorari quashing a decision made by the Public Services Commission terminating with effect from 23rd May 1958 the appointment of the Applicant as an Assistant Passport Officer in the External Affairs Service and reverting him to his previous post of Immigration Officer which decision was conveyed to the Applicant by letter No.P.S.C.2702/3/20 dated 23rd May, 1958 from the Secretary, Public Services Commission to the Applicant and the subsequent decision of the said Commission not to vary that previous decision which subsequent decision was conveyed to the Applicant by letter No.2702/3/49 dated 13th November, 1958, from the Secretary, Public Services Commission, to the Applicant's then Solicitor Dato R.P.S.

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In the High Court

No. 6.

Order granting leave to apply for Order of Certiorari (continued)

30th March, 1959.

Rajasoorai and by letter No. P.S.C. 2702/3/53 dated 12th December, 1958 from the Secretary, Public Services Commission to the Applicant's then said Solicitor Dato R.P.S.Rajasoorai

- (b) That time for making the application for leave be and is hereby enlarged;
- (c) That the costs of this application be costs in the cause; and
- (d) That the further hearing be and is hereby adjourned to a date to be fixed by the Senior Assistant Registrar.

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Given under my hand and the seal of this Court this 30th day of March, 1959.

Sd: Gun Chit Tuan.  
Senior Assistant Registrar,  
High Court, Kuala Lumpur.

No. 7.

Notice of Motion for Order of Certiorari

8th April, 1959.

No. 7.

NOTICE OF MOTION FOR ORDER OF CERTIORARI

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
ORIGINATING MOTION 1959 NO.2

20

In the matter of an application by Rasiah Munusamy for an Order of Certiorari

And

In the matter of the termination by the Public Services Commission of the Appointment of Rasiah Munusamy as Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya.

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Between

In the High  
Court

Rasiah Munusamy ... Applicant

No. 7.

And

The Public Services  
Commission ... Respondent.

Notice of  
Motion for  
Order of  
Certiorari

NOTICE OF MOTION

8th April,  
1959.

10 Take notice that pursuant to the leave of  
the Honourable Mr. Justice Ong given on the 30th  
day of March, 1959 this Honourable Court will be  
moved on Monday the 11th day of May, 1959 at  
10 o'clock in the forenoon or so soon thereafter  
as counsel can be heard by Mr. C.C. Rasa Ratnam of  
Counsel on behalf of Rasiah Munusamy the Applicant  
above named :-

20 (a) That the Court be pleased to make an  
Order of certiorari quashing a decision made by  
the Public Services Commission terminating with  
effect from 23rd May, 1959, the appointment of the  
Applicant as an Assistant Passport Officer in the  
External Affairs Service and reverting him to his  
previous post of Immigration Officer which decision  
was conveyed to the Applicant by letter No. P.S.C.  
2702/2/20 dated 23rd May, 1958, from the Secretary,  
Public Services Commission to the Applicant, and  
the subsequent decision of the said Commission not  
to vary that previous decision which subsequent  
decision was conveyed to the Applicant by letter  
No. 2702/3/49 dated 13th November, 1958, from the  
Secretary, Public Services Commission, to the  
30 Applicant's then Solicitor Dato R.P.S. Rajasoorai  
and by letter No. P.S.C. 2702/3/53 dated 12th  
December, 1958 from the Secretary, Public Services  
Commission to the Applicant's then said Solicitor  
Dato R.P.S. Rajasoorai;

40 (b) That the originating motion of this  
date by the abovesaid Applicant against the  
abovesaid Respondent for an order under section  
44 of the Specific Relief (Malay States) Ordinance  
1950 be consolidated with and/or be heard together  
with this application.

(c) For costs; and

(d) For such further and other relief as

In the High Court

the Honourable Court shall deem fit.

No. 7.

Notice of Motion for Order of Certiorari (continued)

And take notice that upon the hearing of the said motion the said Applicant will use the statement of the Applicant dated the 27th day of February, 1959 and the affidavit of Rasiah Munusamy affirmed the 27th day of February, 1959 and exhibits therein referred to all already served on the Respondent.

Dated this 8th day of April, 1959.

8th April, 1959.

Sd: C.C. Rasa Ratnam Applicant's Solicitor. Sd: Gun Chit Tuan Senior Assistant Registrar, Supreme Court, Kuala Lumpur.

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This notice of motion is taken out by C.C. Rasa Ratnam of Kuala Lumpur whose address for service is no. 59, Klyne Street, Kuala Lumpur, Solicitor for the Applicant who now resides at No. 24 Lorong Kapar off Lornie Road.

To:

The Public Services Commission, Young Road, Kuala Lumpur.

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No. 8.

No. 8.

Notice of Motion under Section 44 of the Specific Relief (Malay States) Ordinance 1950

NOTICE OF MOTION UNDER SECTION 44 OF THE SPECIFIC RELIEF (MALAY STATES) ORDINANCE 1950

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA IN THE HIGH COURT AT KUALA LUMPUR.

ORIGINATING MOTION 1959 NO. 3

In the matter of an application for an order under Section 44 of the Specific Relief (Malay States) Ordinance 1950

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8th April, 1959.

And

In the matter of the termination by the Public Services Commission of the Appointment of Rasiah Munusamy as Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya.

Between

Rasiah Munusamy

... Applicant

And

The Public Services Commission Respondent.

In the High  
Court

No. 8.

Notice of  
Motion under  
Section 44 of  
the Specific  
Relief (Malay  
States)Ordinance  
1950.

(continued)

8th April,  
1959.NOTICE OF MOTION

Take Notice, that this Honourable Court will be moved on Monday, the 11th day of May, 1959 at 10 o'clock in the forenoon or so soon thereafter as counsel can be heard, by Mr. C.C. Rasa Ratnam of counsel on behalf of Rasiah Munusamy the Applicant above named :-

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(a) That the court be pleased to make an order under Section 44 of the Specific Relief (Malay States) Ordinance 1950 requiring the Public Services Commission to reinstate the Applicant as an Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya :

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(b) That the application in the notice of motion of this date in originating motion 1959 No. 2 by the abovesaid Applicant against the abovesaid Respondent for an order of certiorari be consolidated with and/or be heard together with this application;

(c) For costs; and

(d) For such further and other relief as the Honourable Court shall deem fit.

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And take notice that upon the hearing of the said motion the said Applicant will use the affidavit of Rasiah Munusamy affirmed the 7th day of April, 1959 and the exhibits therein referred to.

Dated this 8th day of April, 1959.

Sd: C.C.Rasa Ratnam                      Sd: illegible.  
Applicant's Solicitor. Senior Assistant Registrar.  
Supreme Court, Kuala Lumpur.

40

This notice of motion is taken out by C.C.Rasa Ratnam of Kuala Lumpur whose address for service is No. 59 Klyne Street, Kuala Lumpur Solicitor for the Applicant who now resides at No. 24, Lorong Kapar off Lornie Road, Kuala Lumpur.

To: The Public Services Commission, Young Road,  
Kuala Lumpur.

In the High Court

AFFIDAVIT OF RASIAH MUNUSAMY

No. 9.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

Affidavit of Rasiah Munusamy

IN THE HIGH COURT AT KUALA LUMPUR

ORIGINATING MOTION 1959 NO. 3

7th April, 1959.

In the matter of an application for an order under Section 44 of the Specific Relief (Malay States) Ordinance, 1950.

And

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In the matter of the termination by the Public Services Commission of the Appointment of Rasiah Munusamy as Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya.

Between

Rasiah Munusamy ... Applicant

And

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The Public Services Commission ... Respondent

A F F I D A V I T

I, Rasiah Munusamy of No. 24, Lorong Kapar off Lornie Road, Kuala Lumpur, solemnly and truly affirm and say as follows :-

I. I am the Applicant abovenamed.

II.(A)(1) An advertisement appeared in page 4 of "The Malay Mail" of 19.2.1957 inviting applications for posts of Assistant Passport Officer for service in the Federation of Malaya Government Oversea Missions. A copy of the said page 4 of "The Malay Mail" of 19.2.1957 containing the said advertisement is an exhibit hereto marked "RM - 1". Advertisement No. 506 H. appeared in page 221 B of the Federation of Malaya Government Gazette - Federal - of 7th March, 1957 inviting applications

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for posts of Assistant Passport Officer for service in Federation of Malaya Government Oversea Missions. A copy of the said Gazette containing the said advertisement No. 506 H is an exhibit hereto marked "RM - 2".

In the High Court

No. 9.

Affidavit  
of Rasiah  
Munusamy  
(continued)

7th April,  
1959.

10 (2) The said advertisements stated inter alia "Applicants will be selected according to the following order of preference : (i) Serving Assistant Passport Officers and serving Junior Assistant Passport Officers in the Immigration Department who have had not less than 5 years' service and possess School Certificate (ii) All serving Government Officers who have had not less than 5 years' service and who possess School Certificate (iii) Persons not in Government Service who have School Certificate with credit in English, and who have attained the age of 22 but have not attained the age of 30".

20 II.(B) (1) At the time of the said advertisements I was a serving Government Officer who had had more than 5 years' service as an Immigration Officer. I was an Immigration Officer from 1st December, 1950. I was promoted from Grade II Immigration Officer to Grade I Immigration Officer on 1.3.1951.

30 (2) (a) I had a certificate issued by my school, the Methodist Boys' School, Kuala Lumpur, dated 14.12.1949, stating as "Standard at time of Leaving" Sch. Certificate Class (Camb)" and as "Reason for Leaving. Graduated". A photostat copy of the said Certificate is an exhibit hereto marked "RM - 3".

(b) With reference to this certificate Mr.. Derick William Bigley, Controller of Immigration stated on 27.1.1958 in his evidence in Summons Case No. 1 of 1958 against me in the Sessions Court at Kuala Lumpur as follows :-

40 "In my opinion the word 'graduated' conveys to me that defendant has passed his school certificate examination. I would agree that the word 'graduated' would convey the impression that the defendant has completed the course. It might be capable of other interpretations." A copy of the proceedings in the said Summons Case No. 1 of 1958 is an exhibit

In the High  
Court

No. 9.

Affidavit  
of Rasiah  
Munusamy  
(continued)

7th April,  
1959.

hereto marked "RM - 4".

(c) The said advertisements did not mention the Senior Cambridge Certificate of Education, or the Senior Cambridge Certificate or the Cambridge School Certificate or the Cambridge Overseas School Certificate as a qualification for intending applicants unlike certain other advertisements which invited applications for Federal Government Vacancies or Study Leave or Scholarships e.g. advertisement No. 506 A in the said Federation of Malaya Government Gazette - Federal - of 7.3.1957, advertisements Nos. 747A, 747B, and 747C in Federation of Malaya Government Gazette - Federal - of 28.3.1957, a copy of which is an exhibit hereto marked "RM - 6", advertisement No. 93 C in Federation of Malaya Government Gazette - Federal - of 24.1.1957 a copy of which is an exhibit hereto marked "RM - 28", and advertisement No. 3552A in Federal Government Gazette of 16.10.1958 a copy of which is an exhibit hereto marked "RM - 29".

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(3) I applied for a post of Assistant Passport Officer by letter dated 21.2.1957. A photostat copy of my said letter of application dated 21.2.1957 is an exhibit hereto marked "RM - 7". The photostat copies "RM - 3" and "RM - 7" are photostats of photostat copies received by my present Solicitor Mr. C.C. Rasa Ratnam from the Secretary, Public Services Commission, together with the said Secretary's letter No. P.S.C. 2702/3/55 dated 22.1.1959 a copy of which is an exhibit hereto marked "RM - 26" in reply to Mr. Rasa Ratnam's letter dated 6.1.1959 a copy of which is an exhibit hereto marked "RM - 25".

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(4) With regard to the kind of candidates whom the Government was looking for, the said Mr. Bigley said in the course of his evidence in the said Summons Case No. 1 of 1958 as follows :- "I passed on to the P.S.C. 14 applications from members of my staff who were applying for the post of Assistant Passport Officers. All 14 did not have Cambridge School Certificates. Government were looking for persons with passport experience to work in the Malayan Overseas Mission. My department was the only department in Government which had persons experienced in passport work. It was decided that priority would be given to persons in the Immigration Department provided

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they were suitably qualified educationally. A few of the applicants from my department had not passed School Certificate but they had passed Standard 8, they had done a minimum of 5 years in the department and it was only fair to pass on their applications which were addressed to P.S.C. and not to myself".

In the High  
Court

No. 9.

Affidavit  
of Rasiah  
Munusamy  
(continued)

7th April,  
1959.

10 (5) With regard to the confidential report the Controller of Immigration made on the applications of members of his staff Mr. Bigley said in the course of his evidence in that case as follows :-

"I made no recommendation in respect of all the Candidates. Confidential reports was on their conduct and qualifications. As far as I remember I gave defendant a satisfactory report."

(6) There was interview by an interview board and I was interviewed in May, 1957.

20 (7) I was emplaced on the pensionable establishment with effect from 1.8.1954.

30 (C) I was offered a post of Assistant Passport Officer in the External Affairs Service (of the Government of the Federation of Malaya) by the Chief Secretary's Office letter No. CSO.58/28 dated 21.8.1957 of the Deputy Chief Secretary to me on the terms and conditions contained in that letter. A copy of the said letter dated 21.8.1957 is an exhibit hereto marked "RM - 8". I accepted the said offer and functioned as Assistant Passport Officer. In paragraph 4 of the said letter dated 21.8.1957 the Deputy Chief Secretary states the following term of service :-

"You will be required to serve a probationary period of one year from the date of your appointment and subject to your work and conduct being satisfactory you will be eligible for confirmation in your appointment at the end of this period."

40 (D) I was charged in Summons Case No. 1 of 1958 in the Sessions Court at Kuala Lumpur and tried on 23.1.1958 and 27.1.1958 and acquitted on 27.1.1958 by the said Sessions Court of the following charge :-

"That you on or about the 16th May, 1957 - at Kuala Lumpur, in the State of Selangor, gave

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Munusamy  
(continued)

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to a Public Servant namely Mr. Singaram a permanent member of the Public Services Commission, an information, namely, that you have passed the School Certificate Examination in 1949, which information you knew to be false intending thereby to cause the said public servant to do a thing which such public servant ought not to have done if the true state of facts respecting such information was known to him to wit to recommend you for the appointment of Assistant Passport Officer in the Government Oversea Missions, and you did thereby commit an offence punishable under Section 182 of the Penal Code." A copy of the charge sheet, notes of evidence, reasons for judgment, Notice of Appeal and Petition of Appeal in the said Summons Case No. 1 of 1958 is an exhibit hereto marked "RM - 4". The appeal against the said acquittal - Criminal Appeal No. 11 of 1958 - was dismissed by the High Court at Kuala Lumpur on 5.5.1958. A certified copy of the judgment of the High Court in the said appeal is an exhibit hereto marked "RM - 5".

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(E) By letter No. IMM/C/PER/177 dated 10.2.1958 the Controller of Immigration informed me that I was interdicted from duty with effect from 24.1.1958 in connection with the said criminal case. A copy of the said letter of interdiction dated 10.2.1958 is an exhibit hereto marked "RM - 9".

(F) The Public Services Commission by its Secretary's letter No. P.S.C./2702/3/20 dated 23.5.1958 to me a copy of which is an exhibit hereto marked "RM - 10" informed me as follows :-

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"I am directed to refer to Chief Secretary's Office letter under reference C.S.O.58/28 dated the 21st August, 1957 notifying you of your selection for the above mentioned post and also to your acceptance of the appointment."

"2. I am to say that it has come to the knowledge of this Commission that you have not passed the School Certificate required as claimed by you and that you are therefore under qualified for the appointment. After due consideration of the circumstances and of the necessity to maintain the standards of the External Affairs Service and in fairness to other properly qualified candidates and appointees, it has been decided to terminate your appointment as Assistant Passport Officer, External Affairs Service on probation, with effect

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from the date of this letter."

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"3. You will revert to your former post in the Immigration Department on the terms and conditions under which you were serving before appointment to the External Affairs Service."

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10 (G)(1) I, acting by my then Solicitor Dato R.P.S. Rajasooria, made representations to the Public Services Commission by a series of letters pointing out the illegality and injustice of the termination of my appointment as Assistant Passport Officer and requesting the said Commission to reinstate me as an Assistant Passport Officer. Copies of Dato R.P.S. Rajasooria's letters to the Secretary, Public Services Commission, which are dated 28.5.1958, 12.6.1958, 22.7.1958, 12.8.1958, 2.9.1958, 18.9.1958, 20.10.1958 and 21.11.1958 are exhibits hereto marked "RM - 11", "RM - 13", "RM - 14", "RM - 16", "RM - 17", "RM - 19", "RM - 20", and "RM - 22" respectively. The copies  
20 of the letters from the Public Services Commission by its Secretary to my then Solicitor Dato R.P.S. Rajasooria which bear No. P.S.C./2702/3/23 dated 7.6.1958, No. P.S.C. 2702/3/29 dated 6.8.1958, No. P.S.C. 2702/3/40 dated 16.9.1958, No. P.S.C. 2702/3/49 dated 13.11.1958 and No. P.S.C. 2702/3/53 dated 12.12.1958 are exhibits hereto marked "RM - 12", "RM - 15", "RM - 18", "RM - 21" and "RM - 23" respectively.

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30 (2) The Public Services Commission by its Secretary's said letter No. P.S.C. 2702/3/49 dated 13.11.1958 to Dato R.P.S. Rajasooria my then Solicitor a copy of which letter is an exhibit hereto marked "RM - 21", stated that my "representations have been considered and no grounds are seen to vary the decision" and "that the matter is now regarded as closed."

40 (3) By letter dated 21.11.1958 to the Secretary Public Services Commission, a copy of which is an exhibit hereto marked "RM - 22", my then Solicitor Dato R.P.S. Rajasooria gave notice that unless I was reinstated as an Assistant Passport Officer within two weeks from date thereof legal proceedings would be instituted to secure my re-instatement and the vindication of my rights.

(4) The Public Services Commission by its Secretary's said letter No. P.S.C.2702/3/53

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dated 12.12.1958 to my then Solicitor Dato R.P.S. Rajasooria a copy of which letter is an exhibit hereto marked "RM - 23" stated that the "Commission has nothing to add to its letter (49) in this series dated 13th November, 1958".

III(A) I am advised and I verily believe that, and I respectfully submit to this Honourable Court that, there is error in law on the face of the said decisions in the letters of 23.5.1958, 13.11.1958 and 12.12.1958 and on the face of the record and absence of jurisdiction in or excess of jurisdiction by the Public Services Commission in terminating in the circumstances in which it did my appointment as an Assistant Passport Officer.

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(1) By an erroneous view as to a general right in law of the Government as an employer, the Public Services Commission terminated my appointment as an Assistant Passport Officer in the External Affairs Service. If the Public Service Commission had regard to the written law of the Federation of Malaya, which had modified the common law, as regards the rights of the Government as an employer, the said Commission would not have fallen into error in points of law which is apparent on the face of the said decisions and of the record. In view of section 3(1) of the Civil Law Ordinance 1956 and Article 132(2) of the Constitution of the Federation of Malaya the rights of the Government as an employer are governed by the Constitution of the Federation of Malaya and by the Public Officers (Conduct and Discipline) Regulations 1956.

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(2) The powers and the restrictions on the powers of the Public Services Commission to terminate the appointment of a Federal Officer are set out in the Public Officers (Conduct and Discipline) Regulations 1956, but are subject to the provisions of the said Constitution. The termination of any appointment as an Assistant Passport Officer (a) was not in any of the circumstances in which, according to the Public Officers (Conduct and Discipline) Regulations 1956, the said Commission was entitled to terminate a Federal Officer's appointment, and (b) was in violation of the restrictions placed on the said Commission by the said Constitution and by the Public Officers (Conduct and Discipline) Regulations 1956. The Public Services Commission

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is a body created by the said Constitution.

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(3) Indeed, the said termination by the said Commission was contrary to Regulation 44 of the Public Officers (Conduct and Discipline) Regulations 1956 in that I was dismissed on a charge upon which I had been acquitted by the Sessions Court and the High Court.

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10 (4) In view of the term in paragraph 4 of the Chief Secretary's Office letter No. CSO. 58/28 dated 21.8.1957 of the Deputy Chief Secretary offering to me the appointment of Assistant Passport Officer on the terms and conditions set out in the said letter that I would be eligible for confirmation in my appointment at the end of one year from the date of appointment subject to my work and conduct being satisfactory, which offer was accepted by me, and in view of the fact and admission by the Public Services Commission, that no question of the quality of my work or conduct arises, the said Commission was not entitled to terminate my appointment as an Assistant Passport Officer in the circumstances in which it did terminate. The said termination was a breach of a contract made by the authority of the Government and by me. The Commissioner for the Federation of Malaya in Pakistan had designated me as Passport Officer and Administrative Assistant. A copy of letter No. FMC. in P.23/57/(9) dated 17.9.1957 from the Commissioner for the Federation of Malaya in Pakistan to the Permanent Secretary, Ministry of External Affairs, Kuala Lumpur informing the said Permanent Secretary of the said act by the said Commissioner is an exhibit hereto marked "RM - 24". This shows how highly I have been rated. The Public Services Commission by its Secretary's said letter No. P.S.C. 2702/3/29 dated 6.8.1958 a copy of which is an exhibit hereto marked "RM - 15", stated in paragraph 3 thereof:

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40 "No question of the quality of Mr. Munusamy's work or his conduct arises."

(5) The reason assigned by the said Commission for the said termination in the said letter No. P.S.C. 2702/3/20 dated 23.5.1958 was that it had come to the knowledge of the said Commission that I had not passed the School Certificate required as claimed by me, and was therefore unqualified for the appointment. The

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said reason means that there was a unilateral mistake of fact on the part of the appointing authority. The said termination for the said reason was, even if there was such a unilateral mistake of fact which is not admitted by me, contrary to section 23 of the Contracts (Malay States) Ordinance 1950.

(6) (a) The advertisements inviting applications for the posts of Assistant Passport officer for service in the Federation of Malaya Government Oversea Missions invited applications also from "All Serving Government Officers who have had 5 years' service and who possess School Certificate." The said advertisements did not mention the Senior Cambridge Certificate as a qualification for intending applicants, unlike certain other advertisements in the same and other Gazettes, which invited applications for Federal Government vacancies and study leave.

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(b) There has been no statement or evidence by the then High Commission of the Federation of Malaya, the appointing authority before Merdeka Day under the Clause 14(1)(a) of the Federation of Malaya Agreement 1948 as to the reasons why I was appointed as Assistant Passport Officer, or as to whether he considered my certificate a School Certificate or not within the meaning of the said advertisements inviting applications for the posts of Assistant Passport Officer.

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(c) The Public Services Commission in its Secretary's letter No. P.S.C. 2702/3/40 dated 16.9.1958 to my then Solicitor Dato R.P.S. Rajasooria a copy of which is an exhibit hereto marked "RM - 18" states "The appointing authority does not and did not consider a School Leaving Certificate in the form held by your client as a 'School Certificate' such as was required by the advertisement relating to the competition referred to above. The meaning of the 'School Certificate' required by the Government is well known and only those applicants who thought to or claimed to have a Cambridge Overseas School Certificate or its equivalent and who were thought to be fully qualified for the post were considered for interview." But this Honourable Court held in the said Criminal Appeal No. 11 of 1958 that there was no Public Services Commission in May, 1957.

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(d) I respectfully submit that the post might have been offered to me because the appointing authority might have considered that the said certificate dated 14.12.1949 issued by the Methodist Boys' School was a School Certificate as required by the said advertisements inviting applications for the post of Assistant Passport Officer for service in the Federation of Malaya Government Oversea Missions, or because there was in fact no scheme of service for Assistant Passport Officers at that time, or because under the Scheme of Service for Junior Assistant Passport Officers and Assistant Passport Officers which was issued on 27.1.1958 but as "Effective from 1st January, 1957" and which classified these posts in Division III no educational qualifications was specified for Assistant Passport Officers although it was specified for Junior Assistant Passport Officers or because the appointing authority might have acted under Common Regulation 13 in the Federation of Malaya Schemes of Service 1956 which says: "Government reserves the right to appoint Government Officers serving under other schemes, or serving in a Government appointment not covered by any scheme of service, posts governed by any scheme in this volume provided they are considered suitable even though they are not possessed of all the qualifications laid down for normal entry to the Scheme or are above the normal age limit." A copy of Service Circular No. 14 of 1958 dated 27.5.1958 which draws attention to this Common Regulation 13 is an exhibit hereto marked "RM - 27".

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(7) (a) Dato R.P.S. Rajasooria my then solicitor in paragraph 2 of his said letter dated 18.9.1958, a copy of which is an exhibit hereto marked "RM - 19", invited "the Public Services Commission to point out any provision under the Public Officers (Conduct and Discipline) Regulations 1956, or in any conditions of service regulated by His Majesty the Yang di-Pertuan Agong subject to Federal law, under which the purported termination of Mr. Munusamy's appointment as an Assistant Passport Officer is justified."

(b) The Public Services Commission in its Secretary's said letter No.2702/3/49 dated 13.11.1958 to my then Solicitor Dato R.P.S. Rajasooria, a copy of which is an exhibit hereto marked "RM - 21" stated in paragraph 2 (5) of that

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(continued)

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letter: "A serving Government Officer is subject to General Orders one of which, General Order A.25(d) gives expression to Government's right to terminate probation, if necessary, without reason assigned." This is the only provision specifically referred to in that reply No. PSC. 2702/3/49 dated 13.11.1958 to justify the termination.

(c) General Orders A.1, A.2 and A.25(c) and (d) which are part of Chapter A of General Orders reads as follows:-

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General Order A.1. :

"Subject to the provisions of part X of the Constitution this chapter will be applicable to all appointments and promotions to Federal Posts and services, to posts on the Federation Establishment and to state posts and services to the extent that it may be adopted by the State Governments, save as specified in General Order 2".

20

General Order A.2. :

"The procedure laid down in this chapter for making appointments to posts and services within the purview of a Commission shall apply to all permanent and temporary appointments excluding only such temporary appointments of officers in Division III and IV and such appointments of daily rated officers as may from time to time be delegated by a Commission under Article 144 (6) of the Constitution."

30

General Order A.25(C). :

"Where consideration is being given to the termination of the appointment of an officer on probation the officer will normally be informed of the grounds upon which such a course is contemplated and shall be permitted to submit such representations as he may wish, for which purpose he shall be allowed a reasonable period of not less than fourteen days. The Disciplinary Authority as defined in Chapter D shall then take such action as may seem just".

40

General Order A.25(d) :

"Notwithstanding the provisions of paragraph (c) above the appointment of an Officer

10 serving on probation may be terminated by a Commission or other appointing authority without any reason being assigned."

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10 (d) General Order A.25(d) is part of the General Orders' Chapter A which Chapter A purports to "have been issued under the authority of the Yang di-Pertuan Agong in accordance with Article 132(2) of the Constitution" and was issued "with effect from 1st July, 1958", but the  
10 purported termination of my appointment as an Assistant Passport Officer was on 23.5.1958 - reference letter No. P.S.C. 2702/3/20 dated 23.5.1958 from the Secretary Public Services Commission to me, a copy of which is an exhibit hereto marked "RM - 10". Further, in view of the term in paragraph 4 of the said Chief Secretary's Office letter No. C.S.O. 58/28 dated 21.8.1957 of the Deputy Chief Secretary offering the post of Assistant Passport Officer to me but  
20 subject to my work and conduct being satisfactory I would be eligible for confirmation in my appointment at the end of the probationary period of one year, it would be a breach of contract to terminate my appointment without assigning reason or for any reason other than my work or conduct being not satisfactory. Further the Public Services Commission in its Secretary's said letter No. P.S.C. 2702/3/20 dated 23.5.1958  
30 terminating my appointment as an Assistant Passport Officer did not terminate without assigning any reason my appointment as an Assistant Passport Officer but purported to terminate my said appointment and set out the reason for the termination. But in view of the said term in the said paragraph 4 of the Chief Secretary's Office letter No. C.S.O.58/28 dated 21.8.1957 of the Deputy Chief Secretary, and in view of the written law of this country namely the Public Officers (Conduct & Discipline)  
40 Regulations 1956 - particularly Regulation 44 thereof, and Section 23 of the Contract (Malay States) Ordinance 1950 and the Constitution of the Federation of Malaya, particularly Articles 132(1)(c), 132(2), 135(2) and 144(1) and, as would be submitted hereinafter, Article 136, of the said Constitution, the Public Services Commission was not entitled to terminate my appointment as an Assistant Passport Officer in the circumstances in which it terminated my  
50 appointment as Assistant Passport Officer. In view of the Article 132(2) and/or Article 135(2)

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and/or Article 144(1) of the said Constitution and/or General Order A.1, the said General Order A.25(d) means that subsequent to an Officer who is on probation being given a reasonable opportunity of being heard the Public Services Commission may make a decision terminating that Officer's appointment without stating in that decision the reason for the termination. If General Order A.25(d) means that the Commission can terminate the appointment of an Officer during his period of probation without giving him a reasonable opportunity of being heard, General Order A.25(d) is void from its inception and is of no force or avail in law in view of Article 132(2) and/or Article 135(2) and/or Article 144(1) of the said Constitution and/or General Order A.1 and/or because it is unreasonable. It is respectfully submitted that if an inferior tribunal sets out the reasons which led it to its decision this Honourable Court will be pleased to consider the question whether the reasons are right in law and if the reasons are wrong in law will quash the decision. It is respectfully submitted that there is error in law on the face of the proceedings and that the Public Services Commission acted without jurisdiction or in excess of jurisdiction in terminating my appointment as an Assistant Passport Officer.

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(8) (a) By an erroneous view of the law in Article 135(2) of the said Constitution, the said Commission terminated my appointment as an Assistant Passport Officer without giving me any opportunity of being heard and thereby acted in the absence or in excess of jurisdiction.

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(b) The said decision of the Public Services Commission communicated to me by the said letter No. P.S.C. 2702/3/20 dated 23.5.1958 dismissed me from the post of Assistant Passport Officer and reduced me in rank to the post of Immigration Officer.

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(c) The Public Services Commission contends in paragraph 2(11) of its Secretary's said letter No. P.S.C. 2702/3/49 dated 13.11.1958 a copy of which is an exhibit hereto marked "RM - 21" as follows :-

"Mr. Munusamy was not 'dismissed' or 'reduced in rank', both of which are disciplinary punishments. Article 135(2) of the Constitution



does not therefore apply to his case."

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(d) It is respectfully submitted that the decision of the Public Services Commission contained in the said letter No. P.S.C.2702/3/20 dated 23.5.1958 was a dismissal and reduction in rank : for a "man may dismiss his servant if he refused by word or conduct to allow the servant to fulfill his contract of employment ..... if the conduct of the employer amounts to a basic refusal to continue the servant on the agreed terms of the employment, then there is at once a wrongful dismissal and a repudiation by the defendants of their contractual obligations and 'a wrongful dismissal' in the ordinary sense of the phrase."

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III (B) I respectfully submit that the said decision contained in the said letter of 23.5.1958 was made contrary to natural justice because I was not given notice of the intention of the Public Services Commission to make such decision and I was not given an opportunity to show cause against it before such decision was arrived at and before such decision was made and because such decision was made without "due inquiry."

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III (C) I infer and I therefore submit that the Public Services Commission in terminating my appointment as Assistant Passport Officer acted with bias and capriciously and arbitrarily, and therefore against natural justice.

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(1) On or about 25.8.1957 I left for Karachi, Pakistan, and a few days later on arrival there assumed duties as Assistant Passport Officer in the Office of the Commissioner for the Federation of Malaya in Pakistan.

(2) It appears from the evidence of Che Mahmood bin Haj. Nazir, A.S.P., C.I.D. H.Q. Kuala Lumpur in the said Summons Case No. 1 of 1958 the Investigating Officer in the said case and from the evidence of Mr. D.W. Bigley the Controller of Immigration that Mr. Bigley forwarded by post to the Police on 6.11.1957 and Che Mahmood received by post on 8.11.1957 my application dated 21.2.1957 for the post of Assistant Passport Officer. It is thus apparent that as early in November, 1957, there was already an investigation which resulted in the said Summons Case No. 1 of 1958.

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(3) The Permanent Secretary, Ministry of External Affairs, Kuala Lumpur, by his letter dated 30.11.1957 wrote to me as follows :-

"I am directed to inform you that you are to be recalled for re-posting and that you should make arrangements for your departure from Karachi within three days of the arrival of your relief who is expected to arrive in Karachi during the second week of December, 1957."

10

"On your return to the Federation you should report direct to the Controller of Immigration, Penang." A copy of this letter is an exhibit hereto marked "RM - 30".

(4) On 11.1.1958 I left Karachi for Malaya.

(5) On the evening of 14.1.1958 I arrived in Kuala Lumpur and planned to leave for Penang on 15.1.1958.

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(6) In the evening of 15.1.1958 I received a message from the Immigration Officer, Kuala Lumpur that I should not proceed to Penang but that I should report at the Immigration Office, Kuala Lumpur.

(7) When I reported at the Immigration Office Kuala Lumpur on 15.1.1958 the Controller of Immigration Mr. D.W. Bigley was there together with A.S.P. Mahmood. The Controller told me that the police wanted me.

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(8) I was tried in the Sessions Court at Kuala Lumpur on 23.1.1958 and 27.1.1958 and was acquitted and discharged on 27.1.1958 on the charge set out in paragraph II (D) above.

(9) On 1.2.1958 the Deputy Public Prosecutor filed notice of appeal dated 31.1.1959 against the order of the learned President of the Sessions Court acquitting and discharging me.

(10) By letter dated 10.2.1958 the Controller of Immigration informed me as follows:-

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"I am directed to inform you that you are interdicted from duty on half monthly emoluments

with effect from 24th January, 1958 - Authority P.S.C. 2702/3/2 dated 25th January, 1958."

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"2. Your interdiction is in connection with the criminal proceedings which were instituted against you which are, I understand, still sub-judice in view of an appeal having been lodged."

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(continued)

10 "3. The reason you have not been officially informed of your interdiction previously is because it was thought that the Ministry of External Affairs had informed you". A copy of the said letter is an exhibit hereto marked "RM - 9".

7th April,  
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(11) The appeal against the acquittal and discharge was dismissed by the High Court at Kuala Lumpur on 5.5.1958.

20 (12) In spite of the acquittal and in spite of the dismissal of the appeal against the acquittal, the Public Services Commission terminated my appointment as Assistant Passport Officer on 23.5.1958.

(13) The Public Services Commission did so without giving me an opportunity of being heard and without "due inquiry".

(14) One Mr. Yap Fook Sang was appointed a Junior Assistant Passport Officer and was subsequently promoted as Assistant Passport Officer although he has not passed the Cambridge Senior Certificate (the Cambridge Oversea School Certificate) or its equivalent.

30 (15) The Public Services Commission in its Secretary's letter No. 2702/3/29 dated 6.8.1958 to my then Solicitor Dato R.P.S.Rajasooria a copy of which is an exhibit hereto marked "RM - 15" stated that Mr. Yap Fook Sang was "promoted to the post of Assistant Passport Officer as provided for in his Scheme of Service on the Service Principle that once an officer is admitted to a Scheme of Service he is treated on his merits for any promotion within that Scheme of Service."

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(16) As pointed by Dato R.P.S.Rajasooria in paragraph 9 of his letter dated 12.8.1958 to the Secretary, Public Services Commission a copy of which is an exhibit hereto marked "RM -16", I

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submit that once I had been admitted to the Scheme of Service for Assistant Passport Officer which happened with effect from my appointment as Assistant Passport Officer I should be treated on my merits for any promotions within that Scheme of Service and a fortiori for retention within that Scheme.

(17) The principle should be recognised and applied impartially to me also in accordance with Article 136 of the Constitution. The said Article 136 reads as follows :-

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"All persons of whatever race in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment be treated impartially." But the Public Services Commission has not re-instated me as an Assistant Passport Officer.

(18) It is therefore respectfully submitted that the Public Services Commission has acted with bias and capriciously and arbitrarily and therefore against natural justice with regard to me.

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IV. (A) In originating motion 1959 No. 2 I am making an application for an order of certiorari quashing the said decisions in the said letters No. P.S.C. 2702/3/20 dated 23rd May, 1958, No. P.S.C. 2702/3/49 dated 13th November, 1958 and No. P.S.C. 2702/3/53 dated 12th December, 1958.

(B) I am advised and verily believe that the said decisions are invalid, void and inoperative in law.

30

(C) I am advised and I verily believe that I am entitled to be re-instated as an Assistant Passport Officer. I acting through my then Solicitor, Dato R.P.S. Rajasooria demanded as aforesaid that justice be done to me by re-instating me as an Assistant Passport Officer. But the Public Services Commission has refused as aforesaid to re-instate me as an Assistant Passport Officer. The salary, allowances and status of an Assistant Passport Officer are much higher than those of an Immigration Officer. The Maximum salary of a Grade I Immigration Officer is \$280/- per month. The initial salary of an Assistant Passport Officer is \$516/- per month; the salary of an Assistant Passport Officer rises

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to a maximum of \$592/-. The forbearing of the Public Services Commission from re-instating me as an Assistant Passport Officer therefore would injure me in my property and personal right.

In the High Court

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(D) I therefore pray for an order requiring the Public Services Commission to re-instate me as an Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya.

Affidavit of Rasiah Munusamy (continued)

7th April, 1959.

10 Affirmed by the said Rasiah Munusamy at Kuala Lumpur this 7th day of April, 1959 at 10 a.m. } Sd: Rasiah Munusamy.

Before me,

Sd: W.P. Sarathy. Commissioner for Oaths.

This Affidavit is filed on behalf of the Applicant.

No. 9 - R.M. 1.

No. 9.  
R.M. 1.

20 ADVERTISEMENT IN "MALAY MAIL"

Advertisement in "Malay Mail"

19th February, 1957.

30 Applications are invited from Federal Citizens for posts of ASSISTANT PASSPORT OFFICER for service in Federation of Malaya Government Oversea Missions. Applicants will be selected according to the following order of preference :  
40 (1) Serving Assistant Passport Officers and serving Junior Assistant Passport Officers in the Immigration Department who have had not less than 5 years' service and possess School Certificate. (ii) All serving Government Officers who have had 5 years' service and who possess School Certificate. (iii) Persons not in Government Service who have School Certificate with a credit in English, and who have attained the age of 22 but have not attained the age of 30. Salary scale \$462 x 20 - 562. Officers will be eligible for overseas allowance when abroad (in lieu of Malayan cost of living allowance). Cost of living allowance at current rates is payable for service in Malaya (when Overseas allowance is not payable). Free passages to overseas posts will

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in "Malay  
Mail"  
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be paid on approved terms. Free housing, or an approved allowance instead, will be provided. Free medical (but not dental) attention. Outfit allowance at approved rates may be claimed. Applications (those from Serving Officers to be submitted through Heads of Department with Confidential Reports and Record of Service) to reach the Secretary, Public Service Commission (Designate) Young Road, Kuala Lumpur, 28th February, 1957.

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19th February,  
1957.No. 9.  
R.M.2.Advertisement  
in Malaya  
Government  
GazetteNo. 9 - R.M. 2.ADVERTISEMENT IN MALAYA GOVERNMENT  
GAZETTEFEDERATION OF MALAYA GOVERNMENT  
GAZETTE - FEDERAL7th March,  
1957.

7th Mar. 1957.

No. 506H - Applications are invited from Federal Citizens for posts of Assistant Passport Officer for service in Federation of Malaya Government Oversea Missions. Applicants will be selected according to the following order of preference :

(i) Serving Assistant Officers and serving Junior Assistant Passport Officers in the Immigration Department who have had not less than 5 years' service and possess School Certificate. (ii) All serving Government officers who have had 5 years' service and who possess School Certificate. (iii) Persons not in Government Service who have School Certificate with a credit in English, and who have attained the age of 22 but have not attained the age of 30. Salary scale \$462 x 20-562. Officers will be eligible for overseas allowances when abroad (in lieu of Malayan cost of living allowance) COLA at current rates is payable for service in Malaya (when overseas allowance is not payable). Free passages to overseas posts will be paid on approved terms. Free housing, or an approved allowance instead, will be provided. Free medical (but not dental) attention. Outfit allowances at approved rates may be claimed. Applications (those from serving officers to be submitted through Heads of Department with Confidential Reports and Record of Service) to reach the Secretary, Public Service Commission

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40

(Designate) Young Road, Kuala Lumpur, 15th March, 1957 (P.S.C.R/64/1).

In the High Court

No. 9.  
RM.2.  
Advertisement  
in Malaya  
Government  
Gazette  
(continued)  
7th March,  
1957.

No. 9. - RM 3.

No. 9.  
R.M.3.

SCHOOL LEAVING CERTIFICATE

No. 656

School Leaving  
Certificate

THE METHODIST BOYS' SCHOOL.  
KUALA LUMPUR.

14th December,  
1949.

Name: R. Munusamy Leaving Certificate

School Number: 215

10 Date & Place of birth: 4.4.1928, Klang.

Name of Father or Guardian: T. Rasiah

Former School (if any) -

Date of admission: 18.1.1935

Date of leaving: 14.12.1949

Standard at time of leaving: Sch. Certificate  
Class (Camb).

Fees due: Nil

Attendance during the year: 173 days

Conduct: V. Good.

20 Reason for leaving: Graduated.

Remarks: Has represented the school in football  
(4 years) cricket (4 years) and hockey.  
Captain of School Cricket Team and  
Combined Schools Team. Has represented  
state in cricket. Very good sportsman  
and athlete. A good leader.

Signature of Pupil: Sd: R. Munusamy

Date 14.12.1949 Sd: H.F. Clancey - Principal  
The Methodist Boys' School  
Kuala Lumpur.

30

In the Supreme Court of the Federation of Malaya

In the High Court

No. 9.  
R.M.3.  
School Leaving Certificate  
(continued)  
14th December, 1949.

In the High Court at Kuala Lumpur  
Originating Motion 1959 No.  
Between  
Rasiah Munusamy Applicant  
And  
The Public Services Commission Respondent.

This is the exhibit marked "RM.3" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:  
Commissioner for Oaths.

10

No. 9.  
R.M.4.

Proceedings in Summons  
Case No. 1 of 1958  
18th February, 1959.

No. 9 - "R.M.4."

PROCEEDINGS IN SUMMONS CASE  
NO. 1 of 1958

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
CRIMINAL APPEAL NO. OF 1958

PUBLIC PROSECUTOR ..... APPELLANT  
Against  
MUNUSAMY S/O RASIAH ..... RESPONDENT

20

FROM THE SESSIONS COURT AT KUALA LUMPUR  
KUALA LUMPUR SUMMONS CASE NO. 1 of 1958

Certified herein  
true copy of the record.

Sd:  
f. PRESIDENT, SESSIONS COURT,  
KUALA LUMPUR.

18.2.59

In the Supreme Court of the Federation of Malaya  
In the High Court at Kuala Lumpur  
Originating Motion 1959 No.

30

BETWEEN

Rasiah Munusamy ... Applicant  
The Public Services Commission ... Respondent.

This is the exhibit marked "RM-4" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:  
Commissioner for Oaths.

40



IN THE SESSIONS COURT AT KUALA LUMPUR  
KUALA LUMPUR SUMMONS CASE NO. 1 OF 1958

In the High  
Court

No. 9.  
R.M.4.

I N D E X

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10 Notes of Evidence	69-77	18th February,
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IN THE SESSIONS COURT AT KUALA LUMPUR  
KUALA LUMPUR SUMMONS CASE NO. 1 OF 1958

LIST OF EXHIBITS.

	P1 - Sanction to prosecute	See Original
	D2 - G.N. No. 506H dated 7.3.57	-do-
	D3 - G.N. No.747A dated 28.3.57	-do-
	D4 - Detailed report University of Cambridge School Certi- ficate Examination 1949.	-do-
20	P5 - Application from Munusamy dated 21.2.1957	-do-
	P6 - Application from Munusamy	-do-
	P7 - School Leaving Certificate No. 656 from M.B.S Kuala Lumpur	-do-

In the High  
Court

No. 9.  
R.M.4.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

18th February,  
1959.

Fed. Co. 21.58

In the Supreme Court of the Federation of Malaya

In the High Court at Kuala Lumpur

(Selangor Criminal No. /58)  
(Kuala Lumpur Summons Case No.1 of 1958)

Public Prosecutor ... Appellant

vs.

Munusamy s/o Rasiah ... Respondent

NOTICE OF APPEAL

The President.  
Sessions Court,  
Kuala Lumpur.

10

TAKE NOTICE that the Public Prosecutor, Federation of Malaya, appeals to the High Court of the Federation of Malaya, against the order of the learned President given in Kuala Lumpur on the 27th January, 1958 whereby the Respondent was acquitted and discharged on a charge under section 182 of the Penal Code.

This appeal is against acquittal and discharge.

20

Dated this 31st day of January, 1958.

Sd: Ali bin Hassan

Deputy Public Prosecutor.

FILED THIS 1ST DAY OF FEBRUARY, 1958.

Sd: Vincent Das,  
Registrar/Magistrate.

S.A.R.  
Forwarded.

SD: VINCENT DAS.  
PRESIDENT, SESSIONS COURT,  
KUALA LUMPUR.

30

Fed.Co.FM.21/58.In the High  
Court

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

No. 9.  
R.M.4.(Selangor Criminal Appeal No. /58)  
(K.L. Summons Case No.1 of 1958)Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

PUBLIC PROSECUTOR

Appellant

vs

Munusamy s/o Rasiah

Respondent

18th February,  
1959.PETITION OF APPEAL10 The Hon'ble the Judge,  
Supreme Court,  
KUALA LUMPUR.

The humble petition of the Public  
Prosecutor, Federation of Malaya, sheweth as  
follows:-

1. On the 23rd and 27th of January, 1958,  
the Respondent abovenamed was tried before the  
learned President of the Sessions Court sitting  
at Kuala Lumpur on the following charges:-

20 "That you on or about the 16th May, 1957  
at Kuala Lumpur, in the State of Selangor,  
gave to a public servant namely Mr.  
Singaram, a permanent member of the Public  
Services Commission, an information,  
namely, that you have passed the School  
Certificate examination in 1949, which  
information you knew to be false  
intending there by to cause the said  
public servant to do a thing which such  
30 public servant ought not to have done  
if the true facts respecting such  
information was known to him to wit to  
recommend you for the appointment of  
Assistant Passport Officer in the  
Government Oversea Missions, and you did  
thereby commit an offence punishable  
under Section 182 of the Penal Code."

40 2. The learned President acquitted and dis-  
charged the Respondent without calling for his  
defence.

In the High  
Court

No. 9.  
R.M.4.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

18th February,  
1959.

3. The Petitioner is dissatisfied with the said Order of the learned President on the following grounds:-

(a) The Prosecution had made out the case against the Respondent on the charge before the Court which if unrebutted would warrant his convictions;

(b) The learned President erred in holding that Mr. Singaram was not a public servant on 16.5.57; 10

(c) The learned President misdirected himself on law on the meaning of the words "public servant" by directing his mind to the Service Commission Ordinance, 1957 and the Schemes of Service Rules, 1950, without regard to the definition of public servant as enumerated in section 21 of the Penal Code;

(d) The learned President having satisfied himself that the false information had been given to the three members of the Interviewing Board of which Mr. Singaram was one erred in holding that Mr. Singaram had not the power to recommend a candidate for appointment. 20

4. Your petitioner therefore prays that the said Order of acquittal and discharge be reversed and that the case be remitted to the learned President with an Order that the Respondent be called upon for his defence, or that such other Order may be made thereon as justice may require. 30

Dated this 20th day of February, 1958.

Sd: Che Ali bin Hassan,  
DEPUTY PUBLIC PROSECUTOR

FILED THIS 22ND DAY OF FEBRUARY 1958

Sd: Vincent Das  
Registrar/Magistrate.

40

FEDERATION OF MALAYA  
In the Sessions Court at Kuala Lumpur

Summons  
No.1 of  
1958

In the High  
Court

Charge Sheet

No. 9.  
R.M.4.

Munusamy s/o Rasiyah NRIC SL 087301

Address of accused: 202, Travers Road, Kuala Lumpur

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

Charge:

18th February,  
1959.

10 That you on or about the 16th May, 1957 at  
Kuala Lumpur in the State of Selangor, gave to a  
public servant namely Mr. Singaram, a permanent  
member of the Public Services Commission, an  
information, namely that you have passed the School  
Certificate examination in 1949, which information  
you knew to be false intending thereby to cause  
the said public servant to do a thing which such  
public servant ought not to have done if the true  
state of facts respecting such information was  
known to him to wit to recommend you for the  
20 appointment of Assistant Passport Officer in the  
Government Overseas Mission, and you did thereby  
commit an offence punishable under section 182 of  
the Penal Code.

Return date of Summons: 24.1.58

Date of issue of Summons: 18.1.58

Signature of issuing authority: Sd: M.M.Hashim

Name of complainant: Mahmood Hj. Nassir

Date of complaint : 30.12.57

Address of complainant: C.I.D. Headquarters,  
Bluff Road, Kuala Lumpur.

30 Date of first appearance: 23.1.58

Nationality of accused: Indian

Age of accused: 29

Prosecuting Advocate or officer: Jamal Singh A.S.P.

Defending Advocate: Rajasooria

Findings: See notes

Sentence and/or other order )  
and/or bond: ) See notes

Date of termination of proceedings: 27.1.58

Signed: Sd: M.M. Hashim.

In the High  
Court

(CRIMINAL PROCEDURE CODE)

(Section 133 F.M.S. Section 143 S.S.)

No. 9.  
R.M.4.

The Information and Complaint of A.S.P. Mahmood of C.I.D. Headquarters, Bluff Road, Kuala Lumpur, at 12.35 p.m. on the 10.1.58.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

18th February,  
1959.

On 21st February, 1957 one Munusamy s/o Rasiah @ Rasiah Munusamy, NRIC SL 087301 submitted an application for the post of Asst. Passport Officer in the Government Oversea Mission to the Secretary of the Public Services Commission, Kuala Lumpur through the Deputy Controller of Immigration, Mr. C.E. Hopkins. In the letter of application this Munusamy s/o Rasiah stated that he had passed his school certificate. The application was forwarded by Mr. C.E. Hopkins to the Controller of Immigration Mr. D.W. Bigley who in turn forwarded it to the Secretary to the Public Service Commission. The post applied by Munusamy s/o Rasiah required the School Certificate as qualification. On the strength of the claim made by him in his letter of application it was forwarded to the Secretary of the Public Service Commission by Mr. D.W. Bigley. He was called for interview. On or about 29th April 1957 this Munusamy s/o Rasiah was interviewed by the Interview Board to select candidates for the appointment. The chairman of the Interview Board was Mr. Singaram. He was aided by three other persons. The letter of application submitted by Munusamy was inspected by Mr. Singaram. Seeing that Munusamy claimed to have passed School Certificate he was then made to believe that Munusamy was eligible for the post. Munusamy s/o Rasiah was selected for the post of Asst. Passport Officer on the strength of the claim. His appointment was confirmed by the full commission and consequently Munusamy s/o Rasiah was posted to Malayan High Commissioner's office in Karachi as Assistant Passport Officer. It was later discovered that this Munusamy s/o Rasiah was not in possession of the School Certificate as claimed by him in the letter of application.

I pray that a summons be issued against this Munusamy s/o Rasiah to answer the charge under Section 182 of the Penal Code.

Signature of Magistrate and  
Seal of the Court, if any.

Sd: M.M.Hashim  
18.1.58

Signature:  
Sd: Mahmood.

IN THE SESSIONS COURT AT KUALA LUMPUR

KUALA LUMPUR SUMMONS CASE NO. 1 OF 1958.

NOTES OF EVIDENCE

In the High  
Court

No. 9.  
R.M.4.

21.1.58.

Rajasooria appears for defendant - asks evidence of Mr. Hopkins to be taken on 23rd instead of 24th as he (Mr. Rajasooria) will be leaving for Kota Bharu on 24th. Rajasooria undertakes to produce the defendant. A.S.P. Jamail will attempt to contact Mr. Hopkins.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

18th February,  
1959.

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To 23.1.58. 10 a.m. before Che Hashim.

Sd: Harun  
23.1.58.

23.1.58

Prosecuting Officer produces sanction (admitted P1)

To record the evidence of one witness today.

Sd: M.M. Hashim.  
23.1.58.

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23.1.58

CHARLES EDWARD HOPKINS affirmed states in English:-

Deputy Comptroller of Immigration, F. of M. Kuala Lumpur. I have held this post since 1953. I see the Defendant. In 1955 he was working as an Immigration Officer in the Kuala Lumpur Office. He worked under me for about 3 years. In 1957 February defendant applies for the post of Asst. Passport Officer in the Government Oversea Mission. I was shown a document. This was defendant's application (A for identification). (A shown to defence Counsel). By looking at A I can tell the Court that I received A on 21.2.57. I received A by hand direct from the defendant in my office in Kuala Lumpur. A was already signed by defendant when I received it. I am familiar with defendant's handwriting. The signature on A is that of the defendant. I forward A to the head of my department on the same day. My signature is on A (identified). To my personal knowledge I do not know whether

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In the High  
Court

No. 9.  
R.M.4.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

18th February,  
1959.

Cross-  
Examination

D2  
G.N.

D3  
G.N.747A

defendant has passed his School Certificate Examination. To my knowledge I do not know whether defendant has passed his Cambridge School Certificate. I know H.M. Robson. He is an Immigration Officer, indirectly under me. He also applied for the same post as Asst. Passport Officer. I forwarded his application to the head of my department. It was returned from my Head Quarters in Penang through me to Robson. I do not know why it was returned. It was returned because Robson was underqualified educationally. Robson was not in possession of a School Certificate.

10

Cross examined by Rajasooria: I did not employ defendant. Not my duty to see that members of staff are qualified educationally. For the post of Immigration Officer, the qualification is Standard 8. (Form IV). I have never seen any proof of defendant's qualifications. I personally do not know whether there is anything wrong in A. I have seen the Gazette Notification calling for candidates in respect of Asst. Passport Officers Overseas Mission. I am shown a copy of the Gazette Notification (admitted D2 - No. 506H). (Witness reads aloud (ii) of the G.N.). I did not ask members of my staff to apply whom I thought were qualified. Some of them inquired from me about the post. I did not recommend the defendant. I agree that if defendant has 5 years service and he possess a School Certificate he has fulfilled one of the conditions. I am shown a copy of G.N.747A dated 20.3.57 (admitted D3) reads aloud. I now look at D2. In D2 it says "who possess a School Certificate" and in D3 it says "hold Senior Cambridge Certificate of education."

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(Witness is released from further attendance - Rajasooria has no objection).

Adjourned to 27.1.58 at 11 a.m.

By consent. Sd: M.M. Hashim  
23.1.58.

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Court resumes: Parties as before.

Sd: M.M. Hashim.  
27.1.58.



Prosecuting Officer applies that the charge be amended in request of the date 29th April 1957 to 16th May, 1957. Rajasooria says he has nothing to say. Date amended accordingly. Case proceeds.

In the High Court

No. 9.  
R.M.4.

Sd: M.M. Hashim.  
27.1.58.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

P.W.2: MAHMOOD BIN HAJI NASSIR affirmed states in Malay :-

A.S.P. C.I.D. H.Q. Kuala Lumpur.

18th February,  
1959.

10 I am the Investigating Officer in this case. On 2.10.57 I received a document from T. Mori, Principal of M.B.S. Kuala Lumpur. (T. Mori called for identification). I produce the document (admitted 14). P4 is a detailed report University of Cambridge School Certificate Examination, December, 1949. On 8.11.57 I received 2 documents by post from D.W. Bigley (D.W. Bigley called for identification). I produce the 2 documents.  
20 I identify A as one of the documents - (A - P5 and the other document P6). On 15.1.58 I received a school leaving certificate from the defendant. I produce it. (Admitted P7).

P4  
Report of  
Commission

P5(A)  
School Leaving  
Certificate

(By consent cross examination reserved.  
Witness is asked to wait in the witness room).

P.W.3. DERICK WILLIAM BIGLEY affirmed states in English:-

30 Comptroller of Immigration, F of M. Penang. I have been the Comptroller since 1952. I know the defendant. Defendant was working under me after 1952. He is still working under me. I am shown P5. I received - P5 some time in February 1957. I forwarded it to the Secretary of the Public Service Commission, Kuala Lumpur. I minuted it and said forwarded. My minute is in P5. I am shown P6. I did not send P6 to the Secretary P.S.C. I sent his record of service which was in book form. I handed P6 and several other documents to P.W.2. I did not hand over P5 to P.W.2.  
40 When I forwarded P5 I was under the impression that defendant had passed School Certificate I have come across defendant's handwriting in the course of my work and his work. I look at P5. The signature of P6 is defendant's signature.

In the High  
Court

No. 9.  
R.M.4.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

18th February,  
1959.

Cross examined by Rajasooria: The present minimum qualification for Immigration Officer is Standard 8. I was not the Comptroller when defendant was taken into the department. I am shown P7 - I have not seen P7 before. Normally we would required the school certificate to be produced and not a school leaving certificate for an applicant. I would ask defendant to produce a certificate from his school to show he has passed Standard 8. I again look P7. I think the contents of P7 would satisfy me that defendant has passed his Standard 8 (Witness reads from P7 - "Standard at time of leaving - School Certificate class (Camb). Reason for leaving - graduated)." In my opinion the word "Graduated conveys to me that defendant has passed his school certificate examination. I would agree that the word "graduated" would convey the impression that the defendant has completed the course. It might be capable of other interpretations. I have known defendant for some time. I passed on to the P.S.C. 14 applications from members of my staff who were applying for the post of Asst. Passport Officer. All 14 did not have Cambridge School Certificates. Government were looking for persons with passport experience to work in the Malayan Overseas Mission. My department was the only department in Government which had persons experienced in passport work. It was decided that priority would be given to persons in the Immigration Department provided they were suitably qualified educationally. A few of the applicants from my department had not passed School Certificate by which I mean Senior Cambridge School Certificate but they had passed Standard 8, they had done a minimum of 5 years in the department and had passport experience. I therefore decided it was only fair to pass on their applications which were addressed to P.S.C. and not to myself. I did not ask the applicants to produce their certificates when I forwarded their applications. I look at D2. There is no mention of "Cambridge" in D2. I am shown D3. D3 states "Senior Cambridge Certificate of education". I made no recommendations in respect of all the candidates. Confidential reports was on their conduct and qualification. As far as I remember I gave defendant a satisfactory report. I think Machado an Asst. Comptroller of Immigration sat on the Board. I don't know where the P.S.C. Works.

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No re-examination:

(Witness is released from further attendance).

In the High  
Court

P.W.4. TO MORI affirmed states in English :

No. 9.  
R.M.4.

Principal, M.B.S. Kuala Lumpur.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

18th February,  
1959.

10 I have been the Principal since 1955. I have been  
a teacher since 1931, after my graduation. On  
2.10.57 I gave P4 (identified) to P.W.2. I look  
at defendant. I know him. He was a pupil studying  
under me in 1949 in the School Certificate Senior.  
He sat for his Cambridge School Certificate  
examination in December 1949. According to the  
results we received he did not pass this examina-  
tion. I am shown P4. According to P4 defendant  
failed in all his subjects and the overall result  
is "R" meaning that he did so badly in his  
examinations that even if he wanted to sit for the  
same examination the following year as a private  
candidate he had to pass a qualifying examination  
in the English Language. I look at P7. P7 is a  
20 school leaving Certificate given to a pupil  
leaving school irrespective of the class he was  
in. According to P7 defendant left the school  
after completing a year's course in the School  
Certificate Class of the School. The holder of  
P7 cannot say he has passed the School Certificate.  
I think the word "graduated" in P7 is not the  
proper word to use. It is a loose terminology. I  
would construe it to mean that the student  
completed his school career in the school. I look  
30 at D2 and D3. I look at the words "School Certi-  
ficate" and "Senior Cambridge Certificate of  
education". In my opinion the 2 expressions are  
ambiguous but I would construe both to be Cambridge  
Overseas School Certificate Examination conducted  
by Cambridge Examination Syndicate.

40 Cross examined by Rajasooria : I graduated as a  
teacher in 1951 from Raffles College with a  
diploma not a degree. "Graduated" means success-  
fully completed a course of education of a  
prescribed syllabus. The syllabus in our Cambridge  
School Certificate class is prescribed by the  
Cambridge Syndicate. Secondary course of education  
starts from Standard I to Standard 9 when it is  
completed. Principal who signed P7 was H.F.Clancy.  
I have known him for several years. He was a  
graduate of a Canadian University. We have a  
weeding out examination before the Cambridge School  
Examination in the middle of the year before the

Cross-  
Examination

In the High  
Court

No. 9.  
R.M.4.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

18th February,  
1959.

applications are sent to Cambridge. We have another or dress rehearsal in November. Normal objective to allow only those who pass this dress rehearsal examination to sit for the proper examination. I cannot recollect whether defendant was suffering from malaria during the examination week December, 1949. We have a teacher Lloyd Jayatilleke. I cannot remember whether L.J. was a invigilator in December 1949. By reading P7 I would construe it to mean insufficient evidence of his ever having passed his school certificate examination. I would definitely not have given a certificate as in P7 to the defendant with the word "graduated" without seeing the copy of the Cambridge School Certificate Examination results. I agree that P7 is ambiguous. A layman would take P7 to mean the holder as having passed his School Certificate. At present we have Federation School Certificate, High School Certificate of Examination and lower School Certificate Education. Defendant was an all round athlete. P7 is outstanding in respect of sports only and student leader.

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No re-examination:

(Witness is released from further attendance).

Adjourned to 2.30 p.m.

Sd: M.M. Hashim.  
27.1.58

Court resumes. Parties as before

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Sd: M.M. Hashim.  
27.1.58

Prosecuting Officer applies that P.W. 3 be recalled.

Granted.

Sd: M.M. Hashim.  
27.1.58.

P.W.3  
recalled

P.W.3: D.W. Bigley (on former oath) states in English:-

Examined by Prosecuting Officer. I am shown P5. It was sent by me to the Police by post. P.S.C. returned the applications of the successful applicants to me and among them was P5. P 5 was

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in my possession until I sent it to the Police on 6.11.57 by post.

In the High Court

Cross examined by Rajasooria : I discovered this after giving my evidence this morning after going through my file.

No. 9.  
R.M.4.

P.W.5. K. SINGARAM : affirmed states in English:-

Member of P.S.C. Kuala Lumpur.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

10 On 16.5.57 I was a member of the Interview Board to interview candidates who had applied for the post of Asst. Passport Officers Federation Overseas Mission. I look at defendant. I know him. On that day defendant was one of the candidates. The applications were short listed from 260 to 48. Recommended that the 48 should be serving Government Officers with a minimum service of 5 years and a School Certificate. An interview board was constituted on 16.5.57, 17.5.57 and 18.5.57. I was the interviewing member on the 16th May with Raja Haji Ahmad was Chairman of the Board and Mr. Hooker of the Ministry of External Affairs as the 20 3rd member Board. Machado was the member in attendance. He was from Immigration Department and he was there to advise us. Raja H. Ahmad did not attend the Board on 17th and 18th through illness and I took over the chairmanship and completed the report. I am shown P5 (Witness reads it). I read P5 at the time I interviewed the defendant. At the time I interviewed the 30 defendant I made notes on the marked sheet. P5 is not stated in my notes as having been seen by me. The ref. No. 75 in P5 appears in my marked sheet: (Witness is allowed to refresh his memory from his notes). Defendant showed a birth certificate to members of the Board and when the certificate came to me I took down particulars of his birth. A school certificate was produced showing that he got a Grade III in 1949 with credit in geography and mathematics. I am shown P7. I cannot positively say I saw P7 on the 16th May. 40 If he had not possessed a School Certificate he would not have qualified for the competition. I made notes from that certificate. Defendant produced that certificate. All documents returned to the candidates there and then.

18th February,  
1959.

Cross examined by Rajasooria The date of the interview is not on the marked sheet which has my

Cross-  
Examination

In the High Court

No. 9.  
R.M.4.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

18th February,  
1959.

notes. Defendant must have turned on one of the 3 days. I can say positively that I was not the chairman when defendant was interviewed. The duty of the interviewing board is only to recommend the candidates for appointment to the full commission. Members of the interviewing board have the power only to recommend and not to select candidates for appointments. The preliminary board check the applications and see that the applications conform to the requirements of the advertisement. Not possible for me to make notes in respect of the wrong person. When an applicant enters the room he hands his papers to one of the 3 members. I maintain that all the documents produced by a candidate are read by all the 3 members of the board. In this particular competition the candidate had to produce a school certificate. I must have seen the school certificate to make these notes. Not possible for me to make notes from information from the other members. I cannot be sure I saw a Cambridge School Certificate. Candidates do sometimes leave their certificates behind in their excitement.

10

20

No re-examination by Prosecuting Officer.

P.W.6: ALFRED SYLVESTER MACHADO affirmed states in English.

Asst. Comptroller of Immigration, Kuala Lumpur. I know the defendant. He was working under me in 1957 as Immigration Officer. On 16.5.57 I was the departmental representative on the Board. Defendant was interviewed on that day. I believe defendant showed some documents at the interview. I cannot remember what documents defendant showed at the interview. The documents produced by defendant were passed round to the members of the Board.

30

Cross-  
Examination

Cross examined by Rajasooria: Defendant came up for interview on 16.5.57. I cannot remember how many candidates were interviewed on 16.5.57, nor their names. I cannot remember the name of any other candidates who was interviewed on 16.5.57. I got the particulars of defendant's appearance before the board on 16.5.57 from my departmental records. I refreshed my memory from the records sometime ago. Records with the Comptroller in Penang. I have seen the records of the P.S.C.

40

I was shown the extract by P.W. 5 about 5 days ago. I cannot remember all the circumstances in respect of the interview by the Board.

In the High Court

No re-examination:

No. 9.  
R.M.4.

P.W.7: HENRY MATHEW ROBSON: affirmed states in English:-

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

Immigration Officer, Padang Besar.

10 In February 1957 I applied for a post of Asst. Passport Officer. I was not called for interview because I was not qualified.

18th February,  
1959.

No question by Rajasooria:

Prosecuting Officer states he has no more witness to call.

Rajasooria states he does not wish to cross examine P.W.2.

Prosecuting Officer makes an application to alter the charge in that the word "select" be altered to "recommend". Granted.

CASE FOR PROSECUTION.

20 Rajasooria addresses Court - no case to answer - is it an offence to recommend - comments on "information" no evidence on information. Comments on "School Certificate".

FINDING:

Acquitted and discharged.

Sd: M.M. Hashim  
27.1.58

TRUE COPY.

30 Sd:  
President Sessions Court,  
Kuala Lumpur.

In the High  
Court

IN THE SESSIONS COURT AT KUALA LUMPUR

SUMMONS CASE NO. 1 OF 1959.

No. 9.  
R.M.4.

FOUNDATIONS OF JUDGMENT.

Proceedings  
in Summons  
Case No. 1  
of 1958.  
(continued)

The defendant was charged under Section 182 of the Penal Code in that he on 16th May 1957 gave false information to a Public Servant, a Mr. Singaram of the Public Services Commission, namely he, the defendant possessed a School Certificate.

18th February,  
1959.

2. The facts as presented by the prosecution would appear to be as follows :-

10

- (a) The defendant was employed as an Immigration Officer.
- (b) He applied for the post of Asst. Passport Officer in the Federation Oversea Service.
- (c) One of the qualifications was that the applicant had to possess a "School Certificate."
- (d) The defendant was interviewed by the Interviewing Board on 16.5.57.
- (e) The members of the Board were Raja Haji Ahmad, the Chairman, Mr. Singaram and a Mr. Hooker.
- (f) In the course of the interview Mr. Singaram took brief notes. Incidentally as these notes were not dated they were not conclusive proof that the interview took place on 16.5.57.

20

The interviewing Board interviewed candidates on 16th, 17th and 18th May. Furthermore the notes were not clear from what source or sources certain information concerning the defendant had been obtained.

30

- (g) The defendant was successful.
- (h) Later it was discovered that defendant had not passed his Senior Cambridge Examination. The prosecution wanted the Court to assume that "School Certificate" was synonymous to Senior Cambridge Certificate.



3. The prosecution therefore contended he gave false information on 16.5.57 to Mr. Singaram.

In the High  
Court

4. Now the Court had to decide :-

No. 9.  
R.M.4.

(a) Whether Mr. Singaram was a public servant on 16.5.57.

(b) The false information was given to Mr. Singaram.

(c) That Mr. Singaram acted with authority on receiving such information.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

18th February,  
1959.

10 5. The Public Services Commission was constituted under the Service Commission Ordinance 1957 and came into force on 31.8.57. Under Section 8 of this Ordinance the members of a Commission are deemed to be public servants. Section 5 of the Ordinance makes it an offence for any applicant to give false information to any member of the Commission. This Ordinance is subject to the provisions of Article 7 of the Constitution. Article 7 of the Constitution provides for the protection of any person against retrospective criminal laws and repeated trials. With the greatest respect I think the Public Services Commission was not legally constituted on 16.5.57, and therefore it could not be said that Mr. Singaram was a public servant on that day. Before this commission commenced to function I believe we had Selection Boards under Rule 5 of the Schemes of Service 1950, Federation of Malaya. Even under this Rule there is no mention that a member of the Board is deemed to be a public servant. Incidentally I do not know whether the Court can take judicial notice of these Rules. I therefore held that Mr. Singaram was not a public servant on 16.5.57.

40 6. The original charge was that as a result of the defendant giving such information Mr. Singaram selected the defendant for the appointment of Asst. Passport Officer. Now Mr. Singaram has clearly stated in his evidence that the Interviewing Board of which he was one of the 3 members had no power to select but to recommend. The charge was then amended by deleting the word "Select" and substituting the word "recommend". Even then I held that the defendant did not give the alleged false information to Mr. Singaram alone but to the 3 members of the Interviewing

In the High  
Court

No. 9.  
R.M.4.

Proceedings  
in Summons  
Case No. 1  
of 1958  
(continued)

1 8th February,  
1959.

Board. I also held that Mr. Singaram as Mr. Singaram had not the power to select or recommend but that his power was vested on the Board as a whole. I therefore held that the prosecution had not proved its case at all and I acquitted and discharged the defendant without calling on his defence.

Sd: M.M. Hashim.

PRESIDENT SESSIONS COURT,  
KUALA LUMPUR.

13.2.58.

10

No. 9.  
R.M.5.

Judgment in  
Criminal Appeal  
No. 11 of 1958

1st May, 1958

No. 9 - R.M.5.

JUDGMENT IN CRIMINAL APPEAL NO.11  
OF 1958

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

CRIMINAL APPEAL NO. 11 OF 1958.

PUBLIC PROSECUTOR  
(Ali bin Hassan)

.. APPELLANT

vs.

MUNUSAMY s/o RASIAH.  
(R.P.S. Rajasooria).

.. RESPONDENT.

20

J U D G M E N T

The respondent was tried before the Sessions Court upon the following charge :-

"That you on or about the 16th May, 1957 at Kuala Lumpur, in the State of Selangor, gave to a Public Servant namely Mr. Singaram, a permanent member of the Public Services Commission, an information namely, that you have passed the School Certificate examination in 1949, which information you knew to be false intending thereby to cause the said public servant to do a thing which such public servant ought not to have done if the true state of facts

30

respecting such information was known to him to wit to recommend you for the appointment of Assistant Passport Officer in the Government Oversea Missions, and you did thereby commit an offence punishable under Section 182 of the Penal Code".

In the High  
Court

No. 9.  
R.M.5.

The facts alleged were as stated in the charge and were given to Mr. Singaram as interviewing officer of the Interview Board of the Public Services Commission (designate).

Judgment in  
Criminal  
Appeal No.11  
of 1958.  
(continued)

10

At the close of the prosecution case the learned President acquitted and discharged the respondent without calling upon him for his defence. Against the acquittal the Public Prosecutor has appealed.

1st May, 1958.

The learned President in his grounds of judgment held that Mr. Singaram was not a public servant for the purpose of Section 182 of the Penal Code. I am in agreement with the learned President for the reasons following :

20

For the purposes of section 182 of the Penal Code the definition of "public servant" is to be found in section 21 of the Code. The learned Deputy argues that Mr. Singaram is an "Officer in the Service .... of Government ...." as set out in the ninth description in section 21 of the Code. Local authority on the meaning of "public servant" is not abundant the decided cases dealing with the position of temporary Government servants.

30

The learned author of Ratanlal, 18th edition, at page 45 has this to say of the word "officer" appearing in clause 9 of section 21 of the Indian Code which is in pari materia with ours :-

" 'Officer' - This word means a person employed to exercise to some extent a delegated function of Government, he must be either himself armed with some authority or representative character, or his duties must be immediately auxiliary to those of some one who is so armed. It means a functionary or holder of some official or office however humble, to whom in some degree are delegated certain functions of Government."

40

In the High  
Court

No. 9.  
R.M.5.

Judgment in  
Criminal  
Appeal No.11  
of 1958  
(continued)

1st May, 1958.

So far as the evidence before the Court is concerned it appears that Mr. Singaram was on 16th May, 1957, a member of an Interview Board. The Court was not told by whom he was appointed. There was, however, before the Court a gazette notification which made it clear that applicants for the post of Assistant Passport Officer for the Federation Overseas Mission were to be interviewed by the "Public Service Commission (designate)". It would appear, therefore, that Mr. Singaram was a member of an Interview Board of the Public Services Commission (designate). The duty of this Board was to recommend candidates to the full Commission. We are not told who made the final appointment - the Commission or the High Commissioner. I cannot see that any functions of Government was exercised.

10

No provision of law was quoted to me under which the appointment was made and I assume therefore that members of the Interview Board had not been formally constituted Public Officers under clause 14(1) of the Federation of Malaya Agreement, 1948. There was no evidence before the Court that Mr. Singaram received any pay, remuneration or commission for the services which he rendered.

20

The word "officer" in section 21 of the Penal Code is not specifically defined. It is to be noticed that a distinction is drawn between "every person" and "every officer". The word "officer" though not defined specifically in the Penal Code is defined in section 2(1)(59) of the Interpretation and General Clauses Ordinance, 1948, in the following terms :-

30

"In every written law..... the following words and expressions shall..... have the meanings hereby assigned to them respectively, unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided."

40

(59) "Officer" and "public officer" mean a person in the permanent or temporary employment of any Government in the Federation, and any person employed or deemed to be employed by the Railway Administration under the provisions of the Railway Ordinance, 1948."

That definition appears to me to imply definite emoluments of some kind by the use of the word "employment". This also appears to me to be the sense in which the word "officer" is used in the ninth description in section 21 of the Penal Code - "every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty."

In the High  
Court

No. 9.  
R.M.5.

Judgment in  
Criminal  
Appeal No.11  
of 1958  
(continued)

1st May, 1958.

10 It was urged by the learned Deputy that Mr. Singaram was in the position of a public servant as visualised in Explanation 2 to section 21 of the Penal Code. Explanation 2 reads as follows:-

"wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

20 I cannot agree with the learned Deputy's argument. Explanation 2 appears to me to cover the case of a person who performs the duties of a public servant even though there may be some technical defects in his appointment. To quote again the learned author of Ratanlal, page 47:-

30 "According to this Explanation the person who in fact discharges the duties of the office which bring him under some one of the descriptions of public servant, is for all purposes of the Code rightfully a public servant, whatever legal defect there may be in his right to hold the office. The absence of a formal appointment is immaterial where a person is in actual possession of a situation as a public servant".

It is to be noted that the Services Commission Ordinance, 1957 which came into force on 31st August, 1957 has the following express provision in section 8 :-

40 "Every member, officer and servant of a Commission shall be deemed to be a public servant within the meaning of the Penal Code."

This is some indication that the status of members of the Public Services Commission must

In the High  
Court

have been considered to be in some doubt without such an express provision.

No. 9.  
R.M.5.

Judgment in  
Criminal  
Appeal No.11  
of 1958  
(continued)

1st May, 1958

Although the Court was not told the reason for the appointment of the Interview Board, I think it is reasonable to deduce from the composition of the Interview Board i.e. 2 unofficials and 1 official, that the object of having 2 unofficials on the Board was to obtain a completely impartial recommendation and that the very reason for Mr. Singaram being on the Board was that he was in no way connected with the public service.

10

I am of opinion that by reading section 21 of Penal Code with the definition in section 1 of the Interpretation and General Clauses Ordinance, 1948, the expression "every officer in the service of Government" means an officer employed by Government and that the word "employed" clearly indicates some kind of monetary reward for the service rendered. There was no evidence that Mr. Singaram was remunerated in any way, and there was no prima facie evidence that he was on or about 16th May, 1957 a public servant by virtue of his being a member of an Interview Board of the Public Services Commission (designate). He certainly was not "a permanent member of the Public Services Commission" in May, 1957 as stated in the charge, since at that time there was no Public Services Commission.

20

The appeal is accordingly dismissed.

30

(Signed) B.G. Smith.  
Judge.

SUPREME COURT,  
FEDERATION OF MALAYA.

Kuala Lumpur.  
1st May, 1958.

Judgment delivered 5.5.58.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

40

Between

Rasiah Munusamy

... Applicant

And

The Public Services Commission ... Respondent

This is the exhibit marked "RM-5" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:

Commissioner for Oaths.

SUPPLEMENT TO MALAYA GOVERNMENT  
GAZETTENo. 9.  
R.M.6.SUPPLEMENT TO FEDERATION OF MALAYA GOVERNMENT  
GAZETTE  
FEDERAL.Supplement  
to Malaya  
Government  
Gazette

28TH March, 1957.

365A.

FEDERAL GOVERNMENT VACANCIES AND NOTICES.28th March,  
1957.

10 STUDY LEAVE TO TWO YEARS IN PREPARATION  
FOR THE SISTER TUTORS DIPLOMA OF THE  
UNIVERSITY OF LONDON.

No. 747A. - Applications are invited from suitably  
qualified candidates to take the above course of  
study in the United Kingdom.

Before entering for the course of study  
students must :

- 20 (i) Be registered in the General Part of  
the Register for Nurses, Federation  
of Malaya or a Register recognised  
by the Board;
- (ii) Hold a recognised Midwifery Certificate:  
(female nurses only).
- 30 (iii) Have undergone since qualification as  
a nurse at least four years experience  
in Nursing (including Midwifery  
training) of which at least one year  
has been spent as a Sister (or in the  
case of male nurses as a charge nurse)  
in charge of a ward in which student  
nurses are trained;
- (iv) Hold Senior Cambridge Certificate of  
education or equivalent certificate  
with a pass in general science.

Applications must reach the Secretary, the  
Public Service Commission, Young Road, Kuala Lumpur  
by 6th April, 1957.

Applications from candidates employed in  
Government Service must be forwarded to the  
Secretary, Public Service Commission, through the

In the High  
Court

No. 9.  
R.M.6.

Head of Department and must be accompanied by Confidential Report on Gen. 315 or F.E.O. 77 together with record of service. Selection will be by the Public Service Commission (Health 2103).

Supplement  
to Malaya  
Government  
Gazette  
(continued)

28th March,  
1957.

STUDY LEAVE OF ONE ACADEMIC YEAR IN  
PREPARATION FOR THE HEALTH VISITOR  
TUTORS CERTIFICATE OF THE ROYAL  
COLLEGE OF NURSING, LONDON.

No. 747B. - Applications are invited from suitably qualified candidates to take the above Course in the United Kingdom. 10

Before entering the course of study students must :

- (i) Be registered in the General Part of the Register for Nurses, Federation of Malaya or a Register recognised by the Board;
- (ii) Hold a recognised Midwifery Certificate;
- (iii) Hold a Health Visitor's Certificate recognised by the Royal Society of Health, London; 20
- (iv) Have had at least three years' experience as a Health Sister or Health Nurse since qualification as a Health Visitor;
- (v) Hold the Senior Cambridge Certificate or its equivalent.

Candidates who do not hold a recognised Certificate of general education may be required to sit an entrance test. 30

Applications must reach the Secretary the Public Service Commission, Young Road, Kuala Lumpur, by 6th April, 1957.

Applications from candidates employed in Government Service must be forwarded to the Secretary Public Service Commission through the Head of Department and must be accompanied by Confidential Report on Gen. 315 or F.E.O. 77



together with record of service. Selection will be by the Public Service Commission (Health 2105).

In the High Court

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

No. 9.  
R.M.6.

Originating Motion No. 1959  
Between  
Rasiah Munusamy Applicant  
vs.

Supplement to Malaya Government Gazette (continued)

10

The Public Service Commission Respondent

28th March, 1957.

This is the exhibit marked "RM.6" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:

Commissioner for Oaths.

No. 9. - R.M.7.

No. 9.  
R.M.7.

LETTER, R. MUNUSAMY TO SECRETARY, PUBLIC SERVICE COMMISSION

Letter - R. Munusamy to Secretary, Public Service Commission

20

Rasiah Munusamy,  
Immigration Office,  
KUALA LUMPUR.

21st February, 1957.

21st February, 1957.

The Secretary,  
Public Service Commission (Designate)  
Young Road,  
KUALA LUMPUR.

30

Through the  
The Controller of Immigration,  
Federation of Malaya,  
Penang.

Thro:  
The Proper Channel.

Dear Sir,

I have the honour to apply for the post of Assistant Passport Officer for service in the Federation of Malaya Government Oversea Mission

In the High  
Court

as per your advertisement in the Malay Mail dated  
19th February, 1957.

No. 9.  
R.M.7.

Letter -  
R. Munusamy  
to Secretary  
Public Service  
Commission  
(continued)  
21st February,  
1957.

I am a local born Indian aged twenty  
eight and am a Federal Citizen. I have passed  
my School Certificate and have been in Govern-  
ment Service for the past seven years. I can  
speak Malayalam, Maly and can read and write  
Tamil. I am single.

I am now serving as an Immigration  
Officer Grade One at Kuala Lumpur. When I was  
stationed in Penang in 1951, I was attached to  
the Passport section. I have since joining the  
Immigration Department, spent Five out of six  
years service put in either at Penang or Kuala  
Lumpur where there are Passport Offices and I  
have had experience in dealing with enquiries  
regarding passports.

10

I should be grateful for your kind and  
favourable consideration of this application.

I have the honour to be,  
Sir,  
Your obedient servant,

20

Sd: Rasiah Munusamy.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

Between

Rasiah Munusamy

Applicant

and

The Public Services Commission

Respondent

30

This is the exhibit marked "RM-7" referred to in  
the affidavit of Rasiah Munusamy affirmed before  
me this 7th day of April, 1959.

Sd:

Commissioner for Oaths.

89.

No. 9. - R.M.8.

LETTER - DEPUTY CHIEF SECRETARY  
TO R. MUNUSAMY

In the High  
Court

No. 9.  
R.M.8.

Chief Secretary's Office,  
Kuala Lumpur,  
Malaya.

Ref: CSO.58/28

Letter -  
Deputy Chief  
Secretary to  
Rasiah  
Munusamy

21st August, 1957.

21st August,  
1957.

Sir,

10 I am directed to inform you that you have  
been selected for appointment as a Assistant  
Passport Officer in the External Affairs Service.  
The date of appointment will be the date of your  
embarkation for your overseas post and the  
appointment will extend for a period of 3 years  
in the first instance.

2. The appointment is on the scale \$516-A19-  
592 per mensem and your salary on appointment will  
be \$516 p.m.

20 3. In addition to your salary you will  
receive:-

(a) An oversea Allowance in lieu of  
Malayan Cost of Living Allowance when  
abroad. This will vary and will be  
calculated to allow for the difference  
in the Cost of Living Allowance of the  
country in which you are posted. This  
allowance will be payable with effect  
from the date of your embarkation.

30 (b) One free Tourist Class passage to and  
from your oversea post once during  
the period of your appointment.

(c) An Outfit allowance as appropriate.

(d) Free medical attention but ward charges  
will be debited to your account subject  
to the maximum for which you would have  
been liable had you been in service in  
the Federation. Cost of dental will  
be to your own account.

40 (e) Free Board and lodging for 3 days after  
arrival in your duty station and there-

In the High  
Court

No. 9.  
R.M.8.

Letter -  
Deputy Chief  
Secretary to  
Rasiah  
Munusamy  
(continued)  
21st August,  
1957.

after furnished accommodation or an allowance equal to cost of hotel rooms or if such division is not possible 45% of inclusive hotel charges for board and lodging, exclusive of personal bills.

(f) Cost of Living Allowance at standard rates during periods spent in Malaya. The oversea allowance is payable only during service outside Malaya.

10

4. You will be required to serve a probationary period of one year from the date of your appointment and subject to your work and conduct being satisfactory you will be eligible for confirmation in your appointment at the end of this period.

5. Further details in relation to subsistence allowance payable while on duty and leave conditions will be communicated to you in due course.

6.\* I am to enquire if you accept appointment on the Terms and Conditions stated above.

20

I am, Sir,  
Your obedient servant.

Sd: N.G.A.Hooker.

for DEPUTY CHIEF SECRETARY.

Mr. R. Munusamy  
Through Dy. Controller of Immigration,  
Selangor,  
Kuala Lumpur.

c.c  
Controller of Immigration,  
Federation of Malaya,  
Penang.

30

Secretary,  
Public Service Commission (Designate)  
Young Road, Kuala Lumpur.

Accountant General.  
C.S.986/57

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR

Originating Motion 1959 No.

40

Between

Rasiah Munusamy

Applicant

and

The Public Service Commission

Respondent

This is the exhibit marked "RM.8" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:

Commissioner for Oaths.

No. 9. - R.M.9.

In the High Court

LETTER - CONTROLLER OF IMMIGRATION TO  
R. MUNUSAMY

No. 9.  
R.M.9.

IMM/C/PER/177

10th February, 1958.

Mr. R. Munusamy.

Through

The Dy. Controller of Immigration,  
Kuala Lumpur.

Letter -  
Controller of  
Immigration  
to R.Munusamy

10th February,  
1958.

Sir,

10

I am directed to inform you that you are interdicted from duty on half monthly emoluments with effect from 24th January 1958: authority P.S.C. 2702/3/2 dated 25th January, 1958.

2. Your interdiction is in connection with the criminal proceedings which were instituted against you which are, I understand, still sub-judice in view of an appeal having been lodged.

20

3. The reason you have not been officially informed of your interdiction previously is because it was thought that the Ministry of External Affairs had informed you.

I am,  
Your obedient servant,  
Sd: D.W.Bigley  
Controller of Immigration,  
Federation.

c.c Dy Controller of Immigration,  
Kuala Lumpur.

30

Permanent Secretary,  
Ministry of External Affairs (Mr.Hooker)  
Kuala Lumpur.

EA.0.2/52 dated 24th January, 1958 refers.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.  
Originating Motion 1959 No.

Between  
Rasiah Munusamy Applicant  
and  
The Public Service Commission Respondent.

40

This is the exhibit marked "RM-9" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd: Commissioner for Oaths.

In the High  
Court

No. 9. - R.M.10.

LETTER - PUBLIC SERVICES COMMISSION  
TO R. MUNUSAMY.

No. 9.  
R.M.10.

Letter - Public  
Services  
Commission to  
R. Munusamy

23rd May, 1958.

Tel: No. 88984/5 Ext. PUBLIC SERVICE COMMISSION  
Telegraphic Address YOUNG ROAD  
Sercoms Kuala Lumpur KUALA LUMPUR  
Our Reference:  
PSC/2702/3/20 23rd May, 1958.  
Your Reference:

CONFIDENTIAL

10

Sir,

Probationary Appointments as Assistant  
Passport Officer, External Affairs  
Service

I am directed to refer to Chief  
Secretary's Office letter under reference  
C.S.O.58/28 dated the 21st August, 1957  
notifying you of your selection for the above  
mentioned post and also to your acceptance of  
the appointment.

20

2. I am to say that it has come to the  
knowledge of this Commission that you have not  
passed the School Certificate required as claimed  
by you and that you are therefore under-qualified  
for the appointment. After due consideration  
of the circumstances and of the necessity to  
maintain the standards of the External Affairs  
Service and in fairness to other properly  
qualified candidates and appointees, it has  
been decided to terminate your appointment as  
Assistant Passport Officer, External Affairs  
service on probation, with effect from the date  
of this letter.

30

3. You will revert to your former post in  
the Immigration Department on the terms and  
conditions under which you were serving before  
appointment to the External Affairs Service.

I am, Sir,  
Your obedient servant,  
Sd: J.R.H. Chalmers,  
for Secretary.

40

PUBLIC SERVICES COMMISSION

Mr. R. Munusamy,  
Through: The Controller of Immigration,  
Penang.

Sd: D.W. Bigley,  
Controller of Immigration,  
Federation of Malaya,  
May 24 1958.

In the High  
Court

No. 9.  
R.M.10.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

Between

Rasih Munusamy Applicant

and

The Public Services Commission Respondent.

Letter - Public  
Services  
Commission to  
R. Munusamy  
(continued)

23rd May, 1958

This is the exhibit marked "RM.10" referred to in  
the affidavit of Rasiah Munusamy affirmed before  
me this 7th day of April, 1959.

Sd:

Commissioner for Oaths.

No. 9. - R.M.11.

No. 9.  
R.M.11.

LETTER - R.P.S. RAJASOORIA TO SECRETARY,  
PUBLIC SERVICES COMMISSION.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission.

28th May, 1958.

20 Dato R.P.S.Rajasooria J.P. 15, Weld Road,  
BAR AT LAW (MIDDLE TEMPLE) Kuala Lumpur.

Advocate & Solicitor 28th May, 1958.  
and Commissioner for Oaths.

RPSR/Gds/58

The Secretary,  
Public Services Commission,  
Young Road,  
Kuala Lumpur.

Sir,

30 I have been handed your letter addressed  
to Mr. R. Munusamy whose last appointment was  
Assistant Passport Officer in Karachi, Pakistan,  
with instructions to reply thereto in my capacity  
as his counsel who defended him in a criminal  
case (trial) for false declaration and in the  
subsequent appeal against his acquittal in the  
Supreme Court. Paragraph 2 of your letter appears  
to have been written under a misapprehension of  
the result of the Criminal Trial. For your

In the High  
Court

No. 9.  
R.M.11.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission.  
(continued)  
28th May, 1958.

information Mr. R. Munusamy was acquitted and discharged without his defence being called upon and the appeal of the Public Prosecutor against the acquittal was dismissed. The result being that the Court of Competent Jurisdiction has found Mr. R. Munusamy not guilty of any offence of false declaration whatsoever.

I was not aware that the Public Service Commission can find an officer guilty of an offence where the Court has found him innocent. 10

If the Commission did not act properly or with due diligence I regret to say that it has no power to penalise an officer when the Government has chosen to bring him down by air against doctor's orders and have him charged in Court and then appeal against his acquittal where again his innocence was ratified once and for all.

If my knowledge of General Orders serves me right no disciplinary action can be taken on the same charge on which an officer is tried in Court. Vide Reg. 44 of the Public Officers (Conduct and Discipline) Reg. 1956. 20

I have advised my client Mr. R. Munusamy that your letter is ultra vires and that he has a cause of action against Government. The principal ground being that there is a binding contract between him and the Government of the Federation where he was offered the appointment after full exhaustive interview by your Board and he accepted the offer and he assumed duties in Karachi. If you have not perused a copy of the judgment of His Lordship Justice B.G. Smith I shall send you one. I am however enclosing a copy of Mr. Bigley's evidence in Court and it speaks for itself. 30

My client should not be made a scape goat for loosely worded ambiguous Gazette notifications calling for applications for Assistant Passport Officers and for other remissness on the part of responsible officers. A perusal of the Judgment and notes of evidence of officers in the Immigration Department in Court will enlighten you on the reason for those very officers wishing to have Mr. R. Munusamy hounded and cajoled into accepting a 40



subordinate appointment carrying half the salary than the one in which His Excellency the High Commissioner for Malaya in Pakistan found him fit to hold office as Passport Officer.

In the High Court

No. 9.  
R.M.11.

I have in my possession copies of letters from His Excellency as to the capabilities of Mr. R. Munusamy. Other Officers with 8th Standard qualifications have been appointed to the post of Assistant Passport Officers.

Letter - R.P.S. Rajasooria to Secretary, Public Services Commission (continued)

28th May, 1958.

10

If justice and fairplay is not shown to my client I will have to ask my client to look to the Courts of this Country for it.

Yours faithfully,  
Sd: R.P. Rajasooria.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
Originating Motion 1959 No.  
Between

20

Rasiah Munusamy .. Applicant  
And  
The Public Services Commission. .. Respondent.

This is the exhibit marked "RM-11" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:  
Commissioner for Oaths.

No. 9. - R.M.12.

LETTER - SECRETARY PUBLIC SERVICES COMMISSION  
TO R.P.S. RAJASOORIA

No. 9.  
R.M.12.  
Letter - Secretary, Public Services Commission to R.P.S. Rajasooria

30

Public Services Commission,  
Young Road,  
Kuala Lumpur.

P.S.C. 2702/3/23

7th June, 1958.

Sir,

7th June, 1958.

I am directed to refer to your letter under reference RPSR/GDS/58 dated the 28th May.

40

2. I am to request you to refer to paragraph 2 of the letter dated the 23rd May addressed to Mr. Munusamy. You will note that Mr. Munusamy's appointment was on probation until 24th August,

In the High Court

No. 9.  
R.M.12.

Letter -  
Secretary,  
Public  
Services  
Commission  
to R.P.S.  
Rajasooria  
(continued)

7th June,  
1958.

1958 and has been terminated, not on the grounds of the charge in the Court case but on the grounds that Mr. Munusamy is not eligible for confirmation in the appointment because he has not passed the Senior Cambridge School Certificate, the standard which was demanded of the candidates by the Scheme of Service and obtained from the other successful candidates. No question of disciplinary action arises in these circumstances and your client reverts to his former post.

10

3. I am therefore to say that it is not considered that your client has any grounds for complaint.

I am, Sir,  
Your obedient servant,  
Sd: Hashim Mat Dris.

Ag. Secretary, Public Services Commission.

Dato R.P.S. Rajasooria, J.P.,  
Bar.at.law (Middle Temple).  
Advocate & Solicitor and Commissioner for Oaths,  
15 Weld Road,  
KUALA LUMPUR.

20

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR

Originating Motion 1959 No.

Between  
Rasiah Munusamy  
And  
The Public Services  
Commission  
Applicant  
Respondent.

30

This is the exhibit marked "RM-12" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:  
Commissioner for Oaths.

No. 9. - R.M.13.In the High CourtLETTER - R.P.S. RAJASOORIA TO SECRETARY  
PUBLIC SERVICES COMMISSION.No. 9.  
R.M.13.

Dato R.P.S. Rajasooria J.P.  
Bar at law (Middle Temple)  
Advocate & Solicitor,  
And Commissioner for Oaths. 12th June, 1958.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission

RPS/GDS/58.

10 The Secretary,  
Public Services Commission,  
Young Road,  
KUALA LUMPUR.

12th June,  
1958.

Dear Sir,

Your Reference P.S.C. 2702/3/23

I am in receipt of your letter dated 7th  
June, 1958.

20 2. I have looked at your letter of 23rd May,  
1958 to my client Mr. R. Munusamy and also a copy  
of a letter dated 21st August, 1957 reference  
CSO.58/28 from the Deputy Chief Secretary to my  
client.

3. May I point out the following in respect  
of this matter:-

- (a) According to the copy of letter dated  
21.8.1957 my client is eligible for  
confirmation in the post of Assistant  
Passport Officer at the end of the one  
year from 1.6.57 subject to his work and  
conduct being satisfactory.
- 30 (b) The Commissioner for the Federation of  
Malaya in Pakistan has designated my  
client Mr. R. Munusamy as Passport Officer  
and Administrative Assistant which is in  
a higher grade vide Commissioner's letter  
dated 17.9.57 (Ref: FMC. in P.22/57/9) to  
the Permanent Secretary, Ministry of  
External Affairs, Federation of Malaya. I  
would therefore submit that in the  
circumstances there can be no question  
about his work and conduct being satis-  
40 factory.

In the High  
Court

No. 9.  
R.M.13.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)

12th June,  
1958.

- (c) According to the Scheme of Service effective from 1st January 1957 for Junior Assistant and Assistant Passport Officers - refer pages 177 and 178 of the Publication Federation of Malaya Scheme of Services 1956, there is no educational qualification required for appointment as Assistant Passport Officers although candidates for appointment for the post of Junior Assistant Officer must have passed the School Certificate examination with credit in English. 10
- (d) According to the Scheme of Service there cannot be any period of probation for Assistant Passport Officers although there is probation for Junior Asst. Passport Officers.
- (e) My client was acquitted of the charge laid against him in case No. 1 of 1958 in the Sessions Court Kuala Lumpur and the Appeal No. 11/58 in the High Court at Kuala Lumpur. Therefore the law holds him innocent of all ingredients of the charge - vide Judgment 1950 of the Privy Council in Sambasisam versus the Public Prosecutor. I would therefore submit if there was any mistake as to the qualification of my client, my client denies that there was such a mistake, it was unilateral mistake. If the contract of service of my client as an Asst. Passport Officer was caused by unilateral mistake of fact on the part of the appointing authority my client cannot be made to suffer for it. Sec. 23 of the Contracts (Malay State) Ordinance 1950 states:- 20 30
- "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact". 40
- (f) But if there was no mistake on the part of the appointing authority, the appointing authority may well have considered that my client's educational qualifications was a School Certificate as advertised in Federal Government Vacancies Notice No. 506.H in the Federal

Gazette of 7.3.1957 or the appointing authority may have acted under Regulation 13 of the Regulations to Common to all Schemes vide pages (iii-iv) of the Federation of Malaya Scheme of Service 1956, Reg. 13 says :- "Government reserves the right to appoint Government Officers serving under other Schemes or serving in a government appointment not covered by any Schemes of Service, to posts governed by any scheme in this volume provided they are considered suitable even though they are not possessed of all the qualifications laid down for normal entry to the Scheme or are above the normal age limit".

In the High  
Court

No. 9.

R.M.13.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)

12th June,  
1958.

10

I submit that Mr. Bigley's evidence in Court supports my above contention.

20

- (g) My client has been and is a member of the General Public Service of the Federation within the meaning of part 10 of the Constitution of the Federation of Malaya Article 135(2) says:

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

30

The purported termination contained in your letter dated 23rd May, 1958 Ref. P.S.C. 2702/3/20 of my client's appointment as Asst. Passport Officer was made without his being given a reasonable opportunity of being heard. Such purported termination is therefore null and void as it offends against the Supreme Law of the Federation.

40

- (h) I am instructed that Mr. Yap Fook Sang was appointed Junior Assistant Passport Officer and has subsequently been appointed as Asst. Passport Officer although his educational qualification is Eight Standard or something like it. I cannot understand why my client should be treated differently. Article 136 of the Constitution of the Federation of Malaya provides :-

"All persons of whatever race in the same grade in the Service of the

In the High Court

Federation shall, subject to the terms and conditions of their employment, be treated impartially."

No. 9.  
R.M.13.

4. In the light of the foregoing I submit that the status quo ante should be fully restored.

Letter - R.P.S. Rajasooria to Secretary Public Services Commission (continued)

Yours faithfully,

Sd: R.P.S. Rajasooria.

12th June, 1958.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

10

Originating Motion 1959 No.

Between  
Rasiah Munusamy Applicant  
and  
The Public Services Commission Respondent.

This is the exhibit marked "RM-13" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:  
Commissioner for Oaths.

20

No. 9.  
R.M.14.

No. 9. - R.M.14.

LETTER - R.P.S. RAJASOORIA TO SECRETARY,  
PUBLIC SERVICES COMMISSION.

Letter - R.P.S. Rajasooria to Secretary, Public Services Commission

R.P.S. Rajasooria J.P. 15, Weld Road,  
Bar at law (Middle Temple) Kuala Lumpur.  
Advocate & Solicitor,  
And Commissioner for Oaths. 22nd July, 1958

22nd July, 1958.

The Secretary,  
Public Services Commission,  
KUALA LUMPUR.

30

Sir,

Your Reference P.S.C.2702/3/23

I have not had a reply to my letter of 12.6.1958. I wonder if this is due to the unintentional embarrassment caused by asking

for redress from the body that caused the Complaint of my client. I do appreciate the many and varied implications of this matter. The inordinate delay in replying to my letters has further accentuated the nervous disorder that my client has been suffering from ever since his recall against Medical Advice from Karachi.

In the High  
Court

No. 9.  
R.M.14.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)

22nd July,  
1958.

10 Under the circumstances it does appear that my client will have to look to competent Courts for redress in this dispute over Breach of Contract of Service.

Yours faithfully,

Sd: R.P. Rajasooria.

c.c

To the Permanent Secretary,  
to Minister of External Affairs  
Federation of Malaya  
Kuala Lumpur

20 To Controller of Immigration,  
Federation of Malaya,  
Penang.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.  
Originating Motion 1959 No.

Between  
Rasiah Munusamy Applicant  
And  
The Public Services Commission Respondent

30 This is the exhibit marked "RM-14" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:  
Commissioner for Oaths.

In the High  
Court

No. 9. - R.M.15.

LETTER, - SECRETARY, PUBLIC SERVICES  
COMMISSION TO R.P.S. RAJASOORIA

No. 9.  
R.M.15.

Letter -  
Secretary,  
Public  
Services  
Commission  
to R.P.S.  
Rajasooria

Ref: P.S.C. 2702/3/29      Public Services Commission,  
RPSR/GDS/58              Young Road,  
   Kuala Lumpur.

6th August, 1958.

Sir,

6th August,  
1958.

I am directed to refer to your letter  
RPSR/GDS/58 dated the 12th June and to your further      10  
letter dated the 22nd July under the same reference.

2. I am to say that it is not the contention  
of Government that the contract with Mr. Munusamy  
is voidable because it was entered into under a  
mistake of fact although the fact that Mr. Munusamy  
did not have the requisite qualification was not  
known to Government at the time of his appointment.

3. Mr. Munusamy was appointed to the post of  
Assistant Passport Officer on one year's probation.  
Government had the right to terminate the contract      20  
during the period of probation, which it exercised  
on the discovery that the officer had not the  
requisite qualification. No question of the  
quality of Mr. Munusamy's work or his conduct  
arises.

4. Nor does Article 135(2) of the Constitution  
apply in this case since Mr. Munusamy is not being  
dismissed or reduced in rank. Mr. Munusamy was  
given an appointment on probation on the termina-  
tion of which during the period of probation he      30  
might be permitted to revert to his previous  
appointment. In these circumstances no question  
of dismissal or reduction in rank arises and, in  
any event, your client is being given every  
opportunity of being heard.

5. I am further to say that the case of Mr. Yap  
Fook Sang is not parallel to Mr. Munusamy's. Mr.  
Yap Fook Sang was appointed in different conditions  
in 1951, to the post of Junior Assistant Passport  
Officer. He was eventually promoted to Assistant      40  
Passport Officer as provided for in his Scheme of  
Service on the service principle that once an  
officer is admitted to a Scheme of Service he is



treated on his merits for any promotion with that Scheme of Service. The post of Assistant Passport Officer is not within the Scheme of Service of an Immigration Officer.

In the High Court

No. 9.  
R.M.15.

I am, Sir,  
Your obedient servant,

Sd: J.R.H. Chalmers.  
for Secretary, P.S.C.

Letter -  
Secretary,  
Public  
Services  
Commission  
to R.P.S.  
Rajasooria  
(continued)

10 Dato R.P.S. Rajasooria J.P.  
Advocate and Solicitor and Commissioner for Oaths,  
15 Weld Road,  
KUALA LUMPUR.

6th August,  
1958.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
Originating Motion 1959 No.

Between  
Rasiah Munusamy Applicant  
And  
The Public Services Commission Respondent.

20 This is the exhibit marked "RM-15" referred to in the Affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:  
Commissioner for Oaths.

No. 9. - R.M.16.

No. 9.  
R.M.16.

LETTER - R.P.S. RAJASOORIA TO SECRETARY,  
PUBLIC SERVICES COMMISSION

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public Services  
Commission.

30 Dato R.P.S. Rajasooria J.P.  
Bar at law (Middle Temple)  
Advocate & Solicitor  
And Commissioner for Oaths  
RPSR/GDS/58 12th August, 1958.

12th August,  
1958.

The Secretary,  
Public Services Commission,  
Young Road, Kuala Lumpur.

Sir,

Your Ref: PSC.2702/3/29

Thank you for your letter dated 6th August,

In the High  
Court

No. 9.  
R.M.16.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)

12th August,  
1958.

1958.

2. I am glad to note your statement in paragraph 2 of your said letter "that it is not the contention of Government that the contract with Mr. Munusamy is voidable because it was entered into under a mistake of fact....."

3. Your statement that "the fact that Mr. Munusamy did not have the requisite qualification was not known to Government at the time of his appointment" would if it is correct mean that there was a unilateral mistake of fact on the part of the Government. 10

4. Your statement in paragraph 3 of your letter that "on the discovery that the officer had not the requisite qualification" the Government exercised "the right" to terminate the contract means that the discovery of the unilateral mistake induced the Government to terminate the contract. And paragraph 2 of your letter dated 23rd May, 1958 to my client appears to confirm this inference. 20

5(a) I am therefore really baffled by the contradictory and inconsistent position of the Government. Having assigned the reasons which induced the Government to terminate the contract with my client the Government cannot say that it is not assigning any reasons. And the reason assigned does not entitle the Government to terminate its contract with my client.

(b) It is stated in Halsbury's Laws of England third Edition Volume 11 page 61 Article 118 that an inferior "tribunal is not (unless so required by statute) obliged to set out in its adjudication the reasons which led it to its decision, but if it does state them the superior court will consider the question whether they are right in law, and if they are wrong in law, will quash the decision." 30

6. Re your statement in connection with determination by the Government of the contract with my client that "no question of the quality of Mr. Munusamy's work or his conduct arises," may I point out that the Dy. Chief Secretary's letter Ref: C.S.O.58/28 dated 21st August, 1958 to my client which in law constitutes the offer of appointment which was accepted by my client 40

states in paragraph 4 that "subject to your work and conduct being satisfactory you will be eligible for confirmation in your appointment at the end of this period." No terms could be added to this written contract except by another written document signed by both parties. In the absence of such other document conferring any right on the Government to terminate the contract during the period of probation even though my client's work and conduct were satisfactory, the government had no right to terminate the contract during the period of probation unless my client's work or conduct was unsatisfactory.

In the High  
Court

No. 9.  
R.M.16.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)

7. I am surprised at the statement in paragraph four of your letter that Mr. Munusamy is not being dismissed or reduced in rank. Your letter dated 23rd May 1958 conveys to my client the dismissal from the post of a Asst. Passport Officer and a reduction in rank to the position of Immigration Officer. It was held in the case of Re Rubel Bronzo etc. and Vos reported in Law Reports 1918 Volume One Kings Bench page 315 that "A man may dismiss his servant if he refused by word or conduct to allow the servant to fulfil his contract of employment ..... if the conduct of the employer amounts to a basic refusal to continue the servant on the agreed terms of the employment, then there is at once a wrongful dismissal and a repudiation by the defendants of their contractual obligations and 'a wrongful dismissal' in the ordinary sense of the phrase". What article 135(2) of the Constitution envisages is the grant to a member of any of the services mentioned in paragraph (b) to (g) of Clause (1) of Article 132 of "a reasonable opportunity of being heard" prior to dismissal or reduction in rank and not subsequent to dismissal or reduction in rank. There was no grant to my client of a reasonable opportunity of being heard prior to your said letter dated 23rd May, 1958 conveying the dismissal and reduction in rank to him. This is contrary not only to the Supreme Law of the Land but also to the principles of natural justice. But since it is contrary to "the Supreme Law of the Federation," I submit that the purported termination and reduction in rank are Ultra Vires and are therefore of no force or avail in law.

12th August,  
1958.

8. Whether one looks at the matter as a violation of Sec. 23 of the Contracts (Malay States) Ordinance 1950 or as the assignment of a wrong reason or as a flagrant disregard and

In the High  
Court

No. 9.  
R.M.16.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)  
12th August,  
1958.

violation of the safeguards provided by article 135(2) of the constitution or as a denial of natural justice the dismissal and reduction in rank of my client cannot be supported and, I submit, would be set aside by a Court of competent jurisdiction. I trust that it may even now not become necessary for my client to have to go to the Courts for Justice and his legal rights.

9. As regards the case of Mr. Yap Fook Sang I am instructed that Mr. Yap Fook Sang was a temporary clerk from about 1949 till about 1954 when he was appointed to the post of Junior Asst. Passport Officer although his qualification was only about Eight Standard and though at that time there was no Scheme of Service for Junior Asst. Passport Officers. The Scheme of Service for Junior Asst. Passport Officers & the Asst. Passport Officers appears in pages 177 and 178 of the Scheme and Service. It is stated on page 177 that it is effective from 1st January, 1957 but it is stated in page 178 that it was issued on 27th January 1958. I am unable to understand what you mean by "different conditions" in which Mr. Yap Fook Sang was appointed. However I am glad to learn that he was eventually promoted to Assistant Passport Officer as provided for in his scheme of Service and "once an Officer is admitted to a Scheme of Service he is treated on his merits for any promotion within that Scheme of Service." I would ask that the same principle be recognised and applied impartially to my client also in accordance with Article 136 of the Constitution. Once my client had been admitted to the Scheme of Service for Asst. Passport Officers which happened with effect from 1st June, 1957, my client should be treated on the same service principle and he should be treated on his merits for any promotion within that Scheme of Service and a fortiori for retention within the Scheme. On this question of his merits I would again refer you to paragraph 3(b) of my letter to you dated 12th June, 1958. The Commissioner for the Federation of Malaya in Pakistan has designated my client Mr. R. Munusamy as Passport Officer and Administrative Assistant which is on a higher level.....vide Commissioner's letter dated 17th September, 1957 Ref: FMC. in P.22/57/9 to the Permanent Secretary Ministry of External Affairs. This shows how highly he has been rated.

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10. I regret to note that there is no attempt to reply to the points urged by me in sub-paragraphs (a), (c), (d) and (f) of paragraph three of my said letter dated 12th June, 1958.

In the High  
Court

No. 9.  
R.M.16.

11. I shall be obliged for a full reply on all above as soon as possible. If you think that you would be unable to reply within fourteen days, I shall be obliged if the acknowledgement of this letter would indicate in accordance with Rule 15 of Chapter 2 of the Manual of Office Procedure when a reply can be expected.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)

12. It is still not impossible to set aright the injustice to my client caused by the purported dismissal and reduction in rank and to permit him to continue as an Assistant Passport Officer.

12th August,  
1958.

Yours faithfully,

Sd: R.P.S. Rajasooria.

c.c to

20 The Permanent Secretary,  
Ministry of External Affairs,  
Kuala Lumpur.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

Between

Rasiah Munusamy

Applicant

And

The Public Services Commission

Respondent

30 This is the exhibit marked "RM-16" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:

Commissioner for Oaths.

In the High Court

No. 9. - R.M.17.

No. 9.  
R.M.17.

LETTER - R.P.S. RAJASOORIA TO  
SECRETARY, PUBLIC SERVICES  
COMMISSION

Letter - R.P.S. Rajasooria to Secretary, Public Services Commission.

Dato R.P.S. Rajasooria J.P. Bar at law (Middle Temple) Advocate & Solicitor, And Commissioner for Oaths. Ref:-No. RPSR/GDS/58

15 Weld Road, Kuala Lumpur.  
2nd September, 1958

2nd September, 1958.

Secretary,  
Public Services Commission,  
Young Road, KUALA LUMPUR.

10

Sir,

Your Reference PSC/Conf/2702/3.

Thank you for your Post Card bearing the above reference dated 15th August, 1958 acknowledging receipt of my communication dated 12th August and informing me that its contents are receiving attention.

2. I shall be obliged for an early and full reply to all the points raised in my said letter dated 12th August, 1958 and in sub-paragraphs (a) (c) (d) and (f) of paragraph 3 of my letter dated 12th June, 1958.

20

3. It is still not impossible to set aright the injustice to my client Mr. R. Munusamy caused by the purported dismissal and reduction in rank and to permit him to continue as an Asst. Passport Officer.

Yours faithfully,

30

Sd: R.P.S. Rajasooria.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR  
Originating Motion 1959 No.

Between  
Rasiah Munusamy Applicant  
And  
The Public Services Commission Respondent

This is the exhibit marked "RM-17" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

40

Sd:

Commissioner for Oaths.

No. 9. - R.M.18.

LETTER - SECRETARY, PUBLIC SERVICES  
COMMISSION TO R.P.S. RAJASOORIA

In the High  
Court

No. 9.  
R.M.18.

Ref: P.S.C.2702/3/40      Public Service Commission,  
Young Road,  
Kuala Lumpur.

Letter -  
Secretary,  
Public  
Services  
Commission to  
R.P.S.Rajasooria

16th September, 1958.

Sir,

16th September,  
1958.

10      I am directed to refer to your letter RPSR/  
GDS/58 dated the 12th August and to thank you  
therefor.

2.      With regard to paragraph 10 on your letter,  
I am to say that the answers to sub-paragraphs  
(a), (c), (d) and (f) of your previous letter  
dated the 12th June, are as follows:-

20      (a) This statement is correct as far as it  
goes but the candidate is subject to an over-  
riding right on the part of Government as an  
employer as indicated in paragraph 3 of this  
office letter to you in P.S.C.2702/3/29 dated  
6th August, 1958.

30      (b) The Scheme of Service as laid down at  
pages 177, 178 of the Schemes of Service 1956  
became effective from 1st January 1958 (and not  
1st January 1957) after Munusamy's appointment  
in August, 1957. No educational qualification is  
stipulated for Assistant Passport Officers since  
the Scheme of Service is a closed one, i.e. under  
that Scheme of Service promotion to Assistant  
Passport Officer is from the rank of Junior  
Assistant Passport Officer. Possession of a  
School Certificate is therefore a pre-requisite  
for both posts.

40      (c) Mr. Munusamy was not promoted from the  
grade of Junior Assistant Passport Officer to  
that of Assistant Passport Officer nor was he  
promoted from the grade of Immigration Officer  
to Assistant Passport Officer. He was appointed  
to be an Assistant Passport Officer in the  
External Affairs Service on probation as a result  
of an appointment competition open to serving  
Assistant Passport Officers and Junior Assistant  
Passport Officers, serving Government Officers

In the High  
Court

No. 9.  
R.M.18.

Letter -  
Secretary,  
Public  
Services  
Commission  
to R.P.S.  
Rajasooria  
(continued)  
16th September,  
1958.

having five years' service and possessing School Certificate and persons not in Government service in possession of School Certificate with a credit in English. In these circumstances probation is normal and well within the Government's right to require.

(d) The appointing authority does not and did not consider a School Leaving Certificate in the form held by your client as a "School Certificate" such as was required by the advertisement relating to the competition referred to above. The meaning of the "School Certificate" required by the Government is well known and only those applicants who were thought to or claimed to have a Cambridge Overseas School Certificate or its equivalent and who were thought to be fully qualified for the post were considered for interview. 10

3. I am further to re-iterate with regard to your paragraph 7 that your client has neither been dismissed nor reduced in rank. 20

4. With reference to paragraph 9 of your letter, I am to say that Mr. Yap Fook Sang was promoted from the grade of Junior Assistant Passport Officer to that of Assistant Passport Officer in the Immigration Department in a competition which was limited to Junior Assistant Passport Officers in the Department.

5. With further reference to paragraph 9 of your letter, I am to say that at no time did Mr. Munusamy receive promotion beyond the grade of Assistant Passport Officer. 30

I am, Sir,  
Your obedient servant,  
Sd: J.R.H.Chalmers,  
for Secretary.  
Public Services Commission.

Dato R.P.S.Rajasooria J.P.  
Advocate & Solicitor & Commissioner for Oaths,  
15 Weld Road, KUALA LUMPUR. 40

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

Between

Rasiah Munusamy Applicant

And

The Public Services Commission Respondent.  
This is the exhibit marked "RM-18" referred to in



111.

the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:

Commissioner for Oaths.

In the High  
Court

No. 9. - RM.19

No. 9.  
R.M.19.

LETTER - R.P.S. RAJASOORIA TO  
SECRETARY, PUBLIC SERVICES COMMISSION

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission

10 Dato R.P.S. Rajasooria J.P.  
Bar at law (Middle Temple)  
Advocate & Solicitor  
& Commissioner for Oaths. 18th September 1958.

RPSR/GDS/58/1

18th September,  
1958.

The Secretary,  
Public Service Commission,  
Young Road,  
KUALA LUMPUR.

Sir,

Your reference P.S.C.2702/3/40 -  
Mr. R. Munusamy

20 Thank you for your letter reference No.  
P.S.C. 2702/3/40 dated 16th September, 1958.

30 2. With reference to your reply to paragraph  
3(a) of my letter of 12th June, 1958 I submit that  
the rights of the Government as an employer are  
not governed completely by the common Law but by  
the common law as modified by the written law of  
this country. Section 3(1) of the Civil Law  
Ordinance 1956 expressly lays down "Save in so  
far as other provisions has been made or may here-  
after be made by any written law in force in the  
Federation of Malaya or any part thereof, the  
Court shall apply the Common Law of England....."  
I point out that as far as the rights of the  
Government as an employer are concerned "other  
provision has been made ..... by ..... written  
law in force in the Federation," namely, the  
Public Officers (Conduct and Discipline) Regu-  
lations 1956 and the Constitution of the Federation  
of Malaya. Mr. Munusamy is a person in the General  
40 Public Service of the Federation within the

In the High  
Court

No. 9.  
R.M.19.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)

18th September,  
1958.

meaning of Article 132(i)(c) of the said  
Constitution. Article 132(2) of the said  
Constitution says :-

"Except as otherwise expressly provided  
by this Constitution, the qualifications for  
appointment and conditions of service of persons  
in the public services other than those mentioned  
in paragraph (g) to Clause (1) may be regulated  
by federal law and subject to the provisions of  
any such law by the Yang di-Pertuan Agong.....". 10  
I submit that the purported termination of the  
appointment of Mr. R. Munusamy as an Assistant  
Passport Officer is not in any of the circum-  
stances permitted by Federal Law, namely, the  
Public Officers (Conduct and Discipline)  
Regulations 1956 or in any "Conditions of  
Service ..... regulated ..... by the Yang  
di-Pertuan Agong" subject to the provisions of  
such Federal Law. I invite the Public Service  
Commission to point out any provision under the  
Public Officers (Conduct and Discipline)  
Regulations 1956, or in any other Federal Law,  
or in the Constitution, or in any conditions of  
service regulated by his Majesty the Yang di-  
Pertuan Agong subject to Federal Law, under  
which the purported termination of Mr. Munusamy's  
appointment as an Assistant Passport Officer is  
justified. 20

3. With reference to your reply in your said  
letter dated 16th September, 1958 to paragraph 30  
3(c) of my letter dated 12th June, 1958 I request  
you to have a second look at the third line of  
page 177 of the Scheme of Service 1956: the words  
are "Effective from 1st January, 1957", not 1st  
January, 1958. With reference to your statement  
"no educational qualification is stipulated for  
Assistant Passport Officers since the Scheme of  
Service is a closed one....." I again point  
out Regulation 13 of the Regulations Common to 40  
the Schemes of Service 1956 which says "Govern-  
ment reserves the right to appoint Government  
Officers serving under other schemes, or serving  
under other schemes, or serving in a Government  
Appointment not covered by any Scheme of Service,  
to posts governed by any Scheme in this volume  
provided they are considered suitable even  
though they are not possessed of all the  
qualifications laid down for normal entry to  
the Scheme or are above the normal age limit."  
I also invite your attention to service circular 50

letter No. 14 of 1958 - reference P.28643/8 dated 27th May 1958 of the Principal Establishment Officer in paragraph 3 of which he refers to this regulation 13.

In the High  
Court

No. 9.  
R.M.19.

10 With reference to your reply in your said letter dated 16th September 1958 to paragraph 3 (d) of my said letter dated 12th June 1958 and with reference to paragraph 3 of your said letter dated 16th September 1958 it has never been my contention that Mr. Munusamy was promoted from the grade of Junior Assistant Passport Officer to the Grade of Assistant Passport Officer. It is my contention also that Mr. Munusamy was appointed as Assistant Passport Officer and therefore the purported termination of his said appointment is a dismissal and since the said purported termination was made without his having been given "A reasonable opportunity of being heard" the said purported termination is ultra vires the Govern-  
20 ment in view of Article 135(2) of the said Constitution.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)

18th September,  
1958.

5. With reference to your reply in the said letter dated 16th September 1958 to paragraphs 3(d) and (f) of my said letter dated 12th June, 1958 I again refer to Section 23 of the Contracts (Malay States) Ordinance 1950 and the said regulation 13.

30 6. With reference to paragraph 4 of your said letter dated 16th September 1958 I still do not understand how Mr. Yap Fook Sang with the qualification of about eight standard was appointed a Junior Assistant Passport Officer and why there is said to be a service Principle "once an officer is admitted to a Scheme of Service he is treated on his merits for any promotion within that Scheme of Service" applicable to Mr. Yap Fook Sang which is not applied to the retention of my client within the Scheme of Service - that of Assistant Passport Officer - to which my client had been appointed although the principle is a fortiori applicable  
40 to my client.

7. I regret to note that there is no reply in your said letter dated 16th September, 1958 to paragraphs 4, 5, 6 and 7 of my letter dated 12th August, 1958.

8. I shall be obliged for a full reply to the said paragraphs 4, 5, 6 and 7 of my letter dated

In the High Court

12th August, 1958 and to this letter, particularly to paragraph 2 and 6 of this letter.

No. 9.  
R.M.19.

9. An early reply will be greatly appreciated.

Yours faithfully,  
Sd: R.P.S. Rajasooria.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)  
18th September,  
1958.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

Between

Rasih Munusamy

Applicant

10

And

The Public Services Commission

Respondent.

This is the exhibit marked "RM-19" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:

Commissioner for Oaths.

No. 9.  
R.M.20.

No. 9. - RM. 20.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission

LETTER - R.P.S. RAJASOORIA TO  
SECRETARY, PUBLIC SERVICES COMMISSION

20

Dato R.P.S. Rajasooria J.P.  
Bar at Law (Middle Temple)  
Advocate & Solicitor &  
Commissioner for Oaths.

15, Weld Road,  
Kuala Lumpur.

20th October 1958.

20th October,  
1958.

Ref: NO. RPSR/GDES/58

The Secretary,  
Public Services Commission,  
Young Road,  
KUALA LUMPUR.

Sir,

30

Your Ref: PSC.2702/3/40 -  
Mr. R. Munusamy.

I invite your attention to my letter dated 18th September, 1958 regarding Mr. R. Munusamy.

I am at a loss to understand why I have not been favoured with a reply for over a month.

In the High Court

I shall be obliged for a full reply as requested in paragraph 8 of my said letter.

No. 9.  
R.M.20.

I trust that it would now be agreed that my client Mr. R. Munusamy should be reinstated as an Assistant Passport Officer.

Letter - R.P.S. Rajasooria to Public Services Commission. (continued) 20th October, 1958.

Yours faithfully,  
Sd: R.P.S. Rajasooria.

10 IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR

Originating Motion 1959 No.

Between

Rasiah Munusamy

Applicant

And

The Public Services Commission

Respondent.

This is the exhibit marked "RM-20" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

20

Sd:

Commissioner for Oaths.

No. 9. - RM.21.

No. 9.  
R.M.21.

LETTER, - SECRETARY PUBLIC SERVICES COMMISSION TO R.P.S. RAJASOORIA.

P.S.C.2702/3/49  
RPSR/GDS/58/1.

PUBLIC SERVICES COMMISSION,  
YOUNG ROAD,  
KUALA LUMPUR.

Letter - Secretary, Public Services Commission to R.P.S.Rajasooria

13th November, 1958.

13th November, 1958.

Sir,

30

I am directed to refer to your letter RPSR/GDS/58/1 dated the 18th September, 1958.

2. I am to recapitulate the position for your benefit. :

(1) Mr. Munusamy does not possess the "School Certificate" as required by Government and

In the High  
Court

No. 9.  
R.M.21.

Letter -  
Secretary,  
Public  
Services  
Commission  
to R.P.S.  
Rajasooria  
(continued)

13th November,  
1958.

of which the meaning is well known to all in Malaya. In fact he failed the Cambridge Overseas School Certificate Examination in December 1949 in all the nine subjects for which he sat.

(2) Mr. Munusamy has in three applications for other posts claimed to have passed the "School Certificate" (the capital letters, his, are to be noted).

(3) Mr. Munusamy on 12th January, 1958 signed a departmental document recording particulars for his record of service which states that he had "Passed School Certificate (Senior Cambridge)." 10

(4) Government has the contractual right of any employer to terminate services at any time in accordance with the normal conditions of service applicable to the appointment.

(5) A serving Government Officer is subject to General Orders, one of which, General Order A 25(d) gives expression to Government's rights to terminate probation, if necessary, without reason assigned. 20

(6) Mr. Munusamy was appointed as Assistant Passport Officer on probation. He was subject to the overriding provisions of General Orders and Government's right as an employer.

(7) It is the practice where a probationary officer's qualification have later been found not to be such as are required and as he has claimed, that the officer's appointment has been terminated. This is not only reasonable but Government's duty in the interests of the taxpayer and the public, to maintain the public service at a proper standard, and in the interests of other serving officers who are properly qualified, and in fairness to other candidates not considered for selection because they were underqualified. 30

(8) Common Regulation 13 states a right reserved at the time to Government. This right was not exercised in the competition at which Mr. Munusamy was interviewed. 40

(9) Admission to a Scheme of Service

on probation does not entitle that Officer to retention in that Scheme for obvious reasons. Otherwise probation would have no meaning.

In the High  
Court

No. 9.  
R.M.21.

Letter -  
Secretary,  
Public  
Services  
Commission  
to R.P.S.  
Rajasooria.  
(continued)

13th November,  
1958.

10 (10) The case of Mr. Yap Fook Sang is not parallel to your client's for the reason given to you, that he was appointed a Junior Assistant Passport Officer under a Scheme of Service for Junior Assistant Passport Officers and Assistant Passport Officers at a time when a Standard VIII qualification only was required. It is a service principle that once an officer is confirmed in a scheme he is entitled to be considered for promotion within that scheme in competition with other officers of the same standing serving under the same scheme. Mr. Munusamy was not admitted to the scheme of Assistant Passport Officer until he was appointed an Assistant Passport Officer on probation and not eligible for the principle until confirmed.

20 (11) Mr. Munusamy was not "dismissed" or "reduced in rank" both of which are disciplinary punishments. Article 135(2) of the Constitution does not therefore apply to his case.

30 3. I am to inform you that General Orders to which Government Officers are subject provide that Officers while being at liberty to seek the advice of their staff associations or some other party in regard to any matter must sign and submit their own representations through their Head of Department.

4. Mr. Munusamy has elected to make his representations through yourself. The decision that he should revert to his former post was made by the Public Services Commission which is the final arbiter in service matters. His representations have been considered by the Commission and no grounds are seen to vary that decision. I am therefore to inform you that the matter is now regarded as closed.

40 5. A copy of this letter is being despatched under separate cover to Mr. Munusamy through his Head of Department, and also the Permanent Secretary to the Prime Minister's Department, for the information of the Hon'ble the Prime Minister

In the High Court

whom you have addressed in the matter.

No. 9.  
R.M.21.

I am,  
Your obedient servant.

Letter -  
Secretary,  
Public  
Services  
Commission  
to R.P.S.  
Rajasooria.  
(continued)

Sd: Hashim.  
(Hashim bin Mat Dris)  
SECRETARY.

Public Services Commission.

Copy to: Mr. Munusamy

13th November,  
1958.

Through: The Controller of Immigration,  
Federation of Malaya,  
Penang.

10

and copy to :

The Permanent Secretary,  
Prime Minister's Department  
Federation of Malaya.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

	Between		
Rasiah Munusamy		Applicant	20
	And		
The Public Services Commission		Respondent.	

This is the exhibit marked "RM-21" referred to  
in the affidavit of Rasiah Munusamy affirmed  
before me this 7th day of April, 1959.

Sd:

Commissioner for Oaths.



No. 9. - R.M.22.In the High  
CourtLETTER - R.P.S. RAJASOORIA TO  
SECRETARY, PUBLIC SERVICES  
COMMISSIONNo. 9.  
R.M.22.Dato R.P.S. Rajasooria J.P.  
Bar at law (Middle Temple),  
Advocate & Solicitor,  
And Commissioner for Oaths.15 Weld Road,  
Kuala Lumpur.

21st November, 1958.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission

Ref: RPSR/GDS/58

10 The Secretary,  
Public Services Commission,  
Young Road,  
Kuala Lumpur.21st November,  
1958.

Sir,

Your ref: PSC/2702/3/49 - Mr. R.  
Munusamy

20 Thank you for your long awaited letter  
No. 2702/3/49 dated 13th November, 1958. I could  
not help but note the exasperation caused to the  
members of the Public Services Commission by my  
submissions on the unjustified termination of  
my client's appointment as an Assistant Passport  
Officer. It is with trepidation that I am writing  
this letter in view of paragraphs 3 and 4 of your  
said letter. But I am compelled to clear for the  
benefit of the Public Services Commission the  
misconception shown in your said paragraphs 3 and  
4 about Government Officer's rights to have the  
30 services of an Advocate & Solicitor.

2(a) Regulation 52 (e) (i) of the Public Services  
(Conduct and Discipline) Regulations, 1956, as  
amended in Insertion Slip Amendment No. 27 should  
be read in the context of the whole of the said  
Regulation 52. It is only when a Federal Officer  
wishes to appeal against a decision affecting him  
given by the Officer's Head of Department that he  
is required to submit a petition to the appropriate  
Commission through the Officer's Head of Department.  
40 And it is only representations on matters of fact  
which will not be accepted from any person who is  
himself not concerned in the subject matter of  
such representations.

(b) In the present matter, the decision

In the High  
Court

No. 9.  
R.M.22.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)

21st November,  
1958.

terminating Mr. R. Munusamy's appointment as Asst. Passport Officer was not given by the Head of his Department but by the Public Services Commission itself so that Regulation 52 has no application. There is no other regulation which has any bearing on the right to make submission to the Public Services Commission in this matter. Further the submissions that I have made are of law which I as Advocate and Solicitor am entitled to make in presenting my client's case and my client is entitled to make them through an Advocate & Solicitor.

10

(c) As the submissions to the Public Services Commission are not against the decision given by the Head of my client's Department but against the decision of the Public Services Commission itself, there is no Regulation or other written law which says that the decision of the Commission is final. The Commission in making decisions ignoring the written law of this country cannot make the matter closed. I am happy to state that it is provided in Article 121 of the Constitution of the Federation of Malaya :-

20

"The judicial power of the Federation shall be vested in a Supreme Court and such inferior Courts as may be provided by Federal law".

3. You will pardon me the temerity in remarking that paragraph 2 of your said letter is the same old story as in your earlier letters. I keep on quoting the written law of this our country as I see it and you keep on reiterating age-worn cliches which, however, have been superseded by the written law.

30

4. In paragraph 2 of my letter dated 18th September 1958, to you I invited the Public Services Commission to point out any provisions in the Public Officers (Conduct and Discipline) Regulations, 1956 or in any other Federal law, or in the Constitution, or in any conditions of service regulated by His Majesty the Yang di-Pertuan Agong subject to Federal law, under which the purported termination of Mr. Munusamy's appointment as an Assistant Passport Officer was justified. The only provisions specifically referred to by you in your said letter to justify the termination is General Order A 25(d). General Order A.25(d) is part of Chapter A which was made

40

In the High  
Court

No. 9.  
R.M.22.

Letter - R.P.S.  
Rajasooria to  
Secretary,  
Public  
Services  
Commission  
(continued)

21st November,  
1958.

10 by his Majesty the Yang di-Pertuan Agong with effect from 1st July, 1958 but the purported termination of my client's appointment as an Assistant Passport Officer was on 23rd May, 1958 reference letter No. P.S.C. 2702/3/20 dated 23rd May, 1958 from you to my client. That letter further did not terminate without assigning any reason my client's appointment as an Assistant Passport Officer but purported to terminate his said appointment and set out the reason for termination. As pointed out in my earlier letters, in view of Section 23 of the Contract (Malay States) Ordinance 1950 the reason assigned does not entitle the Government to terminate its contract with my client. From whatever view one may look at the matter General Order A.25(d) has no application to this matter.

5. We appear to have come to the parting of the ways.

20 6. I now give notice that unless my client Mr. R. Munusamy is reinstated as an Assistant Passport Officer within two weeks from date hereof legal proceedings will be instituted to secure his reinstatement and the vindication of his rights.

Yours faithfully,  
Sd: R.P.S. Rajasooria.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

30 Originating Motion 1959 No.

	Between	
Rasiah Munusamy		Applicant
	And	
The Public Services Commission		Respondent

This is the exhibit marked "RM-22" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:  
Commissioner for Oaths.

In the High Court

No. 9. - R.M.23.

LETTER - SECRETARY, PUBLIC SERVICES COMMISSION TO R.P.S. RAJASOORIA

No. 9.  
R.M.23.

Letter -  
Secretary,  
Public  
Services  
Commission  
to R.P.S.  
Rajasooria

CONFIDENTIAL

Public Services Commission,  
Young Road, Kuala Lumpur.

Our ref: PSC.2702/3/63  
Your ref: RPSR/GDS/58

12th December, 1958.

Sir,

MR. R. MUNUSAMY.

12th December,  
1958.

I am directed to refer to your RPSR/GDS/58 dated the 21st November, and to say that the contents thereof are noted.

10

2. With reference to your paragraph 2, I am further to say that the principles of the General Order 52 are applied to any correspondence between serving Officers and the appropriate Disciplinary or Appeal Authority.

3. I am to say that this Commission has nothing to add to its letter (49) in this series dated the 13th November, 1958.

20

I am, Sir,  
Your obedient Servant,

Sd: Hashim  
(Hashin bin Mat Dris).

Secretary Public Services Commission.

Dato R.P.S. Rajasooria J.P.  
Advocate & Solicitor & Commissioner for Oaths.  
15, Weld Road,  
KUALA LUMPUR.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.  
Originating Motion 1959 No.

30

Between  
Rasiah Munusamy Applicant  
And  
The Public Services Commission Respondent

This is the exhibit marked "RM-23" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd: Commissioner for Oaths.

No. 9 - R.M.24.

In the High Court

LETTER - PAKISTAN COMMISSIONER  
TO PERMANENT SECRETARY, MINISTRY  
OF EXTERNAL AFFAIRS.

No. 9.  
R.M.24.

PMC in P/22/57/9

17th September, 1957

The Permanent Secretary,  
Ministry of External Affairs,  
Kuala Lumpur.

Letter -  
Pakistan  
Commission to  
Permanent  
Secretary,  
Ministry of  
External  
Affairs

Sir,

17th September,  
1957.

10 I have the honour to refer to the Chief  
Secretary's letter CSO 58/57 dated 13th July,  
1957 in particular to paragraph 4 thereof, and to  
inform you that Mr. R. Munusamy, Assistant Passport  
Officer (Overseas) has now been designated as  
Passport Officer and Administrative Assistant.

20 I shall be grateful if you will let me  
know whether Mr. Munusamy is an Officer of Branch  
B or Branch C of the External Affairs Services  
and whether Officers of his status are given  
diplomatic privilege in other missions of the  
Federation.

I have the honour to be,  
Sir,  
Your obedient servant.

Sd: TUNKU MOHAMED.

Commissioner for the Federation  
of Malaya in Pakistan.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

30 Originating Motion 1959 No.  
Between  
Rasiah Munusamy Applicant  
And  
The Public Services Commission Respondent

This is the exhibit marked "RM-24" referred to in  
the affidavit of Rasiah Munusamy affirmed before  
me this 7th day of April, 1959.

Sd: Commissioner for Oaths.

In the High Court

No. 9. - R.M.25.

LETTER - C.C. RASA RATNAM TO PUBLIC SERVICES COMMISSION

No. 9.  
R.M.25.  
Letter - C.C.  
Rasa Ratnam  
to Public  
Services  
Commission.  
6th January,  
1959.

C.C. RASA RATNAM  
ADVOCATE & SOLICITOR

59, Klyne Street,  
Kuala Lumpur.  
Malaya.

The Public Services Commission, 6th January, 1959.  
Young Road,  
Kuala Lumpur.

Gentlemen,

10

Your Ref: P.S.C.2702/3/53.

I am now acting as Advocate & Solicitor for  
Mr. R. Munusamy.

I am instructed that the school certificate  
issued to my client by the Methodist Boys' School,  
Davidson Road, Kuala Lumpur was taken from him by  
Inspector S. Sinnappah of the C.I.D. High Street,  
Kuala Lumpur, that it was produced in Court in Case  
No. 1 of 1958 of the Sessions Court at Kuala Lumpur,  
and that my client understands that it was subse-  
quently removed from the Court by the Police and  
given to you. I shall be obliged if you will send  
me the said certificate or a certified copy of it.

20

Also please send me a certified copy of the  
application of my client for the post of Assistant  
Passport Officer.

I shall pay your fees for the certified  
copy or copies on hearing from you.

Please send me the above documents as soon  
as possible, say, within a few days, as they are  
urgently needed.

30

Thanking you.

Yours faithfully,  
Sd: C.C. Rasa Ratnam.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

Rasiah Munusamy

Applicant

and

The Public Services Commission

Respondent

This is the exhibit marked "RM-25" referred to in  
the affidavit of Rasiah Munusamy affirmed before  
me this 7th day of April, 1959.

40

Sd:

Commissioner for Oaths.

No. 9. - R.M.26.

In the High  
Court

LETTER - SECRETARY, PUBLIC SERVICES  
COMMISSION TO RASA RATNAM.

No. 9.  
R.M.26.

Public Services Commission,  
Telephone: 88984/7 Ext. Young Road,  
Kuala Lumpur.

Letter -  
Secretary,  
Public  
Services  
Commission to  
Rasa Ratnam.

Our ref: P.S.C.2702/3/55 22nd January, 1959.

22nd January,  
1959.

Sir,

MR. R. MUNUSAMY.

10 I am directed to refer to your letter  
dated 6th January, 1959 and to forward one copy  
each of :-

(1) the School Leaving Certificate issued to your  
client by Methodist Boys' School, Davidson  
Road, Kuala Lumpur.

(2) your client's application for the post of  
Assistant Passport Officer.

I am, Sir,  
Your obedient servant,

20 Sd: J.R.H. Chalmers  
For Secretary,  
Public Services Commission.

c.c.  
Rasa Ratnam Esq.,  
Advocate & Solicitor,  
59, Klyne Street,  
KUALA LUMPUR

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

30 Originating Motion 1959 No.  
Between

Rasiah Munusamy Applicant  
And  
The Public Services Commission Respondent

This is the exhibit marked "RM-26" referred to in  
the affidavit of Rasiah Munusamy affirmed before  
me this 7th day of April, 1959.

Sd: Commissioner for Oaths.

No. 9. - RM.27.

In the High Court

P.2864/8

Federation Establishment Office,  
Federal House,  
Kuala Lumpur.  
27th May, 1958.

No. 9.  
R.M.27.

SERVICE CIRCULAR LETTER NO.14 OF 1958

Letter -  
Principal  
Establishment  
Officer to  
Secretaries  
and Heads of  
Departments

Sir,

Advertisement of Posts on the Permanent Establishment.

27th May,  
1958.

I am directed to inform you that misunderstandings have arisen in a number of instances in which posts on the permanent establishment have been advertised in the terms which permit serving officers to apply, though they lack the full qualifications required from the general public, but which do not define clearly to what categories of serving officers the relaxed terms may be applied.

10

As regards Federal Citizenship, the present policy of Government is that expressed in F.E.O. Circular No. 9 of 1956, that all candidates for first appointment to the permanent establishment must be Federal Citizens. While, therefore, an officer who is already on the permanent establishment, but is not a Federal Citizen since a different policy was current at the time of his entry, may apply for other permanent posts for which he is otherwise qualified, a temporary or Contract Officer who is not a Federal Citizen is excluded from doing so.

20

Under Regulation 13 of the Regulations Common to the Schemes of Service 1956, Government reserves the right to "appoint Government Officers serving under other schemes, or serving in a Government appointment not covered by any scheme of service, to posts governed by any scheme in this volume provided they are considered suitable even though they are not possessed of all the qualifications laid down for normal entry to the scheme or are above the normal age limit". Again, it is the present policy that entry under such relaxations of Schemes of Service should normally be open only to officers already serving on the permanent establishment, including those on probation. It is however, permissible to offer

30

40



entry on such relaxed terms to temporary or contract officers in cases where the particular nature or circumstances of the appointment makes it desirable to do so.

In the High  
Court

No. 9.  
R.M.27.

10 Temporary officers are not, therefore, debared from applying for posts on the permanent establishment provided they fulfil all the conditions specified in the advertisement. They cannot, however, be considered on such relaxed terms as may be offered to permanent officers only. Heads of Departments are asked to forward any applications they receive from temporary officers on their staff and to ensure that the status of the officer is clearly defined in the application.

Letter -  
Principal  
Establishment  
Officer to  
Secretaries  
and Heads of  
Departments  
(continued)

27th May,  
1958.

20 To reduce the likelihood of misunderstanding in the future, Heads of Departments are asked to bring this circular to the attention of their subordinate staff, both permanent and temporary. Heads of Departments are also requested, when drafting advertisements or gazette notifications, to ensure that their intentions in this respect are expressed as clearly and concisely as possible.

I am Sir,  
Your obedient servant,  
Sd: N.R.M.Storey.  
f. Principal Establishment Officer.

30 All Secretaries to Ministers/Ministeries,  
All Federal Heads of Departments,  
Copy to: All State Secretaries.  
Received: 30.5.58 by me.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959. No.

Between

Rasiah Munusamy

Applicant

And

The Public Services Commission

Respondent

40 This is the exhibit marked "RM-27" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd:

Commissioner for Oaths.

In the High Court

No. 9. - R.M.28.

MALAYA GOVERNMENT GAZETTE

No. 9.  
R.M.28.

FEDERATION OF MALAYA GOVERNMENT GAZETTE  
FEDERAL

Malaya  
Government  
Gazette

69B

24th Jan, 1957.

24th January,  
1957.

No. 93G - Probationary Women Inspectors in the Federation of Malaya Police. Qualifications: Cambridge School Certificate; Citizens of the Federation or eligible for Federal Citizenship. Age between 18 and 35 years. Minimum height: 4 feet and 10 inches. Only candidates with normal eye-sight without glasses will be accepted. Vision must be at least  $\frac{6}{9}$  in each eye. Salary scale: Probationary Inspector \$200 x 30-260; Inspector \$283 x 13-361; Senior Inspector \$380 x 13-510; Chief Inspector \$471 x 26-601 per mensem plus approved rates of cost of living allowance. Selected candidates will be on two years probation, and will in the first instance undergo a course of training at the Federal Police Depot, Kuala Lumpur. Application forms, obtainable from the Commandant, Federal Police Depot, Kuala Lumpur, should be completed and returned to the Secretary, Police Service Commission, Young Road, Kuala Lumpur, not later than 31st January, 1957. Serving officers should submit their applications through their Heads of Department (Pol. S.C.R./1)

10

20

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

Between

Rasiah Munusamy

And

The Public Services Commission

Applicant

Respondent

30

This is the exhibit marked "RM-28" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd.

Commissioner for Oaths.

No. 9. - R.M.29.

MALAYA GOVERNMENT GAZETTE.FEDERAL GOVERNMENT GAZETTE.

16th Oct. 1958.

FEDERAL GOVERNMENT VACANCIES AND  
NOTICES

No. 3552A.

GOVERNMENT OF THE FEDERATION OF MALAYA  
FEDERAL SCHOLARSHIPS, 1959.In the High  
CourtNo. 9.  
R.M.29.Malaya  
Government  
Gazette16th October,  
1958.

10 Applications are invited from Federal Citizens, or those eligible for Citizenship, for Federal Bursaries/Scholarships, tenable at the University of Malaya for the academic year beginning 1959, for courses in Medicine/Dentistry/Pharmacy respectively.

## (a) Medicine (M.B.B.S.) and Dentistry (B.D.S.)

20 Candidates must have a Division I or II Cambridge Overseas School Certificate, with a credit in English Language, not later than 1956 and either have passes in at least two subjects (Biology/Zoology/Botany and Physics/Chemistry) at Principal Level in the Cambridge Overseas Higher School Certificate or be in the Second Year of Federation VI Form and registered to take the Cambridge Higher School Certificate in 1958 (in this category Bursaries cannot be confirmed until the results of the 1958 Higher School Certificate are made known).

30

## (b) Pharmacy (B. Pharm):

This is a three year course and for entry into the first year candidates must satisfy the requirements as for (a) Direct entry into the Final year may be possible for candidates who have already passed the Part II of the Examination of the Diploma in Pharmacy from the University of Malaya.

40 Applicants must be under the age of 25 on 1st

In the High Court

January, 1959 and under 35 years in the case of serving officers.

No. 9.  
R.M.29.

Malaya  
Government  
Gazette  
(continued)

Application Forms may be obtained by sending a stamped, addressed foolscap envelope to: Secretary (Training) Ministry of Education, Federal House, Kuala Lumpur. Completed forms must be returned to the same address, and where relevant through the candidate's Principal/Head of Department who must enclose a Confidential Report.

16th October,  
1958.

The closing date for the receipt of applications is Wednesday, October 22nd, 1958.

(FEO.8419/23).

10

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No. 3552B.

Applications are invited from serving Senior Storekeepers, for appointment as Chief Storekeeper Medical Department, Kedah, on the salary scale \$460x20-562 per mensem plus allowances at current rates. Experience in the distribution of Drugs, hospital equipments, surgical dressing and instruments. X-Ray films and sundries and General Knowledge of the use of all the above will be an advantage. Applications should be submitted through applicant's Head of Department who should forward them with a copy of the applicants statement of Service and an up to date Confidential Report on form Gen.315 written as far as possible with reference to the suitability of the applicant for the post, to reach the Secretary, Ministry of Health, Federal House, Kuala Lumpur, not later than 3rd November, 1958.

20

30

(PSCP/62/14; M of H. 7118)

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

Between

Rasiah Munusamy

Applicant

And

The Public Services Commission

Respondent.

This is the exhibit marked "RM-29" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

40

Sd:

Commissioner for Oaths.

No. 9. - R.M.30.

In the High Court

LETTER - PERMANENT SECRETARY, MINISTRY OF EXTERNAL AFFAIRS TO R. MUNUSAMY.

No. 9.  
R.M.30.

MINISTRY OF EXTERNAL AFFAIRS,  
FEDERATION OF MALAYA.

Letter -  
Permanent  
Secretary,  
Ministry of  
External  
Affairs to  
R. Munusamy

Kuala Lumpur, 30th Nov.1957.

30th November,  
1957.

Sir,

10 I am directed to inform you that you are to be recalled for re-posting and that you should make arrangements for your departure from Karachi within three days of the arrival of your relief who is expected to arrive in Karachi during the second week of December, 1957.

On your return to the Federation, you should report direct to the Controller of Immigration, Penang.

I am, Sir,  
Your obedient servant,

20 Sd: N.J.A. Hooker  
for Permanent Secretary  
Ministry of External Affairs.

R. Munusamy, Esq.,  
c.o Office of the High Commissioner for  
the Federation of Malaya,  
Malaya House,  
189, N.P.E.C.H.S.,  
Drigh Road,  
Karachi,  
PAKISTAN.

30 IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE HIGH COURT AT KUALA LUMPUR.

Originating Motion 1959 No.

Between

Rasiah Munusamy

Applicant

And

The Public Services Commission

Respondent.

This is the exhibit marked "RM-30" referred to in the affidavit of Rasiah Munusamy affirmed before me this 7th day of April, 1959.

Sd: Commissioner for Oaths.

In the High  
Court

No. 10.

PROCEEDINGS.

No.10.  
Proceedings  
21st July,  
1959.

In Open Court, Tuesday 21st July, 1959

O.M. 2 & 3/59 (Continued from 30th March 1959).

C.C. Rasa Ratnam for Appellant.

I. Talog Davies Federal Counsel for Respondent.

By consent Order for consolidation of O.M.  
2 & 3/59/

T. Davies: O.M. 2/59. 3/59  
(1956) M.L.J. 149 & 150  
1st preliminary question is - do orders of  
certiorari and mandamus run in the  
circumstances?

10

To Court: The averments of fact in the statement  
are not challenged : the conclusions drawn  
are challenged.

C.C. Rasa Ratnam : This is an application for  
Order of Court against P.S.C. created by the  
Constitution.

Article 4 - Supreme law.

20

Article 139 - Creates P.S.C.

Article 132(1)(c) to (f)

" 144(1) - functions of P.S.C.

"Subject to provisions etc." of Article 160.

"Existing Law" - (p.107):

Public Officers (Conduct & Discipline)

Regn. 1956, was existing law before Merdeka  
day.

Modification of Regn. by Yang-di-Pertuan  
Agong under Article 132(2).

30

11th Schedule (p.147) @ 149 -

Section 29 - "power to appoint includes power

to dismiss"

In the High  
Court

In s. 144(1) power to "appoint".....  
includes p. to dismiss but not power to  
terminate" (as now used by the P.S.C.)

No.10.

Jurisdiction of P.S.C. were subject to  
(1) existing law - and the 1956 Regn. was  
existing law - which is now continued.

Proceedings  
(continued)

21st July,  
1959.

(2) provisions of Constitution.

(3) Regn by Y.P. Agong under Art.132(2)

10

Submit so far no regulations have been  
made by Y.P. Agong under Art. 132(2).

General Orders (Chap.A) - w.e.f. 1.7.58 issued  
"under the authority" of Y.P. Agong.

cf.L.N. (N.S.) 14/57 - at end note the words "By  
Command: Tunku Abdul Rahman, Prime  
Minister"

And L.N. 332/58: "Y.P. Agong hereby makes the  
following order".

20

Chapter A of G.O. - "The following General Orders  
have been issued under the authority of  
Y.P. Agong in accordance with article 132  
(2) of the Constitution."

"By authority" to be distinguished from making by  
Y.P.A.

Delegation of Powers Ord. 1956 - p.213 - s.2 & s.  
3 - Y.P.A. might delegate - but not his  
powers under the Constitution.

30

Article 135(2) of Constitution is one of the  
restrictions imposed by Constitution on  
P.S.C. in matter of termination of service  
i.e. dismissal or reduction in rank.

Condition precedent imposed by Art. 135(2) is  
mandatory on P.S.C.

Further Art. 135(2) clothes P.S.C. with  
characteristics of a "quasi-judicial" body  
- gives statutory recognition of principles  
of natural justice.

In the High  
Court

No.10.

Proceedings  
(continued)

21st July,  
1959.

G.M.C. v. Spackman: (1943) 2 A.E.R. 342, (B) (H)  
p.343 (H) "had respondent a fair hearing"?  
p.344 (h) - tribunal to be impartial and  
respondent to have a full and  
fair opportunity of being heard.

S.135(2) requires - before a Fed. officer is dis-  
missed or reduced in rank he shall have a  
reasonable opportunity of being heard.

Appellant's complaint in P.S.C. in matter of  
terminating his appointment - gave no such  
opportunity. 10

As to reducing his rank: it gave him again no  
opportunity of being heard.

These are errors of law on part of P.S.C. on  
23.5.58: also P.S.C. has not complied with  
mandatory provisions of Art.135(2).

Robson: Justice & Administrative Law: p.74.

The present application is for an order of certiorari  
to quash decision of P.S.C. made on 23.5.58.

Refers: Ex. "RM-19" (P. ) 20  
RM 21 (reply of 13.11.58)  
Quotes G.O., A.25(d)

Therefore the legal foundation of the P.S.C.'s  
action was G.O. A.25(d).

The decision of P.S.C. was 23.5.58; but G.O. were  
issued 1.7.58.

N.W. Frontier Province v. Suraj Narain Anand  
L.R. 75 I.A. 343, 356.

Chapter A of G.O., S.1 says: "subject to the  
provisions of Part X of the Constitution"  
i.e. subject to Art. 135(2). 30

R. v. Industrial Disputes Tribunal ex.o.Kigon Ltd.  
(1953) 1 A.E.R. 593, 595 (D).

Queen v. Justice of Surrey (1869) 5 Q.B.466  
"Condition precedent not complied with:  
order without jurisdiction"  
(at p.473): ll. 7 - 12("resp.aggrieved")

Board of Education v. Rice 1911 A.C. 179, 182



("if the Board have not acted judicially, there is remedy by certiorari). In the High Court

Barnard v. National Dock Labour Board (1953) 1 A.E.R. 1113, 1118: (opportunity of being heard: judicial jurisdiction) - read this case with Spackman's case. No.10. Proceedings (continued)

High Commissioner for India v. I.M. Lall. A.E.R. (1948) P.C. 121, 124 (para 13). 21st July, 1959.

Stroud's Judicial Dictionary: (2nd ed).

10 "Dismissal" does not necessarily import relationship of master & servant - convenient expression to denote termination of an employment.

In re R. Bronze & Match Co., and Vos. (1918) 1 K.B. 315, 323 - what amounts to a dismissal.

Lall's case - p. 127 (para 22).  
re S. 240(3) of Govt. of India Act 1935 =  
Art. 135(2) of Constitution.

20 Rex. Electricity Commissioner (1924) 1 K.B. 171, 205 per L. Atkin: "whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the K.B.D. exercised in the writs."

30 R. v Patients Appeal Tribunal - Ex p. Champion Paper and Fibre Co., (1957) 1 A.E.R.227, 228.

Re Gilmore's Appln: (1957) 1 A.E.R. 796.  
801 (c) - Certiorari for excess of jurisdiction or error of law on face of the record; also see p. 803 & p.804 (H).

P.S.C.'s letter of 23.5.58 contains on its face an error of law in that Art.135(2) has not been complied with; and the P.S.C. had acted in excess of or without jurisdiction.

40 Reason assigned in that letter of 23.5. is not one of those for which a public officer's services may be terminated under General

In the High  
Court

No.10.

Proceedings  
(continued)

21st July,  
1959.

Orders.

- See Cap.D - page 10 - Regulation 37.  
Asst. Passport Officer is Div.III officer.  
also P.14 - Regulation 40 - conviction on  
a cr. charge.  
Regn. 44 - acquittal.  
see Ex.RM.10, 11 & 12.
- Regn. 45 - removal on grounds of public interest.
- As to Error of Law on face of record.
- Refer - RM.15 - para 4. 10  
of. RM 10 - in effect dismissal & reduction  
in rank.  
Para 4 - of RM.15.  
Ex post facto "opportunity" only  
Para 3 - of RM.15 - see last sentence.  
RM.8. - para 4 - re probationary period &  
conditions in this connection : read para  
1 of same letter.
- C.B. Reilly v. The King (1934) A.C. 176, 179. 20  
para 2, per Lord Atkin - power to dismiss  
"for cause" by necessary implication;  
denies power to dismiss at pleasure.
- RM.15 - para 3 : "Govt. had the right to terminate"  
- Lord Atkin in C.B. Reilly's case clearly  
states contra.
- R.M.13 - para 3(a), (c), (d), (f)  
R.M.18 - para 2  
RM. 21 - para 2  
RM. 22 - para 4  
RM. 23 - P.S.C. has nothing to add to RM.21 30
- By Article 4, Regn. A.25(d) of G.O. must be void  
to the extent of its inconsistency with  
Art. 135(2).
- R. v. Northumberland App. Tribunal - Exp. Shaw  
(1952) 1 A.E.R. 122; 127 "Court should not  
hesitate to act to prevent an injustice  
being done if the remedy sought is within  
the scope of its powers."  
p.128(e) - supervision by certiorari.
- (Adjourned at 1.15 p.m. to 2.45 p.m.) 40  
(Resumed at 2.45 p.m.)

C.C. Rasa Ratnam (continued)  
 (1928) 1 K.B. 291 - The King v. P.M.G.Exp. Carmichael at p. 299 (para 2)

In the High Court

No.10.

Party aggrieved applying for certiorari ought to be granted the relief ex debito justitiae. (1953) L.Q.R. 318, 322-3.

Proceedings (continued)

Re: O.M. 3/59 -

21st July, 1959.

Re s.44 Sp. Relief Ord. 29/50  
Affid. filed in accordance with s. 45

10

p. : II(B) (1)

p. : {7}

p. : IV (A)  
 {B}  
 {C}

Exhibits: RM.11 p. , last para  
 RM.13 p. , para 4  
 RM.16 p. , last para  
 p. , para 8  
 RM.17 last para  
 RM.19 page  
 RM.20 last para  
 RM.21 p. , para 4.  
 RM.22 p. , (last 4 lines)  
 p. , para 6.  
 RM.23 last para.

20

Re: Affid. on behalf of Respondent:

30

Para 1: submit jurisdiction of P.S.C. is subject to Art. 144 (Federal Counsel says, admitted) also subject to Art.132(2), 135(2) & Eleventh Schedule (p.147) as to s. 29

"Power to appoint includes power to dismiss".

Para 2: -

Para 3: (a) "legal right" should mean "personal right"

The Queen v. Justices of Surrey: L.R. 5 Q.B. @ 473

40

Post of Assistant Passport Officer ; carries higher salary, status and pension.

(b) Appellant joins issue with respondent.

(c) s. 44(2)(a) raised in objection:  
 (He = Yang di Pertuan Agong)

In the High  
Court

The application is for order against P.S.C. (not  
Y.P. Agong) who terminated the appointment.

No.10.

Y.P. Agong makes certain appointments only :  
those referred to in p.310, Index to Malayan  
Constitutional Documents.

Proceedings  
(continued)

Ekambara Naicker v. Madras Corporation : A.I.R.  
(1927) Mad. 22, p.33

21st July,  
1959.

Alcock Ashdown & Co. Ltd., v. Chief Revenue  
Authority

A.I.R. (1923) P.C., p. 138 @ 142.

10

In the matter of O.A. Natesan & K.R. Ramanathan  
(1917) I.L.R. 40 Mad. 125 @ 176.

Queen v. Sec. of State for War (1891) 2 Q.B. 326,  
@ 334, 335, 338

King v. Commissioners of Income Tax (1920) 1 K.B.  
26 @ 37 - 38 & 40

Art. 32(1) - Y.P. Agong

" 69(2) - Federation may sue and be sued.

Board of Education v. Rice (1911) A.C.179 @ 182  
(If Board had not acted judicially, there  
is remedy by mandamus & certiorari)

20

Rex. v. Revising Barrister of Borough of Hansley  
(1912) 3 K.B. 518 @ 528, 529, 531.

King v. Chancellor etc. of Cambridge: 93 E.R. 698,  
702.

Re: Para 4 of Affidavit:

Has appellant no remedy ?

4.45 p.m. to 9.30 a.m. 22.7.1959.

22nd July,  
1959.

Wednesday, 22nd July, 1959 : (Continued): O.M. 2  
& 3/59

30

Resumed 10 a.m.  
Counsel as before.

Rasa Ratnam:

Coming back to para 3 of affidavit of  
Mohd. Ismail: referring to s.44(1)(a) to  
(1) (which correspond to s.45 of the Indian  
S.R.A.) - and to p. of appellant's

affidavit in O.M. 3/59 (para C), page ,  
 para 2; page , para 3 and 2; page , para  
 ; page , para 4; page - "no question  
 of the quality etc."; page , para (b),  
 (d); page , para IV (A), (B), (C). s.44  
 (1)(a) of S.R.O. - appellant has been  
 injured in his property and personal right.

In the High  
Court

No.10.

Proceedings  
 (continued)

22nd July,  
 1959.

10

(b) the doing or forbearing is clearly  
 incumbent on respondent in its public  
 character.

(c) and the same is consonant to right &  
 justice.

(d) appellant has no other specific and  
 remedy in this connection - no  
 remedy provided in the Constitution  
 for breach of Art.135(2)

(e) The remedy now applied for will be  
 complete.

20

Therefore under s.44 of S.R.O. ask for  
 reinstatement.

If the termination of service is a nullity  
 then, under Lall's case, the appointment continues.

Normally it sufficed to apply for certiorari :  
 application under s.44 is ex abundanti cautela.

Re: Gillmore's appln : (1957) 1 A.E.R. @ 803 (E)  
 (last sentence).

As to para 4 of affidavit of Mohd Ismail :  
 "no question of the quality etc" is answer.

30

If termination of appellant's appoint-  
 ment is void and inoperative - appellant continues  
 in office.

It is to secure his reinstatement in  
 office that application is made under s.44.

Alcock, Ashdown's Case A.I.R. (1923) P.C. @ p.142  
 relied on.

The P.S.C. without cause or jurisdiction in  
 law have terminated appointment of appellant as  
 Assistant Passport Officer.

In the High  
Court

Therefore pray for relief to applicant by  
ordering P.S.C. to reinstate him.

No.10.  
Proceedings  
(continued)  
22nd July,  
1959.

Rex. v. Poplar Borough Council (1922) 1 K.B. 72 -  
mandamus only means there of securing  
performance of a public duty.  
@ p.84: 2nd para; prima facie mandamus is  
appropriate remedy where there is a clear  
breach of duty by a public body etc.

Rex. v. Bishop of Sarum: (1916) 1 K.B.466, 470  
"In the present case the right to performance  
of duties, which are of a public character,  
cannot be secured at all if a mandamus is  
refused. We do not think that in such a case  
as this the issue of a writ is discretionary." 10

P.S.C. - as to reinstatement would be performing a  
ministerial act.

In termination and reduction of rank - a  
quasi judicial function.

Submit no other adequate remedy is available  
to appellatant. 20

Restoration to status quo ante would give  
complete relief.

Appellant had explored all other avenues  
before coming to court for relief.

Federal Counsel: (in reply)

First: facts of case : agreed, though interpretation  
is challenged.

Second : Perogative order of Certiorari will not run  
against P.S.C. - alternatively, if it does, 30  
this will not be a proper case for such order.

Mandamus : will not be against P.S.C. on the  
ground that there is no public duty.  
Alternatively : not case for mandamus in the  
circumstances.

Facts : as seen by respondent are clear.  
View of P.S.C. that applicant was employed  
as Immigration Officer in February 1957.  
As a result of advertisement he applied :  
see RM.7 - sentence in 2nd para "I have 40  
passed my School Certificate."

RM.1 is the advertisement : see item (ii):  
admitted applicant had 5 years service.

In the High  
Court

As a result of interview he received  
"RM.8" - very important and crucial to  
whole matter.

No.10.

para 1 & 4 - Respondent relies on para 4 -  
"eligible".

Proceedings  
(continued)

22nd July,  
1959.

In due course P.S.C. came to know Applicant  
did not possess a Cambridge School Certificate.

- 10 Prosecution - acquittal - appeal dismissed  
- Respondent not alleging that Applicant committed  
any criminal offence.

Fair to admit : "School Certificate" is  
vague.

Reasonable high standard of education  
required for one going on foreign service. P.S.C.  
learnt he did not do well in school : (evidence  
in Sessions Court - see RM.4 - page of notes  
of evidence.)

- 20 Clear applicant never had a Cambridge  
School Cert.

In Karachi appellant gave complete satis-  
faction.

P.S.C. came to conclusion - in an  
administrative capacity - they took view applicant  
did not have qualification required.

So they sent RM.10 - note para 2.

In letter offering appointment -"probation"  
at all material times appellant was on probation.

- 30 Legal submission: as to Certiorari on those facts.  
Material to consider "status" of applicant -  
His appointment "on probation" was  
terminated - clearly not a dismissal -  
he is still in Govt. Service - note "you  
will revert" Was he reduced in rank?  
In truth no.

"Rank" is distinct from "appointment"

Appointment was on probation.

Probationary appointment - is not a  
rank.

In the High  
Court

No.10.

Proceedings  
(continued)

22nd July,  
1959.

Until confirmation - he is not ranked. Art 144 of the Constitution - see Art.144(7) - transfers without change of rank is for head of Department, not for P.S.C.

It follows: rank is nothing less than a fixed status.

When Applicant was appointed in 1957 - pre-Merdeka - see RM-19 para 2 -

Respondent agrees with that statement of law. Govt. servants in Malaya not equivalent to servants of Crown of England.

10

Rodwell v. Thomas (1943-4) 60 T.L.R. 431, 433.

That is position in England.

When appellant held office on probation -

Art.144 of Constitution came into force.  
"subject to provisions of any existing law".

But note definition of "law" (see p.108)

Common law, convention, usage and written law govern status of public servant.

20

6 F.M.S.L.R. 160 (S.K. Pillai v. Sultan of Kedah) @ 164 (para 2) & 165, 166.

Govt. employee differ from private employee.

In deciding on the facts that appellant was under-qualified the P.S.C. was acting in interests of public policy and good Government.

Proper exercise of P.S.C.'s responsibilities. Officer on probation - during testing period - is in a different position from officer holding confirmed rank - he has no security of tenure.

30

P.S.C. was not acting judicially or quasi-judicially.

(1953) 2 A.E.R. 717: Reg. v. Metrop Police Commissioner - ex parte Parker, 718, 719, 721.

(1954) 2 A.E.R. 11, Ex parte Fry, 118-120, 122.



Re Mandamus : order in nature of :

In the High Court

(1958) M.L.J. 280 -

word "eligible" discussed.

No guarantee from "eligible" that he must be appointed.

No.10.

P.S.C.'s functions, though resting on Constitution (Art.144) - that does not give an individual the right to claim against P.S.C. that they exercise powers of appointment etc in his favour.

Proceedings (continued)

22nd July, 1959.

10

RM-21 - page , para 5.

P.S.C. a body of highest standing and repute. no public "duty" on P.S.C.

As to s.44(1) of S.R.O.  
(a) to (e) are cumulative.

Does a public servant have a legal right to his salary ? He cannot sue for his salary.  
Lall's case : see para 24

(a) Not property franchise or personal right

20 (e) reinstatement would be reinstatement as probationer.

Re Para 4 of affidavit :

Art 39: Executive authority in Y. de.P. Agong

P.S.C. exercise delegated authority from Y. d.P.Agong.

To Conclude :

Discretionary nature of remedies

30 P.S.C. acting in interests of public policy.

In their discretion - they exercised their administrative powers.

No reduction in rank - in fact - "eligible"

Article 135(2) has no application

Article 25 D: merely declaratory of existing powers of Government.

In the High Court

Rely on L.C.J. Goddard's views in judgments - re public service.

No.10.

C.C. Rasa Ratnam :

Proceedings (continued)

Goddard L.C.J. - in disciplinary action.

22nd July, 1959.

RM.15 & 18 - neither a matter of taking disciplinary action.

Spackman's Case @ page 342 (2nd para).

Submit P.S.C. is a statutory body with powers and duties under the Constitution.

High Commissioner had wide powers of appointment in 1957 - no affidavit filed as to circumstances under which appellant came to be appointed.

10

See adverts- "School Cert".

Evidence in Sessions Court of Bigley.

Kedah case has no application - because Art.135(2) has come into operation - certainly no application since Merdeka.

Adjourned at 12.30 p.m.

C.A.V.  
22.7.59.

20

Sd: H. T. Ong.

No.11.

No. 11.

Judgment

JUDGMENT.

3rd May, 1960

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

O.M. 2/59 and O.M.3/59

Rasiah Munusamy  
Mr. C.C. Rasa Ratnam

Applicant

and  
The Public Service Commission  
Mr. I. Talog Davies.

Respondents

30

JUDGMENTIn the High  
Court

No.11.

Judgment  
(continued)

3rd May, 1960

10 In these two motions the applicant moves the Court, first, for an order of certiorari to quash a decision of the respondents, the Public Service Commission, terminating with effect from May 23, 1958, the appointment of the applicant as a probationary Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya and reverting him to his previous post of Immigration Officer; secondly, for an order in the nature of a mandamus, under section 44 of the Specific Relief (Malay States) Ordinance, 1950, requiring the respondents to re-instate the applicant as an Assistant Passport Officer in the said External Affairs Service on probation.

20 At the commencement of the hearing I made an order, with the agreement of counsel, for consolidation of the two motions. I referred Federal Counsel also to the affidavit of the Secretary to the Public Services Commission, filed only in Originating Motion No. 2 of 1959, which confined itself to submission of law under the Specific Relief Ordinance, but disputed no allegation of fact in the applicant's statement and affidavit. Federal Counsel stated that the averments of fact by the applicant are not  
30 challenged, but only the conclusions to be drawn therefrom.

The facts of this case may now be set out.

On February 19, 1957, an advertisement in the Malay Mail newspaper invited applications for posts of Assistant Passport Officer for service in Federation of Malaya Government Oversea Missions. The relevant portion reads :

40 " Applicants will be selected according to the following order of preference:  
(i) Serving Assistant Passport Officers and Junior Assistant Passport Officers in the Immigration Department who have had not less than 5 years' service and possess School Certificate. (ii) All serving Government Officers who have had 5 years' service and who possess School Certificate."

In the High  
Court

No.11.

Judgment  
(continued)

3rd May, 1960

At that date the applicant was a serving Government Officer who had had more than 5 years' service as an Immigration Officer, and, as such, subject to requisite qualifications, his application had to be dealt with under the second category. As regards his educational qualifications he held a "Leaving Certificate" from his School, the Methodist Boys' School, Kuala Lumpur, which states, inter alia:

"Standard at time of leaving: School Certificate Class (Camb.) 10  
Reason for leaving: Graduated.

Remarks: He represented the School in football (4 years), cricket (4 years), and Hockey. Captain of School Cricket Team and Combined Schools Team. Has represented State in Cricket. Very good sportsman and athlete. A good leader. " 20

It is not in dispute that other advertisements appearing from time to time, inviting applications for Federal Government vacancies or study leave scholarships were couched in more precise terms as to the type of School Certificate required to qualify.

In his letter of application dated February 21, 1957, the applicant wrote:

"I am a local born Indian aged twenty-eight and am a Federal Citizen. I have passed my School Certificate and have been in Government Service for the past seven years. I can speak Malayalam, Malay and can read and write Tamil. I am single." 30

He then proceeded to describe his past experience as Immigration Officer in the Passport Section.

In May 1957, he was interviewed by an Interview Board of the Public Service Commission and, from the evidence given in the Sessions Court by a member of that Board, there can be no doubt that the Leaving Certificate was produced (together with applicant's Birth Certificate) for inspection by the Board, and that this particular member made his notes therefrom. Here, I would observe that, whatever might have been the 40

impression conveyed to any one reading the letter from the applicant, there was no question of any wilful misrepresentation taking place before the Interview Board which could possibly have left any misconception in the mind of any of its members as to the applicant's true educational qualification, unless they completely misunderstood the purport of the certificate. It is, however, true to say that the word "graduated" in the Leaving Certificate, appearing in juxtaposition with "School Certificate Class (Camb)" may well have left an impression that he had passed the School Certificate examination and was eligible for appointment.

In the High  
Court

No.11.

Judgment  
(continued)

3rd May, 1960

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20

Following the interview the applicant was informed by a letter from the Chief Secretary's office, dated August 21, 1957, that he had been selected for appointment as Assistant Passport Officer, such appointment to be for 3 years in the first instance, with effect from the date of embarkation for his overseas post. It gave details of salary and allowances, and, as to the appointment, informed the applicant in paragraph 4 as follows:

30

"You will be required to serve a probationary period of one year from the date of your appointment and subject to your work and conduct being satisfactory you will be eligible for confirmation in your appointment at the end of this period. "

The letter concluded by asking if the applicant accepted appointment on the terms and conditions stated.

40

The offer was accepted, and on August 25, 1957, the applicant duly left for Karachi, where he assumed duty as Assistant Passport Officer in the Office of the High Commissioner for the Federation of Malaya in Pakistan. In October 1957 certain investigations were made by the police, which resulted in a letter being sent to the applicant by the Permanent Secretary to the Ministry of External Affairs on November 30, 1957 recalling him for reposting.

Shortly after his return, the applicant was charged in the Sessions Court, Kuala Lumpur, with an offence under section 182 of the Penal

In the High  
Court

Code. The charge was:

No.11.  
Judgment  
(continued)  
3rd May, 1960.

"That you on or about the 16th May, 1957 at Kuala Lumpur, in the State of Selangor, gave to a public servant, namely, Mr. Singaram, a permanent member of the Public Services Commission, an information, namely, that you have passed the School Certificate examination in 1949, which information you knew to be false, intending thereby to cause the said public servant to do a thing which such public servant ought not to have done if the true state of facts respecting such information was known to him, to wit, to recommend you for the appointment of Assistant Passport Officer in the Government Overseas Missions, and you did thereby commit an offence punishable under section 182 of the Penal Code."

10

He was acquitted on January 27, 1958, and an appeal to the High Court against such order of acquittal was dismissed on May 5, 1958. Meanwhile, on February 10 1958 he was interdicted from duty, on half-monthly emoluments, by the Controller of Immigration, with effect from January 25, 1958, by reason of the criminal proceedings then pending in the appeal.

20

On May 23, 1958, the Secretary to the Public Services Commission sent to the applicant the letter which led to these proceedings. It is as follows:

30

" 2. I am to say that it has come to the knowledge of this Commission that you have not passed the School Certificate required as claimed by you and that you are therefore under-qualified for the appointment. After due consideration of the circumstances and of the necessity to maintain the standards of the External Affairs Service and in fairness to other properly qualified candidates and appointees, it has been decided to terminate your appointment as Assistant Passport Officer, External Affairs Service on probation, with effect from the date of this letter.

40

3. You will revert to your former post in the Immigration Department on the terms and conditions under which you were serving

before appointment to the External Affairs service."

In the High  
Court

During the following months there was considerable correspondence between the Public Services Commission and the applicant's solicitor, in course of which the applicant was pressing continuously for reinstatement.

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Judgment  
(continued)

3rd May, 1960.

On November 13, 1958 the Secretary to the Public Services Commission sent the following letter :

10

" I am directed to refer to your letter RPSR/GDS/58/1 dated the 18th September.

2. I am to recapitulate the position for your benefit:

20

(1) Mr. Munusamy does not possess the "School Certificate" as required by Government and which the meaning is well known to all in Malaya. In fact he failed the Cambridge Overseas School Certificate Examination in December 1949 in all the nine subjects for which he sat.

30

(2) Mr. Munusamy has in three applications for other posts claimed to have passed the "School Certificate" (the capital letters, his, are to be noted).

(3) Mr. Munusamy on 12th January, 1958 signed a departmental document recording particulars for his record of service which states that he had "Passed School Certificate (Senior Cambridge)"

40

(4) Government has the contractual right of any employer to terminate services at any time in accordance with the normal conditions of service applicable to the appointment.

(5) A serving Government Officer is subject to General Orders, one of which, General Order A.25(d), gives expression to Government's right to terminate probation, if necessary, without reason assigned.

In the High  
Court

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Judgment  
(continued)

3rd May, 1960.

- (6) Mr. Munusamy was appointed an Assistant Passport Officer on probation. He was subject to the overriding provisions of General Orders and Government's right as an employer.
- (7) It is the practice where a probationary Officer's qualification have later been found not to be such as are required and as he has claimed, that the officer's appointment has been terminated. This is not only reasonable but Government's duty in the interests of the taxpayer and the public, to maintain the public service at a proper standard, and in the interests of other serving officers who are properly qualified, and in fairness to other candidates not considered for selection because they were underqualified.
- (8) Common Regulation 13 states a right reserved at the time to Government. This right was not exercised in the competition at which Mr. Munusamy was interviewed.
- (9) Admission to a Scheme of Service on probation does not entitle that officer to retention in that Scheme for obvious reasons. Otherwise probation would have no meaning.
- (10) The case of Mr. Yap Fook Seng is not parallel to your client's for the reason given to you, that he was appointed a Junior Assistant Passport Officer under a Scheme of Service for Junior Assistant Passport Officers and Assistant Passport Officers at a time when a Standard VIII qualification only was required. It is a service principle that once an officer is confirmed in a scheme he is entitled to be considered for promotion within that scheme in competition with other officers of the same standing serving under the same scheme. Mr. Munusamy was not admitted to the scheme of Assistant Passport Officer until he was appointed an Assistant Passport Officer on probation and not eligible for the principle until confirmed.

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(11) Mr. Munusamy was not "dismissed" or "reduced in rank", both of which are disciplinary punishments. Article 135(2) of the Constitution does not therefore apply to this case.

In the High  
Court

No.11.

Judgment  
(continued)

3rd May, 1960.

3. I am to inform you that General Orders to which Government Officers are subject provide that Officers, while being at liberty to seek the advice of their staff associations or some other party in regard to any matter must sign and submit their own representations through their Head of Department.

10

4. Mr. Munusamy has elected to make his representations through yourself. The decision that he should revert to his former post was made by the Public Services Commission. His representations have been considered by the Commission and no grounds are seen to vary that decision. I am therefore to inform you that the matter is now regarded as closed.

20

5. A copy of this letter is being despatched under separate cover to Mr. Munusamy through his Head of Department and also to the Permanent Secretary to the Prime Minister's Department, for the information of the Hon. the Prime Minister whom you have addressed in the matter.

30

On December 12, 1958, the Public Services Commission said their final word on the matter when the applicant's solicitor was informed that the Commission had nothing to add to their letter of November 13. That concludes a summary of the facts and the reasons for the Commission's decision to revert him to his former substantive post.

I would here observe that the Public Services Commission in their letter of August 6, stated unreservedly that the quality of the applicant's work or his conduct subsequent to appointment never came in question, and Federal Counsel conceded that in Karachi the applicant gave complete satisfaction. The reason for the step taken against him was that set out in the letter of May 23, 1958 and in paragraph (7) of

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Judgment  
(continued)

3rd May, 1960.

the letter of November 13, 1958.

I shall proceed first to deal with the question of certiorari. Counsel for Applicant argued that certiorari should go against the respondents on the ground that Article 135(2) of the Constitution had not been complied with when they terminated the applicant's appointment as probationer Assistant Passport Officer and reverted him to his former post in the Immigration Department. Article 135 reads as follows:

10

"Restriction 135(1) No member of any of the services mentioned in paragraphs (b) to (g) of clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank.

20

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

The third clause is not relevant to these proceedings.

The contention of the applicant's Counsel is that by reason of non-compliance with Article 135(2) the decision of the respondents was void on three grounds: that they had acted without jurisdiction, that there was error of law on the face of the record, and that their decision was taken contrary to the principles of natural justice. The non-compliance alleged is that the applicant was never given a reasonable, or any, opportunity of being heard before action taken by the respondents in the manner set out in their letter of May 23, 1958. The exercise of the respondents' powers, it was argued, is subject to the mandatory restrictions imposed by Article 135(2) which are in the nature of a condition precedent, and a breach thereof renders the decision made by them liable to be quashed on certiorari for want of jurisdiction and error of law. Furthermore, the requirement that the applicant should have a reasonable opportunity of

30

40

being heard clothes the respondents with the characteristics of a quasi-judicial body, and gives statutory recognition to the requirement that respondents must, before making their decision, observe the principles of natural justice.

In the High  
Court

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Judgment  
(continued)

3rd May, 1960

10 The respondents' reply to these submissions, briefly is that the respondents are not amenable to certiorari, and alternatively, if they are, this is not the proper case for such an order. Federal Counsel's argument is that the word "eligible" in the context of the respondents' letter of August 21, 1957, offering the appointment to the applicant, gave him no vested right to the appointment until confirmation; that termination of the applicant's appointment on probation was clearly not a dismissal because he still remains in Government service; that a person while on probation holds no rank, so that in fact the applicant never had been even reduced in rank, much less dismissed.

20 Finally, Federal Counsel submitted that "law" in Article 144(1) of the Constitution includes the common law, convention and usage, as well as written law governing the status of public servants, wherefore different considerations apply to Government or public servants, as distinct from those applying to private employees; that the respondents' decision was made in the interests of public policy and good government, and that in so doing the respondents were performing an

30 administrative act within their discretion, and were in no way acting in any quasi-judicial capacity.

Counsel for the applicant has referred in his argument to a large number of authorities:

R. v. Ashford (Kent) Justices, Ex Parte RICHLEY (1)

High Commissioner for India v. I.M. Lall (2)

Re Gilmore's Application (3)

40 General Medical Council v. Spackman (4)

N.W. Frontier Province v. Suraj Narain Anand (5)

R. v. Industrial Disputes Tribunal, ex parte Kigass Ltd (6)

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(continued)

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The Queen v. Justices of Surrey (8)

Barnard & Others v. National Dock Labour Board  
& anor. (9)

In re R. Bronze & Metal Co. Ltd. and VOS (10)

(1)	(1955)	2. A.E.R. 327	
(2)	(1948)	A.I.R. (PC) 121, 124-7	
(3)	(1957)	1 A.E.R. 796, 801	
(4)	(1943)	2 A.E.R. 342, 343	
(5)	L.R. 75	I.A. 343, 356	
(6)	(1953)	1 A.E.R. 593, 595	10
(7)	(1809)	5 Q.B. 466	
(8)	(1911)	A.C.179, 182	
(9)	(1953)	1 A.E.R. 1113, 1118	
(10)	(1918)	1 K.B. 315, 323.	

R. v. Patents Appeal Tribunal, Ex parte Champion  
Paper & Fibre Company Ltd. (11)

C.B. Reilly v. The King (12)

R. v. Northumberland Appeal Tribunal, Ex parte  
Shaw (13)

The King v. P.M.G., Ex parte Carmichael (14)

20

T. Ekambare Naicker & anor. v. Madras Corporation  
(15)

Alcock Ashdown & Co. Ltd. v. The Chief Revenue  
Authority, Bombay (16)

In the matter of G.A. Nateson & K.B. Ramanathan  
(17)

The Queen v. Secretary of State for War (18)

The King v. The Commissioner of Income Tax (19)

Rex. v. Revising Barrister for the Borough of  
Hanley (20)

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The King v. Chancellor etc. of University of  
Cambridge (21)

Rex. v. Poplar Borough Council (No.1) (22)

Rex v. Bishop of Sarum (23)

Lee v. Showman's Guild (24)

	(11)	(1957)	1 A.E.R.227, 228	In the High
	(12)	(1934)	A.C. 176, 179	Court
	(13)	(1952)	1 A.E.R. 122,127	<hr/>
	(14)	(1928)	1 K.B. 291	No.11.
	(15)	(1927)	A.E.R.Mad.22,33	
	(16)	(1923)	A.I.R. (PC) 138, 142	Judgment
	(17)	(1917)	IL R.40 Mad.125,126	(continued)
	(18)	(1891)	2 Q.B. 326,334-5-8	
	(19)	(1920)	1 K.B. 26,37-40	3rd May, 1960.
10	(20)	(1912)	3 K.B. 518,528-31	
	(21)		93 E.R. 698, 702	
	(22)	(1922)	1 K.B.72	
	(23)	(1916)	1 K.B. 466,470	
	(24)	(1952)	1 A.E.R.1182-5	

After having gone through these authorities, involving no little time and labour, I trust I shall not be considered discourteous to counsel, or unappreciative of the intense industry he has shown in his researches, if I omit references to them, because any discussion of such authorities, on the facts of this case, would be only academic. There is no need to discuss whether, under Article 135(2) of the Constitution, the Public Services Commission must act as a judicial or quasi-judicial tribunal, since, under that Article, the Commission must hear the public officer it is intended to dismiss or reduce in rank. Any action by the Commission in contravention of the Article must be constitutionally invalid, for the Constitution is the supreme law of the land. In such cases, certiorari can and must issue to quash the order, because it is the right and the duty of the Court to maintain the rule of law and declare invalid any transgression of the limits of the Constitution. Nor is it necessary to invoke the principle of audi alteram partem, because it is part of the Article itself. I need refer only to High Commissioner for India v. I.M. Lall (2)

Corresponding to Article 135(1) and (2) of our Constitution is Article 311 of the Indian Constitution, clauses (1) and (2) of which are derived from subsections (2) and (3) of Section 240 of the Government of India Act, 1935. In Lall's case the Privy Council held that, because the purported removal of the respondent had not conformed to the mandatory requirements of subsection 3 of Section 240, it was void and inoperative.

In the High  
Court

No.11.

Judgment  
(continued)

3rd May, 1960.

The essential point for consideration, therefore, is whether, in effect, the decision of the respondents, terminating the applicant's appointment as Assistant Passport Officer on probation and reverting him to his former post in the Immigration Department, involved his dismissal from the probationary post, or a reduction in his rank.

Counsel for the applicant refers to the functions of the Public Services Commission, as set out in Article 144(1), which provides :

10

" Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends."

20

He points out that, under the Eleventh Schedule to the Constitution (being provisions of the Interpretation and General Clauses Ordinance, 1948 applied for Interpretation of the Constitution) "power to appoint includes power to dismiss," and he contends that the decision to terminate the applicant's appointment and revert him to his former post, was, in truth, a decision effecting the applicant's dismissal from the post of Assistant Passport Officer on probation and a reduction from that rank, regardless of the terminology used to disguise that fact.

30

I shall now deal first with the question of dismissal. With all respect to Counsel, I regret that I am unable to accept his contention that I must hold the termination of a probationary appointment as tantamount to dismissal. In Shyamlal v. State of Utter Pradesh and Another(25) Das, J., in the course of his judgment, said:

40

"Removal, like dismissal, no doubt brings about a termination of service, but every termination of service does not amount to dismissal or removal ... Our recent decision in Satischandra Anand v. The Union of India (26) fully supports the conclusion that Article 311 does not apply to all cases of termination of service."

(25) A.I.R. (1954) S.C. 369, 374  
 (26) A.I.R. (1953) S.C.250

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 Court

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Judgment  
 (continued)

3rd May, 1960.

10 In Shyam Lal's case the question was whether a  
 termination of service brought about by compulsory  
 retirement amounted to dismissal or removal from  
 service, so as to attract the provisions of Article  
 311. The Court were of opinion that the answer  
 depended on whether the nature and incidents of  
 the action resulting in dismissal or removal were  
 to be found in the action of compulsory retirement.  
 In their view, removal or dismissal involved "the  
 levelling of some imputation or charge against the  
 officer which may conceivably be controverted or  
 explained by the officer"; another distinguishing  
 characteristic of dismissal or removal is that it  
 is a punishment, imposed on an officer as a penalty,  
 involving loss of benefit already earned; and, as  
 both these elements were absent in the action taken  
 by way of compulsory retirement, the Court held  
 20 that compulsory retirement, as termination of  
 service, did not amount to dismissal or removal,  
 and consequently Article 311 had no application.

30 Although Indian authorities have no binding  
 force, they are entitled to great weight, and I  
 would, with respect, adopt the test applied by  
 Das J., with whose judgment Mukherjea, Bhagwati,  
 Jagannadhadas and Venkatrama Ayyar JJ agreed. In  
 the present case no imputations of any sort what-  
 soever were made against the applicant, and the  
 termination of his probationary appointment was  
 professedly an administrative measure dictated by  
 public interest, and not ordered as a penalty or  
 disciplinary action. The applicant's Counsel  
 raised no argument on this point, and, although it  
 was submitted that the respondents had terminated  
 the applicant's appointment "without cause or  
 justification in law", there was never any  
 suggestion that the respondents did not come to  
 their decision in good faith, or that the reason  
 40 which they gave inadequate. The indisputable fact  
 is that he never possessed the School Certificate,  
 and was therefore under-qualified for the appoint-  
 ment, and the respondents, having discovered their  
 error, albeit a little late, took necessary action  
 to rectify the matter. I am accordingly of opinion  
 that the termination of the applicant's appointment  
 in those circumstances does not amount to a  
 dismissal to which the provisions of Article 135  
 (2) would apply.

In the High  
Court

No.11.

Judgment  
(continued)

3rd May, 1960.

Apart from the question of law, it is impossible to overlook the fact that the applicant remains today in the continued service of the Government. Counsel for the applicant has not pointed out to me, nor have I been able to discover, any hiatus between the termination of the applicant's appointment in Karachi and his reversion to his post in Kuala Lumpur. He cannot be still in the Government Service, if he was dismissed, unless he has been re-employed after his dismissal, and of that there is no iota of evidence. No question of his dismissal can therefore arise.

10

A more difficult question is whether the reversion of the applicant from the probationary appointment to his former substantive post amounts to reduction in rank. In my view "reduced in rank" means reduced in substantive rank, and not the reversion of an officer holding a post merely on probation to his original substantive rank. In Gopi Kishore Prasad v. State of Bihar (27) it was held that Article 311(2) of the Indian Constitution applied to probationers, and that they were entitled to have an opportunity of showing cause against an order of discharge. That decision, however, establishes no principle, because it was based on Rules 49 and 55 of the Civil Services (Classification, Control and Appeal) Rules, as amended in 1947, and Explanation II to Rule 49 provided that

20

"the discharge of a probationer for some specific fault or on account of his unsuitability for the service, amounts to removal or dismissal within the meaning of this Rule."

30

On the Other hand, there are certain Indian decisions which I think are of the greatest assistance in determining the question arising in this case. In M.V. Cichoray v. The State of Madhya Pradesh (28) the judgment contains this passage:

40

"The first question which arises for consideration is whether the reversion of a person officiating in a higher post held by him amounts to reduction in rank, within the meaning of the expression used in

---

(27) A.I.R. (1955) Patna 372  
(28) A.I.R. (1952) Nag. 288



In the High  
Court

No. 11.

Judgment  
(continued)

3rd May, 1960.

10

Article 311 Clause (2) of the Constitution. In our opinion, if a person officiating in a higher post is reverted to his original post in the normal course, and not by way of penalty, he cannot be said to be reduced in rank. On the other hand, we are equally clear that where reversion is ordered as a penalty, it amounts to reduction in rank because such reversion is apt to stand in the way of a Government Servant in securing his promotion in the normal course."

See also Rabindra Nath Das v. General Manager, Eastern Railway & Others (29) Keda Nath Agarwal v. The State of Ajmeer (30)

20

In Laxminarayan Chironjilal Bhargava v. Union of India (31) the facts were as follows: the petitioner, since his employment, had been working continuously and still continued as a temporary civilian employee in the Defence Department. In 1947 he was duly promoted as permanent supervisor, Barrack Stores, Grade I. In 1949 he was promoted as officiating temporary Barrack Officer, and he continued to officiate in this post till February, 1952, then he was informed by the Departmental Promotion Committee that as it had found him unsuited for continued retention in the grade of Barrack Officer, he was being reverted to Supervisor, Barrack Stores, Grade I. The petitioner's complaint was that he

30

was not given an opportunity of showing cause against his reversion, as provided by Article 311 of the Constitution. I quote from the judgment:

40

"A person cannot be deemed to be a member of a service unless he is permanently absorbed therein; nor, in our opinion, can he be deemed to be holder of such post unless he holds it permanently. For holding a post permanently the post itself must be permanent and the incumbent must be a permanent employee."

This is also the view of Nigam J.C. in Kedah Nath Agarwal's case (30), where he said:

(29) 59 C.W.N. 859  
(30) A.I.R. (1954) Ajm.22  
(31) A.I.R. (1956) Nag.113

In the High  
Court

No.11.

Judgment  
(continued)

3rd May, 1960.

"I am of opinion that unless a person can affirmatively show that he has been appointed to a post substantively or has been confirmed in the appointment, the normal presumption would be that he had been appointed only in a temporary or officiating capacity."

Returning to Laxminarayan's case, the judgment went on to say:

"No doubt, the authorities have said that the petitioner had been negligent in the performance of his duties and that he has also disobeyed certain orders and instructions. But when they said so they did not propose to penalise him in any way for his actions. All that they thought it necessary to do, in view of the shortcomings of the petitioner, was not to confirm in the higher post. In our opinion this does not amount to inflicting penalty on a person for his shortcomings, in the strict sense of the word 'penalty'. Penalty, as we understand it, is necessarily by way of retribution or correction.

10

20

"When an act is not intended to be either by way of retribution or correction, it cannot be regarded as a penalty at all. If the Departmental Promotion Committee declined to approve of the petitioner's promotion because of some shortcomings which it found in his work and suggested his reversion to the substantive post, its action cannot be characterised either by way of retribution or correction."

30

The Court accordingly declined to assist the petitioner.

In interpreting what is "reduction in rank" under Article 135(2) of our Constitution, and in deciding whether the applicant's reversion to his original substantive post amounts to a reduction in rank, I would respectfully adopt the reasons given in the cases above referred to. The proper test to apply, when one has to find the dividing line between actions which do, and those which do not, come within the purview of Article 135(2), is whether such actions are penal in character or otherwise. In the instant case I am clearly of opinion that the applicant's reversion was merely

40

the logical result of the respondents' holding that he was under-qualified for confirmation in the probationary appointment, and not action taken by way of penalising him. It therefore does not amount to "reduction in rank", and the provisions of Article 135(2) have no application.

In the High  
Court

No.11.

Judgment  
(continued)

The application for an order of certiorari is accordingly dismissed. Dismissal of the other motion follows, as a matter of course.

3rd May, 1960.

10

Coming to the question of costs, I must say that I feel considerable sympathy for the applicant, who seems to have been the unfortunate victim of circumstances, although he was responsible, initially, for his own predicament. However, the respondents cannot, in all good conscience, disclaim all responsibility for a lapse on the part of their Interview Board.

20

The sequel to all this has been lamentable. The applicant is back where he was, and, in addition, he has had, for several months, the gravest personal anxiety any civil servant can ever have, of a serious criminal charge hanging over his head. He has been put to considerable expense to defend and clear himself. And, withal, the applicant's recall was not because he was found unfit for confirmation in the appointment, but rather that public interest requires it. In all the circumstances, therefore, I propose to exercise my discretion in the matter of costs, so that, instead of costs following the event, I make no order.

30

In fairness to the respondents, I wish to emphasise that, in making no order for costs in their favour, I attach no blame whatsoever to the respondents, or to their Interview Board, or to any member thereof for what is clearly an oversight, which may be attributed to heavy pressure of work.

40

In conclusion, I would express my sincere hope that the applicant's action in availing himself of the right to bring this matter for determination by the Court will not, in any way, prejudice his future career in the service of the Government. I must add that I am greatly indebted to both Mr.C.C. Rasa Ratnam, Counsel for the applicant, and to Mr. I. Talog Davies, Federal Counsel, for their most able arguments and lucid presentation of their case, which have been of the greatest assistance to me.

50

Kuala Lumpur,  
3rd May, 1960.

(sd) H.T. Ong

JUDGE, SUPREME COURT,  
FEDERATION OF MALAYA.

162.

In the High  
Court

No.12.

ORDER

No.12.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

Order

IN THE HIGH COURT AT KUALA LUMPUR.

3rd May, 1960.

ORIGINATING MOTION NO. 2 OF 1959

(In the matter of an application by  
Rasiah Munusamy for leave to apply  
for an order of certiorari

And

In the matter of the termination by  
the Public Services Commission of  
the appointment of Rasiah Munusamy  
as Assistant Passport Officer in  
the External Affairs Service of the  
Government of the Federation of  
Malaya)

10

AND

ORIGINATING MOTION NO.3 OF 1959

(In the matter of an application for  
an order under Section 44 of the  
Specific Relief (Malay States)  
Ordinance, 1950

20

And

In the matter of the termination by  
the Public Services Commission of  
the appointment of Rasiah Munusamy  
as Assistant Passport Officer in  
the External Affairs Service of  
the Government of the Federation  
of Malaya)

30

BETWEEN

RASIAH MUNUSAMY

... APPLICANT

AND

THE PUBLIC SERVICES COMMISSION

RESPONDENT

BEFORE THE HONOURABLE MR. JUSTICE H.T. ONG

JUDGE, FEDERATION OF MALAYA.

This 3rd day of May, 1960.

O R D E R

In the High  
Court

No.12.

Order  
(continued)

3rd May, 1960.

10 UPON MOTIONS pursuant to Notice of Motion dated the 27th day of February, 1959, in Originating Motion No. 2 of 1959 and Notice of Motion dated the 8th day of April, 1959 in Originating Motion No. 3 of 1959 made unto this Court and coming on for hearing on the 21st and 22nd days of July, 1959 in the presence of Mr. C.C. Rasa Ratnam of Counsel for the Applicant and Mr. Idris Talog Davies, Senior Federal Counsel, for and on behalf of the Respondent by consent IT WAS ORDERED that the two motions be consolidated and heard together AND UPON READING the affidavits of Rasiah Munusamy affirmed on the 27th day of February, 1959 and the 7th day of April, 1959, and the affidavit of Mohamed Ismail bin Abdul Latiff affirmed on the 20th day of March, 1959

20 AND UPON HEARING the arguments of Counsel for both parties as aforesaid IT WAS ORDERED that the Motions do stand adjourned for judgment and the same coming on for judgment this day in the presence of Mr. C.C. Rasa Ratnam of Counsel for the Applicant and Mr. B.T.H. Lee, Federal Counsel, for and on behalf of the Respondents, IT IS HEREBY ORDERED that the Motions be and are hereby dismissed AND IT IS FURTHER ORDERED that there be no order as to costs.

30 GIVEN under my hand and the Seal of the Court this 3rd day of May, 1960.

Sd: A.W. Wah

Senior Assistant Registrar,

Supreme Court,

KUALA LUMPUR.

In the Court  
of Appeal

No. 13.

MEMORANDUM OF APPEAL

No.13.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

Memorandum  
of Appeal

IN THE COURT OF APPEAL AT KUALA LUMPUR

28th April,  
1962.

F.M. CIVIL APPEAL NO. 41 OF 1960

Between

Rasiah Munusamy .. Appellant

And

The Public Services Commission Respondent

( In the matter of Kuala Lumpur High Court Originating Motions No.2/59 & 3/59 10

Between

Rasiah Munusamy .. Applicant

And

The Public Services Commission .. Respondent )

MEMORANDUM OF APPEAL

Rasiah Munusamy, the Appellant abovenamed appeals to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Ong given at Kuala Lumpur on the 3rd day of May, 1960 on the following grounds: 20

I. The learned Judge was wrong in law in holding that the termination of the appellant's appointment as Assistant Passport Officer, External Affairs Service on probation was not an action taken by way of penalising him and therefore did not amount to reduction in rank within the meaning of Art. 135(2) of the Constitution. 30

II. The learned Judge was wrong in regarding the laudatory statements made about the appellant by the Respondent after the criminal proceedings against the appellant had terminated in his favour and the statement made by Counsel before him at

hearing that the appellant had given complete satisfaction in Karachi, as of any relevance or value in a consideration of the question whether or not reduction in rank had in fact taken place, in derogation of the legal rights under the Constitution.

In the Court  
of Appeal

No.13.

Memorandum  
of Appeal  
(continued)

28th April,  
1962.

10 III. The learned Judge ought to have held that the letter of the Respondent of the 23rd May 1958 terminating the appellant's appointment as from that very date i.e. even before the letter had been received by the appellant did, in all the circumstances, constitute punishment, that reversion to his former post after promotion to a higher post in which he had admittedly given complete satisfaction that such termination was clearly in disregard of the Constitutional protection given to the appellant and that it was therefore inoperative and void.

Dated this 28th day of April, 1962.

20 Sd: Braddell & Ramani  
Solicitors for the Appellant.

To,  
The Registrar,  
Supreme Court,  
Kuala Lumpur.

30 And to  
The Federal Counsel  
for and on behalf of the abovenamed Respondent,  
Attorney-General's Chambers,  
Secretariat,  
Kuala Lumpur.

The address for service of the Appellant is c/o  
Messrs. Braddell & Ramani, Advocates & Solicitors,  
Hongkong Bank Chambers, Kuala Lumpur.

In the Court  
of Appeal

No. 14.

AMENDED MEMORANDUM OF  
APPEAL

No.14.

Amended  
Memorandum  
of Appeal

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR.

6th August,  
1963.

F.M. CIVIL APPEAL NO. 41 OF 1960.

Between

Rasiah Munusamy .. Appellant.

And

The Public Services  
Commission .. Respondent. 10

(In the matter of Kuala Lumpur High  
Court Originating Motions Nos.  
2/59 & 3/59

Between

Rasiah Munusamy .. Applicant

And

The Public Services  
Commission .. Respondent).

AMENDED MEMORANDUM OF APPEAL

Rasiah Munusamy, the Appellant abovenamed  
appeals to the Court of Appeal against the whole  
of the decision of the Honourable Mr. Justice Ong  
given at Kuala Lumpur on the 3rd day of May, 1960  
on the following grounds :

I. The learned Judge was wrong in law in  
holding that the termination of the Appellant's  
appointment as Assistant Passport Officer,  
External Affairs Service on probation was not an  
action taken by way of penalising him and therefore  
did not amount to reduction in rank within the  
meaning of Art.135(2) of the Constitution. 30

II. The learned Judge was wrong in regarding  
the laudatory statements made about the Appellant  
by the Respondent after the criminal proceedings  
against the Appellant had terminated in his favour  
and the statement made by Counsel before him at



the hearing that the Appellant had given complete satisfaction in Karachi, as of any relevance or value in consideration of the question whether or not reduction in rank had in fact taken place, in derogation of the legal rights under the Constitution.

In the Court  
of Appeal

No. 14.

Amended  
Memorandum  
of Appeal  
(continued)

6th August,  
1963.

10 III. The learned Judge ought to have held that the letter of the Respondent of the 23rd May, 1958 terminating the Appellant's appointment as from that very date i.e. even before the letter had been received by the Appellant did, in all the circumstances constitute punishment, that reversion to his former post after promotion to a higher post in which he had admittedly given complete satisfaction that such termination was clearly in disregard of the Constitutional protection given to the Appellant and that it was therefore inoperative and void.

20 IV. It is respectfully submitted that the learned Judge erred in holding that "reduced in rank" means reduced in substantive rank, and not the reversion of an officer holding a post merely on probation to his original substantive rank".

30 V. The Respondent was not entitled to terminate the Appellant's appointment contrary to the letter of appointment dated August 21st, 1957 (Exhibit "R.M. 8") particularly paragraph 4 thereof which stated "You will be required to serve a probationary period of one year from the date of your appointment and subject to your work and conduct being satisfactory you will be eligible for confirmation in your appointment at the end of this period."

VI. It is respectfully submitted that premature termination of appointment against the will of a public servant is within the purview of Article 135(2) of the Constitution of the Federation of Malaya.

40 VII. The learned Judge erred in holding that the Appellant "cannot be still in the Government service, if he was dismissed, unless he has been re-employed after his dismissal and of that there is no iota of evidence. No question of his dismissal can therefore arise." It is respectfully submitted that the action of the respondent set out in the letter dated May 23rd 1958 (Exhibit "R.M. 10") was a dismissal from the post of

In the Court  
of Appeal

Assistant Passport Officer and re-appointment to  
the post of Immigration Officer.

No.14.

Amended  
Memorandum  
of Appeal  
(continued)

6th August,  
1963.

VIII. The learned Judge erred in holding : "The proper test to apply, when one has to find the dividing line between actions which do, and those which do not come within the purview of Article 135(2) is whether such actions are penal in character or otherwise". It is respectfully submitted, in the words of a dissenting Indian Judge, "It would be anomalous to hold that a man who has been guilty of misconduct should have greater protection than a blameless individual". It is further submitted that the said Article 135 (2) is not merely for the protection of the good name of the public servant but more for the protection of the security of tenure of the public servant and of the public good, particularly as no Minister is answerable to Parliament for the actions of the Respondent.

10

IX. (a) It is respectfully submitted that the word dismiss has the same meaning in both Article 135(2) of the said Constitution and in Section 29 of the provisions of the Interpretation and General Clauses Ordinance 1948 set out in the Eleventh Schedule to the said Constitution. The action of the Respondent set out in the said letter dated May 23rd, 1958 was a dismissal within the meaning of the said Section 29 implied in Article 144(1) of the said Constitution and a dismissal and a reduction in rank within the meaning of the said Article 135(2) and was contrary to the said Article 135(2) and to the principles of natural justice.

20

30

(b) The word dismissed and the words reduced in rank have no technical meaning in the said Article 135(2).

X. It is respectfully submitted that not only was the issue raised whether the powers given by the said Section 29 may be invoked without paying any regard to the provisions contained in the said Article 135(2) but the further issue was raised whether such powers may also be invoked without paying regard to the principles of natural justice. The learned Judge failed to adjudicate on the latter issue and to give relief thereunder as there was no due inquiry by the Respondent; nor was the Appellant given a reasonable opportunity of being heard before the termination of his appointment as Assistant

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Passport Officer by the Respondent. The learned Judge erred in holding: "Nor is it necessary to invoke the principle of audi alteram partem ...."

In the Court  
of Appeal

No.14.

XI. The learned Judge erred in not taking into account that there was in law no Public Services Commission prior to Merdeka Day or that Common Regulation 13 could have been responsible for the appointment of the Appellant, prior to Merdeka Day, as Assistant Passport Officer, External Affairs Service, or that a unilateral mistake of fact if any could not be relied on to avoid the operation of paragraph 4 of the said letter of appointment dated August 21st, 1957.

Amended  
Memorandum  
of Appeal  
(continued)

6th August,  
1963.

10

Dated this 6th day of August, 1963.

Sd: Athi Nahappan & Co.  
Solicitors for the Appellant.

To: The Registrar,  
Supreme Court,  
Kuala Lumpur.

20 And to: The Federal Counsel,  
for and on behalf of the abovenamed  
Respondent,  
Attorney General's Chambers,  
Secretariat,  
Kuala Lumpur.

No. 15.

No. 15.

AFFIDAVIT OF R. MUNSAMY

Affidavit of  
R. Munusamy

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

14th August,  
1963.

30

F.M. CIVIL APPEAL NO: 41 OF 1960

BETWEEN :

RASIAH MUNUSAMY

APPELLANT

AND :

THE PUBLIC SERVICES COMMISSION RESPONDENT

In the Court  
of Appeal

(In the matter of Kuala Lumpur  
High Court Originating Motions  
Nos: 2/59 and 3/59

No.15.

BETWEEN

Affidavit of  
R. Munusamy  
(continued)  
14th August,  
1963.

RASIAH MUNUSAMY

APPLICANT

AND

THE PUBLIC SERVICES  
COMMISSION

RESPONDENT )

A F F I D A V I T

I, Rasiah Munusamy of 55 Lorong Cheong Yoke Choy, Kampong Pandan, Kuala Lumpur, a Federal Citizen of Full age, solemnly and sincerely declare and affirm as follows:- 10

1. I am the Appellant abovenamed.

2. I passed the Cambridge School Certificate Examination of December, 1962. This was after the date of decision of the High Court from which the appeal is brought.

3. A copy of the Detailed Results of my pass in that examination is an exhibit hereto marked "RM. 31". 20

Affirmed by the abovenamed  
Rasiah Munusamy at Kuala Lumpur this 14th day of August, 1963 at 3 p.m. } Sd: R. Munusamy

Before me,

Sd. W.P. Sarathy  
Commissioner for Oaths,  
Supreme Court, Kuala Lumpur.

This Affidavit is filed on behalf of the Appellant by his Solicitors Messrs. Athi Nahappan & Company of Chan Wing Building (2nd Floor), Mountbatten Road, Kuala Lumpur. 30

171.

No. 15.- R.M.31.

CAMBRIDGE SCHOOL CERTIFICATE EXAMINATION RESULTS

PEJABAT PELAJARAN, SELANGOR  
CAMBRIDGE SCHOOL CERTIFICATE EXAMINATION  
FEDERATION OF MALAYA CERTIFICATE  
EXAMINATION

In the Court  
of Appeal

No.15.  
R.M.31.

Cambridge  
School  
Certificate  
Examination  
Results

DECEMBER 1962.

December 1962

10 DETAILED RESULTS OF  
RASIAH MUNUSAMY.

INDEX NO. 799 7/24  
CAMBRIDGE SCHOOL CERT. RESULT 3 (THREE)  
F. of M. Certificate Result  
Cambridge School Aggregate : 37  
F. of M. Aggregate :  
National Language:  
English Language: 6p (CREDIT) Elementary  
Mathematics : 5p (CREDIT)  
English Literature: 8s (PASS).  
20 Additional Mathematics:  
History (Paper H) 5p. (CREDIT).  
General Science:  
Geography : 9f General Science 2nd Subject  
Art: Physics:  
Principles of Accounts:  
Chemistry:  
Lower English : Biology:  
Malay: Health Science 6p (CREDIT)  
Chinese: Bible knowledge: 9f  
30 Tamil: Commercial Studies 7s (PASS)  
Latin:  
Hindi (as 2nd Language):  
Punjabi:

CAMBRIDGE SCHOOL CERTIFICATE RESULT & FEDERATION  
OF MALAYA CERT. OF EDU. RESULT.

1 First Division.  
2 Second Division.  
3 Third Division  
7 Gained a Statement of Success.  
40 8 or 9 Failed to gain a Certificate or a  
Statement of Success.  
0 Absent  
SUBJECTS GRADES (Except for National Language and  
Lower English)  
1 or 2 Very good.

		172.
In the Court of Appeal	3, 4, 5 or 6	Credit.
No. 15. R.M.31.	7 or 8	Pass
	9	Fail
Cambridge School Certificate Examination Results (continued)	0	Absent, or Part Subject.

December 1962.

No. 16.

NOTES OF ARGUMENT, THOMSON C.J.

Notes of  
Argument.  
Thomson C.J.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR.

22nd August,  
1963.

F.M. Civil Appeal No. 41 of 1960  
(Renumbered as Federal Court Civil Appeal  
No. 5/64).

10

Rasiah Munusamy

Appellant

v.

The Public Services Commission

Respondents.

Cor: Thomson, Chief Justice, F.M.  
Syed Sheh Barakbah, J.A.  
Neal, J.,

NOTES OF ARGUMENT RECORDED BY THOMSON  
CHIEF JUSTICE. F.M.

22nd August, 1963.

20

For appt: Palasuntharam.  
For Respts: Au Ah Wah.

Motion to amend Memorandum of Appeal.

Ah Wah: Do not oppose.

Order: Costs to Respts in any event.

On appeal.

Palasuntharam:

Facts are set out Ong J's judgment.

There was no P.S. Common. in May 1957 - came into being after Merdeka.

Appointing officer was H.C. under Art.14 (1)(a) of F. of M. Agreement.

It was subject to Common Regulations of 1956. I am relying on Common Regulation 13.

10 By reason of Art.14(1)(b) of 1948 F. of M. Agreement there was no power to dismiss at pleasure. It must be "for cause".

Terrell v. Sec. of State for the Colonies  
(1953) 2 A.E.R. 490, 497.

Govt. would only terminate a probationary appointment for misconduct etc. - not because he had not a school certificate.

Appellant was prosecuted and convicted for giving false information. But his conviction was quashed. So G.O.D. r. 44.

20 To amend r. 44 P.S.C. wrote letter of 23.5.58 (Supp.60).

Intld: J.B.T.

23rd August, 1963.

"Was appt. dismissed or reduced in rank for the purposes of Art. 135(2) of the Constitution?"

Both counsel:

We accept that as the issue.

Palasuntharam:

30 "Reduction in rank" means dismissal and re-appointment.

Worthington v. Robinson & ors: 75 L.T.446, 447. And see P.S.C. letter dd. 23.5.58 (Supp.60).

Post to which he was appointed was not designated "Probationary Passport Officer" but "Assistant Passport Officer".

In the Court  
of Appeal

No.16.

Notes of  
Argument.  
Thomson C.J.  
(continued)  
22nd August,  
1963.

23rd August,  
1963.

In the Court  
of Appeal

(p. ). Terms of appointment are in letter dd.21.8.57

No.16.

The terms of Art. 135(2) are general and it would be wrong to introduce a proviso.

Notes of  
Argument.  
Thomson C.J.  
(continued)

Salomon v. Saloman & Co. Ltd., (1897) A.C.22  
"The sole guide must be the statute itself".

23rd August,  
1963.

There is nothing in Art.135(2) to cut down the meaning of "the general public service of the Federation " within the meaning of Art.132.

The judgment in Shyam Lal v. State of Uttar Pradesh A.I.R. (1954) S.C. 369 was watered down by:

10

P.L. Dhingra v. Union of India A.I.R. (1958) S.C. 36, 43, 47.

That case modified A.I.R. (1956) Nag.113 (see p.81).

Kanda Singh v. Govt. of F.M. 1962 M.L.J.169 shows that existing law cannot modify the Constitution.

Dismissal means terminating the employment against the will of the servant and is not confined to dismissal by way of punishment.

20

In re An Arbitration between Rubel Bronze & Metal Co., & Vos. (1918) 1 K.B. 315, 323.

Here they "dismissed" appt. from his post of Asst. Passport Officer - they refused to go on employing him on the terms of employment offered in the letter dd. 21.8.57.

Terrell v. S. of S. for the Colonies (1953) 2 A.E.R.490.

Reilly vs. The King (1934) A.C.176.

Ward v. Barclay Perkins & Co. Ltd., (1939) 1 A.E.R. 287

30

Denning v. S. of S. for India in Council 37 T.L.R. 138.

Dhingra v. Union of India A.I.R. (1958) S.C. 36,41.



Appt. has since passed the examination.  
(Ct.: We cannot consider that).

In the Court  
of Appeal

(1948) The High Commissioner v. I.M. Lall A.I.R.  
P.C. 121.

No.16.

Wharton's Legal Dictionary "Probation" -  
that definition suggests a probationer is  
"appointed" and so Art.135(2) is attracted.

Notes of  
Argument.  
Thomson C.J.  
(continued)

Reilly vs The King (1934) A.C. 176.

23rd August,  
1963.

10 Till the end of the probationary period  
the appointment subsisted. During that period  
he was entitled to the protection of Art.135(2).

Cooper v. Wandsworth Board of Works 32 L.J.  
C.P.185.

Smith vs. The Queen 3 A.C. 614, 617, 623.

Adjd. s.d.

Intld J.B.T.

10th September, 1963

10th September,  
1963.

Palasuntharam (cont'd)

20 Constitution cannot be modified by service  
rules.

R. Venkata Rao v. S. of S. for India (1937)  
A.C. 248, 256.

Ponniah vs. Chinniah (1961) M.L.J. 66.  
deals with ouster of jurisdiction of the Court.

This should be taken further by reason of  
Kanda's case.

N.W. Frontier Province v. Suraj Narrain Anand  
A.I.R. (1948) P.C.112; 75 I.A. 343, 351.

30 Termination of appointment comes within  
scope of Art.135(2).

Rules cannot over-ride a statute in the  
absence of express provision to the contrary.

Public Officers Conduct and Discipline  
Regns. 1956, 28 et. seq.

In the Court  
of Appeal

No.16.

Notes of  
Argument.  
Thomson C.J.  
(continued)

10th September,  
1963.

F. of M. Agreement, 1948, Art.14(4).

The regns. related to punishment and discipline only.

Interpretation Ord. s.11(2) is not part of 11th Sch. of the Constitution.

Appellant was a public servant.

Constitution Art.48, 160(2) -"Office of profit."

Leong Peng Wah vs. Bahal Singh (1961)  
M.L.J. 316

10

A contract of service is not uberrimae fidei.

No question of mutual mistake.

Only question is whether appt. was dismissed or reduced in rank.

Case for Appt.

Ah Wah :

Goes through facts.

"Probationary period" - Jowitt's Dictionary 1416, As to "eligible" --

Morriss v. Winter & anor. (1930) 1 K.B. 243, 247.

20

Appellant practised a fraud on the Public Service Commission. So Government may rescind the contract.

Redgrave v. Hurd 20 Ch. D.1.

Contracts Ord. s.19.

1948 Fed. of Malaya Agreement revoked by 1957 Agreement w.e.f. 31.8.57.

G/s shows a servant of the Crown can be dismissed at pleasure.

30

Adjd. to 11.9.63.

Intld. J.B.T.

Ah Wah (cont'd).

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No.16.

Agree that by reg. 13 of "Common Regns" allows Govt. to waive normal requirements as to "qualification".

Notes of  
Argument.  
Thomson C.J.  
(continued)

But previous regs. deal with probation. Govt may terminate services without assigning any reason.

11th September  
1963.

Here there was no dismissal. Such a case would have been governed by Conduct Regns. r.48.

10 Our Art. 135 corresponds to Indian Article 311. Basu (3rd Ed.) II 487.

Art.311 does not apply where reduction is not imposed by way of penalty.

Amalendu v. Railas 56 C.W.N. 846, 851, 852.  
But Cf. Rabindra Nath Das v. Gen. Manager Eastern Rly. 59 C.W.N. 859, 869.

Chauhan v. Collector of Central Excise, Allahabad A.I.R. (1955) All. 528.

Chitaley "Constitution of India" IV p.3431.

20 P.L. Dhingra v. Union of India A.I.R. (1958) S.C. 36,39.

Neal: Jayanti Prasad v. State of Uttar Pradesh A.I.R. (1951) All. 793, 794.

Des Raj. vs. Dominion of India A.I.R.(1952) Pun.205\_7

Reduction in rank must be by way of penalty if it is to attract the provisions of Art.135(2).

Ridge v. Baldwin (1963) 2 W.L.R. 935.

Palasuntharam:

30 Common Regulations cannot be taken judicial notice of.

Ah Wah:

G.O. 24 was in force on 23.5.58.

Palasuntharam:

"Dismissal" in Art.135(2) has the same meaning as in 29 of the Interpretation Ord.

C.A.V.

Intld. J.B.T.  
11.9.63.

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of Appeal

No. 17.

No.17.

NOTES OF ARGUMENT OF  
BARAKBAH C.J.

Notes of  
Argument of  
Barakbah C.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR  
(APPELLATE JURISDICTION).

22nd August,  
1963.

FEDERAL COURT CIVIL APPEAL NO. 5 OF 1964.

(In the matter of Kuala Lumpur High Court Originating  
Motions Nos. 2/59 & 3/59).

Rasiah Munusamy Appellant 10

v

The Public Services Commission Respondent.

Coram: Thomson L.P.,  
Barakbah C.J.,  
Neal J.

NOTES OF ARGUMENT RECORDED BY  
BARAKBAH C.J.

22nd August 1963.

V.K. Palasuntharam for Appellant.

Au Ah Wah for Respondent. 20

Palasuntharam:

Application to amend Memorandum of Appeal.

No objection by Au Ah Wah.

Order as prayed with costs at any event.

Palasuntharam:

May 1957 - No Public Services Commission in  
law.

Public Services Commission constituted on  
31st August 1957.

High Commissioner was the appointing  
authority. 30

Clause 14(1)(a) Federation of Malaya  
Agreement 1948.

In the Court  
of Appeal

Regulation 13.

No.17.

Clause 14 (1)(b)

Notes of  
Argument of  
Barakbah C.J.  
(continued)

Terrell v. Secretary of State for Colonies.  
(1953) 2 A.E.R. 490, 497.

Regulation 44 (Chapter D - General Orders).

22nd August,  
1963.

4.30 p.m. Adjourned till 10.00 a.m.  
tomorrow.

10

Sd: S.S. Barakbah.  
22.8.63.

Friday, 23rd August, 1963.

23rd August,  
1963.

Both Counsel agree that the only issue is:

"Was the Appellant dismissed or reduced in  
rank for the purpose of Article 135(2)."

Palasuntharam:

Reduction in rank means a dismissal and  
re-appointment in rank.

20

Worthington v. Robertson & Others -  
75 L.T. 446, 447.

Not gazetted as Probationary Assistant  
Passport Officer.

p. - Supplementary Record.

Not entitled to introduce proviso in  
Article 135(2).

A. Salomon vs. A. Salomon & Co. Ltd., 1897  
A.C. 22

1895 - 95 A

P. 77 D -

30

P.L. Dhingra v. Union of India 1958 A.I.R.  
S.C. 36, 43, 44.

Shyam Lal v State of Uttar Pradesh  
25 A.I.R. 1954 S.C.369.

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of Appeal

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Notes of  
Argument of  
Barakbah C.J.  
(continued)

23rd August,  
1963.

B. Surrinder Singh Kanda v. Government of  
Federation of Malaya - 1962 M.L.J. 169.

Dismissal not confined to punishment.

In re Arbitration Ruebel Bronze & Metal Co.  
Ltd., and Vos - 1918 1 K.B. 315.

Terrell v Secretary of State for Colonies  
1953, 2 A.E.R. 496.

C.B. Reilly v. The King - 1934 A.C.176  
1937 A.E.R. 179 (reprint)

Ward v Barclay Perkins & Co. Ltd., - 10  
1939 1 A.E.R. 287.

Denning v Secretary of State for India  
in Council - 1920 37, T.L.R. 138.

P.L. Dhingra v Union of India - 1958 A.I.R.  
S.C. 34, 41. Col. 2

12.30 p.m. Adjourned.

2.30 p.m. Resumed.

R. Venkata Rao v Secretary of State for India  
1937 A.C. 248.

High Commissioner for India v I.M. Lall 20  
1948 A.I.R. P.C. 121, 125 para 15.

Cooper v The Board of Works for the Wandsworth  
District 32 L.J. C.P. 185

James Dunbar Smith v The Queen 1877-8, 3 A.C.  
614, 617.

4.00 p.m. - Adjourned sine die.

Sd: S.S. Barakbah.  
23.8.63.

10th September 10th September 1963.  
1963.

V.K. Palasuntharam for Appellant. 30

Au Ah Wah for Respondent.

Palasuntharam:

Venkata Rao v Secretary of State for India  
1937 A.C. 248, 256.

181.

Ponniah v. Chinniah - 1961 M.L.J. 66

North West Frontier Province v Suraj Narain  
Anand. 1949 A.R.R.P.C.112.  
75 Ind. Appeals 343

Article 135(2) Constitution.

Public Officers Conduct and Discipline  
Regulations 1956.

Regulation 28 onwards - Disciplinary  
Procedure.

In the Court  
of Appeal

No.17.

Notes of  
Argument of  
Barakbar C.J.  
(continued)

10th September  
1963.

10

Proviso 1.

Article 48(1)(c) - office of profit.

Article 160 page 124.

Article 50 clause 1.

Article 142 Clause 2, Clause 3.

Yeong Peng Wah v Bahal Singh - 1961 M.L.J.  
316, 317.

Sd: S.S. Barakbah.

Au Ah Wah:

Facts.

20

Advertisement - p.

Application.

Dictionary of English Law by Earl Jowitt  
p.1416.

Eligible - meaning.

Morriss v. Winter & Anor. 130 1 K.B. 243,  
247.

Fraud on part of Appellant.

Came to Court with unclean hands.

Redgrave v. Hurd - 1881 L.R. Ch. D. 1

30

Contract Ordinance - section 19.

In the Court  
of Appeal

Federation Agreement 1947 revoked by Agree-  
ment 1957.

No.17.

4.30 p.m. Adjourned till 10.00 a.m.  
tomorrow.

Notes of  
Argument of  
Barakbah C.J.  
(continued)

Sd: S.S. Barakbah.

Wednesday 11th September, 1963.

10th September,  
1963.

10.00 a.m. Resumed - Counsel as before.

Au Ah Wah :

Regulation 13 - Service Schemes.

11th September,  
1963.

Regulations 10, 11, 12.

10

Regulation 48 - Public Servants' Conduct  
and Discipline Regulations 1956.

Dismissal - no dismissal.

Reduction in rank.

Article 135 Malayan Constitution -  
Article 311 Indian Constitution.

Commentary on the Indian Constitution p.487  
by Basu.

"Discharge of Probationer".

Amalen du Roy Choudhury v. Kailash Behari -  
56 Cal. W.N. 846.

20

Reduction in rank amounts to a penalty.

Des Raj. v. Dominion of India - A.E.R.  
1952 Punjab 205.

Agarwala - Dr. Ram Manohar Lohia

Applicant v The Superintendent

Central Prison, Fategard - 1955 A.I.R.  
Allahbad 193.

Commentary on Indian Constitution by  
Chatterley and Appurau Vol. IV p.3431.

30

P.L. Dhingra v Union of India - 1958 A.I.R.  
Supreme Court, 36, 39, 42.



Reduction in rank must be by way of penalty, if it is to attract the Article 135(2). In the Court of Appeal

Ridge v Baldwin - 1963 2 W.L.R. 935.

No.17.

General Order 24.

Notes of Argument of Barakbah C.J. (continued) 11th September, 1963.

Appendix E. G.O. 21.

Palasuntharam:

Sec. 29 Interpretation Ordinance - Dismissal same as Article 135(2).

C.A.V.

Sd: S.S. Barakbah.  
11.9.63.

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No. 18.

No. 18.

JUDGMENT OF THOMSON L.P.

Judgment of Thomson L.P.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION).

21st February, 1964.

Federal Court Civil Appeal No. 5 of 1964.

(K.L. High Court Originating Motions Nos. 2/59 & 3/59)

20 Rasiah Munusamy

Appellant

v

The Public Services Commission

Respondents.

Cor: Thomson, Lord President, Malaysia.  
Syed Sheh Barakbah, Chief Justice, Malaya  
Neal, Judge, Malaya.

JUDGMENT OF THOMSON, LORD PRESIDENT, MALAYSIA.

30

This is an appeal from a decision of the High Court dismissing an application by a Mr. Munusamy for an order of certiorari to bring up and quash a decision relating to him made by the

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of Appeal

Public Services Commission and for an order of mandamus against the Commission.

No.18.

The facts of the case are not in dispute.

Judgment of  
Thomson L.P.  
(continued)  
21st February,  
1964.

Early in the year 1957 the then Government was engaged in preparing for Independence which was expected later in the year and did in fact come into effect on 31st August. In this connection it was known that under the new Constitution the general public service (and certain other services) would be controlled by a Public Services Commission and that staff would have to be recruited for the diplomatic missions which would have to be set up abroad.

10

With regard to the first of these matters the then Government nominated a body of persons who would become the Public Services Commission under the new Constitution with a view to their obtaining experience of their future duties. This body of persons was called the "Public Services Commission (Designate)" and had no legal standing. It dealt in an advisory capacity with applications for appointment and other matters but appointments were actually made by the Chief Secretary to the Government.

20

With regard to the recruitment of persons for overseas missions an advertisement was inserted in the "Malay Mail" on 19th February, 1957. That advertisement commenced as follows:-

"Applicants are invited from Federal Citizens for posts of ASSISTANT PASSPORT OFFICER for service in Federation of Malaya Government Oversea Missions. Applicants will be selected according to the following order of preferences : (1) Serving Assistant Passport Officers and serving Junior Assistant Passport Officers in the Immigration Department who have had not less than 5 years' service and possess School Certificate. (ii) All serving Government Officers who have had 5 years' service and who possess School Certificate. (iii) Persons not in Government Service who have School Certificate with a credit in English, and who attained the age of 22 but have not attained the age of 30."

30

40

It then set out the terms of appointment and

concluded by stating that applications should be sent to "the Secretary, Public Services Commission (Designate)."

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No.18.

With regard to that advertisement I pause to make two observations.

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Thomson L.P.  
(continued)

First, applications were invited not only from serving public servants but also from persons not in the service of Government.

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10 Second, applicants were required to possess a "School Certificate". By that expression it is said, and this of course is probably true, that the persons issuing the advertisement intended to refer to what is known as the Cambridge School Certificate and it is also said that this certificate is well known to represent a certain standard of educational attainment for persons wishing to be appointed to the service of Govern-  
20 ment. Perhaps, however, it was not as clear to prospective applicants as it might have been that in this particular case it was such a "School Certificate" that was what was intended. There was room for misunderstanding on the point. At the time there was a great deal of recruitment of public servants. The anticipated expanding activities of an independent Government called for increased staff and, moreover, it was known that large numbers of locally domiciled persons would be required to replace Government servants of foreign domicile who would shortly be  
30 departing. Again, in other advertisements relating to Government employment which were published about the same time the expression "Cambridge School Certificate" was used. In the circumstances it was perhaps not so clear as it would be today that "School Certificate" meant "Cambridge School Certificate" and, to put it at the lowest, it might not have been wholly absurd to think that for the time being normal educational requirements were being relaxed.

40 To proceed, on 21st February, 1957, Mr. Munusamy who was then an Assistant Immigration Officer and had been in the service of Government for about seven years applied for one of the advertised appointments and in the course of his letter he said "I passed my School Certificate". Now, it is common ground that Mr. Munusamy had not "passed" the Cambridge School Certificate. He had, however, a document signed by the Principal of the Methodist Boys' School, Kuala Lumpur, which

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(continued)

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was headed "Leaving Certificate". This purported to show that he had been at that school from 1935 till 1949 and stated among other things :-

"Standard at time of leaving : School Certificate Class (Camb).

Reason for Leaving: Graduated"

Just when this document was first seen by anybody connected with the Public Services Commission seems to be in some doubt. But about 16th May, 1957, Mr. Munusamy appeared before an interview board consisting of members of the Public Services Commission (Designate) one of whom was a Mr. Singaram. It is not clear what happened at that interview. In subsequent criminal proceedings Mr. Singaram said Mr. Munusamy produced some sort of certificate which was not the certificate that has been mentioned but had to admit that he was not sure whether or not he saw a Cambridge School Certificate.

10

Whatever happened at that interview, on 21st August 1957, a letter was addressed to Mr. Munusamy by the Deputy Chief Secretary to the Government the material portions of which read as follows: -

20

"I am directed to inform you that you have been selected for appointment as an Assistant Passport Officer in the External Affairs Service. The date of appointment will be the date of your embarkation for your overseas post and the appointment will extend for a period of 3 years in the first instance.

30

.....

4. You will be required to serve a probationary period of one year from the date of your appointment and subject to your work and conduct being satisfactory you will be eligible for confirmation in your appointment at the end of this period."

Mr. Munusamy accepted the offer conveyed to him in that letter and he was posted to the office of the High Commissioner in Pakistan, and embarked for Karachi on 25th August, 1957, which accordingly in terms of the letter addressed to him became the date of his appointment. While there, I should add, it is common ground that he performed his

40

duties to the entire satisfaction of his superiors. In the Court of Appeal

In the meantime, on 31st August, 1957, the Constitution had come into force and as from that date the Public Services Commission came into being clothed with all the powers and duties given to and laid upon it by the Constitution.

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10 Then on a date which does not appear in the evidence but was certainly not later than 6th November, 1957 (see page of the Supplementary Record of Appeal) it came to the knowledge of the Public Services Commission that Mr. Munusamy did not possess the Cambridge School Certificate, and that, indeed, in 1949 when he had sought to obtain that academic distinction he had failed lamentably to pass the necessary examinations. On this it was apparently thought that he had committed some sort of criminal offence in connection with his application for the post of Assistant Passport Officer for the Police were  
20 brought into the matter. Some time later, on 30th November, 1957, the Permanent Secretary to the Ministry of External Affairs addressed to Mr. Munusamy the following letter which in view of the fact that preparations were being made to prosecute him for a criminal offence can hardly be described as a model of candour :-

30 "I am directed to inform you that you are to be recalled for re-posting and that you should make arrangements for your departure from Karachi within three days of the arrival of your relief who is expected to arrive in Karachi during the second week of December, 1957.

On your return to the Federation, you should report direct to the Controller of Immigration, Penang."

40 In accordance with these instructions Mr. Munusamy returned to Malaya and on 10th January, 1958 the Police took out a summons against him and he realised that his "reposting" was to the dock of the Sessions Court at Kuala Lumpur.

In due course Mr. Munusamy came up for trial for an offence in contravention of section 182 of the Penal Code, an offence punishable with six months' imprisonment. The charge against him was as follows:-

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"That you on or about the 16th May, 1957 at Kuala Lumpur in the State of Selangor, gave to a public servant namely Mr. Singaram, a permanent member of the Public Services Commission, an information, namely that you have passed the School Certificate examination in 1949, which information you knew to be false intending thereby to cause the said public servant to do a thing which such public servant ought not to have done if the true state of facts respecting such information was known to him to wit to recommend you for the appointment of Assistant Passport Officer in the Government Overseas Mission, and you did thereby commit an offence punishable under section 182 of the Penal Code."

10

At the close of the case for the prosecution the Sessions Court dismissed the summons without calling on the defence on the ground that on the material date Mr. Singaram was not a public servant within the meaning of the Penal Code and an appeal by the prosecution against that decision was dismissed by the High Court on 1st May, 1958.

20

In the meantime, on 10th February, 1958, after the summons had been dismissed but while the prosecution appeal was still pending, the Controller of Immigration addressed the following letter to Mr. Munusamy:-

"I am directed to inform you that you are interdicted from duty on half monthly emoluments with effect from 24th January, 1958; authority P.S.C. 2702/3/2 dated 25th January, 1958.

30

2. Your interdiction is in connection with the criminal proceedings which were instituted against you which are, I understand, still subjudice in view of an appeal having been lodged.

3. The reason you have not been officially informed of your interdiction previously is because it was thought that the Ministry of External Affairs had informed you."

40

Then, on 23rd May, 1958, after the failure of the prosecution appeal, the Public Services Commission shifted their ground and the Secretary

addressed the following letter to Mr. Munusamy:

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(continued)

"I am directed to refer to Chief Secretary's Office letter under reference C.S.O. 58/28 dated the 21st August, 1957 notifying you of your selection for the above mentioned post and also to your acceptance of the appointment.

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10

2. I am to say that it has come to the knowledge of this Commission that you have not passed the School Certificate required as claimed by you and that you are therefore under qualified for the appointment. After due consideration of the circumstances and of the necessity to maintain the standards of the External Affairs Service and in fairness to other properly qualified candidates and appointees, it has been decided to terminate your appointment as Assistant Passport Officer, External Affairs Service on probation, with effect from the date of this letter.

20

3. You will revert to your former post in the Immigration Department on the terms and conditions under which you were serving before appointment to the External Affairs Service."

30

Thereafter a lengthy and acrimonious war of letters was waged between Mr. Munusamy's then lawyer and the Public Services Commission which it is not necessary to review here and ultimately on 27th February, 1959 the present proceedings were commenced in which Mr. Munusamy prayed for an order of certiorari to bring up and quash the decision of the Public Services Commission contained in the letter of 23rd May, 1958 and for a consequential order of mandamus against the Commission.

40

In the event the matter came on for trial before Ong, J., who dismissed the application but made no order as to costs. Against that decision Mr. Munusamy has now appealed.

Now, a great deal of irrelevant matter has been introduced into the case by both sides. Leaving that aside, however, I do not think it is unfair to either side to say that Mr. Munusamy's case is and has been that what was done to him was

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unlawful and a nullity by reason of certain provisions of the Constitution which I shall proceed to discuss as they existed at 23rd May, 1958, which is the material date in the case.

Article 139 constitutes a Public Services Commission "whose jurisdiction, subject to Article 144, shall extend to all persons who are members" of certain services which include the general public service of the Federation. 10

The "jurisdiction" of the Commission is dealt with in Article 144 the relevant portion of which reads as follows:-

"Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends". 20

Finally there is Article 135(2) which provides that no member of the general public service of the Federation "shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard."

Article 132(2A), which provides that members of the public services hold office during the pleasure of the Yang di-Pertuan Agong, did not come into force till 31st May, 1960. 30

Mr. Munusamy's case is that he has been dealt with in contravention of Article 135(2). He says that at all material times he was a member of the general public service of the Federation, that what was done to him constituted dismissal or reduction in rank and that he has not been given a reasonable opportunity of being heard.

With regard to his being a member of the general public service of the Federation it is unnecessary to discuss the point at any length because the Commission, who are the only respondents to his application, are estopped from denying that he is such a person by reason of 40



their having purported to deal with him at all. In any event, if he was not a member of that service they had no power to deal with him in any way and that is the end of the matter, his purported dismissal by them becomes a nullity.

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10           Passing by for the moment the question of whether he was dismissed or reduced in rank within the meaning of the Article, there can be no question of his having been given a reasonable, or indeed any, opportunity of being heard at any time before he received the letter of 23rd May, 1958, which informed him it had been decided to terminate his appointment. There is nothing to show that he was afforded even any suggestion that his appointment might be in peril till he was served with the summons in the Sessions Court prosecution. He was then faced with the danger of a criminal conviction which might involve a sentence of imprisonment and it would be in the highest degree unreasonable to expect him to have foregone taking advantage of a technical defence (which was a good one) simply to secure the benefit of being able to give evidence on his own behalf which might not have been believed.

20

The only question, then, to be decided is, was he "dismissed or reduced in rank" within the meaning of Article 135(2)?

30           Here it is to be observed that whether what was done to him amounted to "dismissal" or "reduction in rank" is not really very important. His lawyers in the correspondence that preceded litigation treated it as dismissal, but the distinction is irrelevant to the question as to whether or not his treatment came within the scope of Article 135(2). Before his appointment as an Assistant Passport Officer he was an Assistant Immigration Officer; after he received the letter of 23rd May, 1958, he was again an Assistant Immigration Officer. But according to the terms of the advertisement of 19th February, 1957 persons not in the employment of the Government were also eligible for appointment as Assistant Passport Officers and had Mr. Munusamy been unemployed immediately prior to his appointment then the consequence of what was done to him would have been that after 23rd May, 1958, he would again have been unemployed. What is in issue is a question of construction of an Article of the Constitution which forbids the dismissal

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or reduction in rank of certain persons unless a certain condition is complied with, that is that the person concerned be given a reasonable opportunity of being heard. That question of construction is a question of law and in its determination any consideration of the antecedents of the person involved or of consequences to him must be disregarded. As a matter of law how can it be argued that there is any distinction between the case of a man who will become unemployed and that of one who has another appointment waiting for him any more than between the case of a poor man and that of a man who has just inherited a fortune? The one may be reduced to want and suffering, the other may suffer no material discomfort but that has nothing to do with the question of whether the termination of his services amounts to dismissal. How can it be said that an act in itself lawful becomes unlawful only because it produces evil consequences or that an act in itself unlawful becomes lawful simply because it produces no evil consequences?

10

20

Proceeding, then, on the basis that Mr. Munusamy was dismissed we come to the real matter of difficulty in the case. Ong J., took the view, following the views of the Indian Courts on the corresponding Article (Article 311 (2) ) of the Indian Constitution, that Article 135(2) only applies in the case of dismissals inflicted in pursuance of the power to "exercise disciplinary control" given to the Commission by Article 144 and to determine whether a dismissal was made in the exercise of disciplinary control he adopted the tests applied by the Supreme Court of India in relation to Article 311 of the Indian Constitution in the case of Shyamlal v. State of Uttar Pradesh (1). "In their view" he said:-

30

"removal or dismissal involved 'the levelling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer'; another distinguishing characteristic of dismissal or removal is that it is a punishment, imposed on an officer as a penalty, involving loss of benefit already earned."

40

Applying those tests he concluded as follows:-

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(1) A.I.R. (1954) S.C. 369

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10 "In the present case no imputations of any sort whatsoever were made against the applicant, and the termination of his probationary appointment was professedly an administrative measure dictated by public interest, and not ordered as a penalty or disciplinary action. The applicant's Counsel raised no argument on this point, and, although it was submitted that the respondents had terminated the applicant's appointment 'without cause or justification in law', there was never any suggestion that the respondents did not come to their decision in good faith, or that the reason which they gave was inadequate. The indisputable fact is that he never possessed the School Certificate and was therefore under-qualified for the appointment, and the respondents, having discovered their error, 20 albeit a little late, took necessary action to rectify the matter. I am accordingly of opinion that the termination of the applicant's appointment in those circumstances does not amount to a dismissal to which the provisions of Article 135(2) would apply."

30 With great respect it is a little difficult, having regard to the history of the matter, to take the view that Mr. Munusamy's dismissal was nothing more than an "administrative measure". That, however, is not the question. The question is whether it was a dismissal which fell within the scope of Article 135(2).

In this connection I am not prepared to agree that the views of the Supreme Court of India regarding the effect of Article 311(2) of the Indian Constitution are very much in point in arriving at a correct interpretation of Article 135(2) of our Constitution.

40 Article 311(2) of the Indian Constitution (which is based on section 240 of the Government of India Act, 1935) provides that no member of certain public services in India "shall be dismissed or removed or reduced in rank" without being given "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" and the views of the Indian Courts are to be found in the cases of Satish Chandra v.

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1964.

The Union of India (2), Shyamlal v. State of  
Uttar Pradesh (Supra) and P.L. Dhingra v. Union  
of India(3).

It is not an unfair summary of the exhaustive and careful process of reasoning on which these cases were decided to say that ultimately the expression "dismissed or removed or reduced in rank" in Article 311(2) was interpreted in the light of the terms of Rule 49 of the Civil Services (Classification, Control and Appeal) Rules, 1930, which were originally made by the Secretary of State for India under section 96B of the Government of India Act, 1919, and which now derive their force from the All India Services Act, 1951 (Act LXI of 1951) enacted by Parliament under Article 310 of the Constitution. Rule 49 appears in the part of the Rules entitled "Conduct and Discipline" and the relevant portions of it read as follows:-

10

"The following penalties may .....  
..... be imposed..... namely .....  
..... (vi) removal from the Civil Service  
of the Crown, which does not disqualify  
from future employment, (vii) dismissal  
from the Civil Service of the Crown, which,  
ordinarily disqualifies from future  
employment.

20

Explanation. The discharge (a) of a  
person appointed on probation, during the  
period of probation, (b) of a person appointed  
otherwise than under contract to hold a  
temporary appointment, on the expiration of  
the period of the appointment, (c) of a  
person engaged under contract, in accordance  
with the terms of his contract, does not  
amount to removal or dismissal within the  
meaning of this rule."

40

From a consideration of the terms of that  
Rule the conclusion has been drawn by the Indian  
Courts that dismissal or removal for the  
purposes of Article 311(2) means dismissal or  
removal inflicted as a punishment under Rule 49,  
that neither expression includes any discharge  
of a person which falls within the scope of the  
"Explanation" to the Rule and that the  
distinction between the two terms in the  
Constitution was the same as that contained in

(2) A.I.R. (1953) S.C.250  
(3) A.I.R. (1953) S.C.36.

the Rule.

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No. 18.

Judgment of  
Thomson L.P.  
(continued)

21st February,  
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10 Now, with the utmost respect, that course of reasoning, as was pointed out by Bose, J., in his dissenting judgment in the case of Dhingra (Supra), is open to the fatal criticism that it involves controlling the interpretation of a provision of the Constitution itself by reference to a piece of subsidiary legislation made under it. The only  
20 excuse for such a course, if it be an excuse, is that it was rendered necessary, as was shown in the case of Chandra (Supra), by the apparent impossibility that otherwise existed of drawing a distinction between the expressions "dismissal" and "removal". That difficulty, however, does not arise in the interpretation of our Article 135(2) which speaks only of dismissal. Nor is there anything in the terms of our Public Officers (Conduct and Discipline) Regulations, 1956, made under Clause 14 of the Federation of Malaya  
30 Agreement, as amended by Ordinance No. 1 of 1953, which corresponds to Rule 49 of the Indian Rules.

For these reasons, in my view, the Indian cases should be disregarded in the interpretation of our Article 135(2) and that question should be approached as res integra. As was said by Lord Radcliffe in the case of Adegbenro v. Akintola(4) (at p.73) :-

30 "It is in the end the wording of the Constitution itself that is to be interpreted and applied, and this wording can never be overridden by the extraneous principles of other Constitutions which are not explicitly incorporated in the formulae that have been chosen as the frame of this Constitution."

40 It is to be observed that the terms of Article 135(2) are categorical: "no member of such a service as aforesaid (and that includes the general public service) "shall be dismissed..... . . . . without being given a reasonable opportunity of being heard." What is in question is employment and that being so "dismissed" is to be construed in its application to the employment of servants. Generally and considered in isolation the word "dismissal" may be used as an expression to denote any termination of employment. Used, however, in connection with the relationship of master and servant (as it is in Article 135(2) it

(4) (1963) 3 W.L.R. 63.

In the Court  
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No. 18.

Judgment of  
Thomson L.P.  
(continued)

21st February,  
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clearly means the putting an end to the servant's service by the master. Literally it is the "sending away" of the servant and for myself I can find no grounds for placing any artificial restricted meaning on the expression as used in Article 135(2).

It is true that the prohibition contained in Article 135(2) does not apply in terms to the Public Services Commission. But it is equally true that the Public Services Commission are nowhere in terms given any power to dismiss anybody. If they have any such power it must be derived from Article 139(1) which says that their jurisdiction shall extend to all persons who are members of certain specified services including the general public service of the Federation or Article 144(1) which empowers them to exercise disciplinary control. The point, however, is of academic interest only, for the words of Article 135(2) are crystal clear and there is not a word from beginning to end of the Constitution that gives the Commission power to effect a dismissal which does not attract the provision of that Article.

10

20

Thus in the present case a dilemma again arises. Neither the Public Services Commission had the power to dismiss Mr. Munusamy or they did not have that power. If they had that power they exercised it without complying with Article 135(2) and the exercise is therefore a nullity. On the other hand if they did not have that power again the purported exercise of a power they did not possess is equally a nullity.

30

I am therefore compelled to the opinion that this appeal should be allowed and an order should be made calling for and quashing the decision of the Public Services Commission conveyed to Mr. Munusamy in their letter of 23rd May, 1958. Once that is done there can be no question of making an order of mandamus at this stage because Mr. Munusamy's appointment as an Assistant Passport Officer was a period of three years only and accordingly came to an end on 24th August, 1960.

40

As regards the question of whether he is entitled to any other remedy as against the Government, such as damages for wrongful dismissal or a declaration of some sort, it would be wrong to express any view for the reason that the Government

has not been joined as a party to these proceedings. In the Court  
of Appeal

Sd: J.B. Thomson.

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LORD PRESIDENT,  
FEDERAL COURT OF MALAYSIA.

Judgment of  
Thomson L.P.  
(continued)

Kuala Lumpur  
21st February, 1964.

21st February,  
1964.

No. 19.

No. 19.

JUDGMENT OF BARAKBAH C.J.

Judgment of  
Barakbah C.J.

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IN THE FEDERAL COURT OF MALAYASIA HOLDEN AT  
KUALA LUMPUR.  
(APPELLATE JURISDICTION)

21st February,  
1964.

FEDERAL COURT CIVIL APPEAL NO. 5 OF 1964.

(In the matter of Kuala Lumpur High Court  
Originating Motions Nos. 2/59 & 3/59).

Rasiah Munusamy

Appellant

v

The Public Services Commission

Respondent

20

Coram: Thomson C.J.  
Barakbah J.A.  
Neal, J.

JUDGMENT OF BARAKBAH C.J.

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This is an appeal from the decision of Ong J., dismissing the application by way of motion by the Appellant for an order of certiorari to quash the decision of the respondents terminating the appointment of the appellant as a probationary Assistant Passport Officer and reverting him to his previous post of Immigration Officer with effect from 23rd May, 1958, and for an order in the nature of a mandamus requiring the respondents to reinstate the appellant as Assistant Passport Officer in the External Affairs Service on probation.

The facts in this case are given in full by the learned trial Judge and it is unnecessary

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for me to give them in detail. Briefly the facts are as follows :-

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Judgment of  
Barakbah C.J.  
(continued)

21st February,  
1964.

In answer to an advertisement in the Malay Mail newspaper dated 19th February 1957 inviting applications for posts of Assistant Passport Officer for service in the Federation of Malaya Government Oversea Missions, the appellant who was a serving Government Officer with more than five years' service as an Immigration Officer submitted his application. One of the qualifications necessary for the new appointment was that the officer should possess a "School Certificate". In May 1957 he was interviewed by the interviewing board of the Public Services Commission. On 21st August, 1957, the appellant was informed by letter from the Chief Secretary's Office that he had been selected for the appointment as Assistant Passport Officer and paragraph 4 of the said letter stated as follows :-

10

"You will be required to serve a probationary period of one year from the date of your appointment and subject to your work and conduct being satisfactory you will be eligible for confirmation in your appointment at the end of this period." 20

The date of appointment would take effect from the date of embarkation for his overseas post.

On August 25th 1957, the appellant left for Karachi where he assumed duty as Assistant Passport Officer in the office of the High Commissioner for the Federation of Malaya in Pakistan. On 30th November, 1957, a letter was sent to the appellant by the Permanent secretary to the Ministry of External Affairs recalling him for re-posting. This was due to certain investigations made by the police in October 1957. On his return he was charged in the Sessions Court as follows:-

30

"That you on or about the 16th May, 1957 at Kuala Lumpur, in the State of Selengor, gave to a public servant, namely, Mr. Singaram, a permanent member of the Public Services Commission an information, namely, that you have passed the School Certificate examination in 1949, which information you knew to be false, intending thereby to cause the said public servant to do a thing which such public servant ought not to have

40



done if the true state of facts respecting such information was known to him, to wit, to recommend you for appointment of Assistant Passport Officer in the Government Overseas Missions, and you did thereby commit an offence punishable under section 182 of the Penal Code."

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of Appeal

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Judgment of  
Barakbah C.J.  
(continued)

21st February,  
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10 He was acquitted by the Sessions Court on 27th January 1958 and there was an appeal to the High Court against such order and the appeal was dismissed on 5th May 1958. On 23rd May 1958 the Secretary to the Public Services Commission sent a letter to the appellant in the following terms:-

20 "2. I am to say that it has come to the knowledge of this Commission that you have not passed the School Certificate required as claimed by you and that you are therefore under-qualified for the appointment. After due consideration of the circumstances and of the necessity to maintain the standards of the External Affairs Service and in fairness to other properly qualified candidates and appointees, it has been decided to terminate your appointment as Assistant Passport Officer, External Affairs Service on probation, with effect from the date of this letter.

30 3. You will revert to your former post in the Immigration Department on the terms and conditions under which you were serving before appointment to the External Affairs Service."

There was considerable correspondence between the respondents and the appellant which I need not set out in detail here. The reason for the step taken against the appellant was that set out in the letter dated 23rd May 1958 and in paragraph 2(7) of the letter of the 13th November 1958:

40 "It is the practice where a probationary officer's qualification have later been found not to be such as are required and as he has claimed, that the officer's appointment has been terminated. This is not only reasonable, but Government's duty in the interests of the tax payer and the public, to maintain the public service at a proper standard and in the interests of

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of Appeal

No. 19.

Judgment of  
Barakbah C.J.  
(continued)

21st February,  
1964.

other serving officers who are properly qualified and in fairness to other candidates not considered for selection because they were under qualified."

These briefly are the facts of the case.

At the hearing of the appeal before this Court it was agreed by counsel for both parties that the only issue for the decision of this Court was whether the appellant was dismissed or reduced in rank within the meaning of Article 135(2) of the Federation of Malaya Constitution.

10

Article 135 states :

135(1) No member of any of the services mentioned in paragraphs (b) to (g) of clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction has power to appoint a member of that service of equal rank.

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

20

The wording of this Article is similar to that of Article 311 of the Indian Constitution. Therefore, two questions have to be decided : (1) Was the appellant dismissed? or (2) Was he reduced in rank?

I shall deal with the question No. 2 first. It would appear from the pleadings that it was never the contention of both parties that there was promotion for the appellant. In letter "RM-18" dated 16th September, 1958, at page 78, paragraph (c) of the Supplementary Record of Appeal, the Secretary, Public Services Commission stated :

30

"Mr. Munusamy was not promoted from the grade of Junior Assistant Passport Officer to that of Assistant Passport Officer nor was he promoted from the grade of Immigration Officer to Assistant Passport Officer. He was appointed to be an Assistant Passport Officer in the External Affairs Service on probation as a result of an appointment

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competition open to serving Assistant Passport Officers and Junior Assistant Passport Officers, serving Government Officers having five years' service and possessing School Certificate with a credit in English. x. x x x

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of Appeal

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Judgment of  
Barakbah C.J.  
(continued)

In reply Dato Rajasooria, Counsel for the appellant in letter "RM-19" dated 18th September 1958 at page 112 said:-

21st February,  
1964.

10 "With reference to your reply in your  
said letter dated 16th September 1958 to  
paragraph 3(d) of my said letter dated 12th  
June 1958 and with reference to paragraph 3  
of your said letter dated 16th September  
1958 it has never been my contention that  
Mr. Munusamy was promoted from the grade of  
Junior Assistant Passport Officer to the  
Grade of Assistant Passport Officer. It  
is my contention also that Mr. Munusamy was  
20 appointed an Assistant Passport Officer and  
therefore the purported termination of his  
appointment is a dismissal and since the  
said purported termination was made without  
his having been given "A reasonable opportunity  
of being heard" the said purported termination  
is ultra vires the Government in view of  
Article 135(2) of the said Constitution."

30 In my view as there was no promotion, the  
question of reduction in rank did not arise. All  
the respondents did was to revert him to his former  
position. Apart from the pleadings, the learned  
trial Judge had dealt fully with the question of  
reduction in rank and with respect I agree with  
him.

40 So there remains only the question of  
dismissal. The appellant was appointed on pro-  
bation for one year and before the period expired  
he was recalled by letter for re-posting. On his  
return he was charged in the Criminal Court for  
an offence under section 182 of the Penal Code.  
The criminal action against him failed and  
subsequently his appointment as Assistant Passport  
Officer was terminated and he was reverted to his  
former post in the Immigration Department. The  
appellant then filed an application to the High  
Court by way of motion for certiorari and mandamus  
and his application was dismissed. He now appeals  
to this Court from the decision of the learned

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No. 19.

Judgment of  
Barakbah C.J.  
(continued)

21st February,  
1964.

trial Judge.

The point at issue is whether the terminating of the appellant's appointment on probation amounted to a dismissal. It is not in dispute that the appointment of Assistant Passport Officer is a permanent one. Now the words that require consideration are "on probation" and "dismissal". In Parshotam Lal Dhingra v. Union of India (1) S.R. Das C.J. states :

"An appointment to a permanent post in Government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial. The period of probation may in some cases be for a fixed period, e.g. for six months or for one year or it may be expressed simply as "on probation" without any specification of any period. Such an employment on probation, under the ordinary law of master and servant, comes to an end if during or at the end of the probation the servant so appointed on trial is found unsuitable and his service is terminated by a notice. 10 20

He then went on to say

"In short, in the case of an appointment to a permanent post in a Government service on probation, or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time. 30

With regard to dismissal I can do no better than quote the case of Shyamlal v State of Uttar Pradesh and another (2) in which Das J. says

"Removal, like dismissal, no doubt brings about a termination of service but every termination of service does not amount to dismissal or removal..... Our recent decision in Satischandra Anand v Union of India (supra) fully supports the conclusion 40

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(1) A.I.R. 1958 Supreme Court 36 at page 42.  
(2) 1954 A.I.R. Supreme Court 369 at p.374.

that Article 311 does not apply to all cases of termination of service."

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Another characteristic of dismissal or removal is that it is a punishment. This is imposed on an officer as a penalty. In Laxminarayan Chironjilal Bhargava v. The Union of India (3) the opinion of the Court was:

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Judgment of  
Barakbah C.J.  
(continued)

21st February,  
1964.

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"Penalty is necessarily by way of retribution or correction. Where an act is not intended to be either by way of retribution or correction, it cannot be regarded as a penalty at all. If the Departmental Promotion Committee declines to approve of the Petitioner's promotion because of some short comings which it finds in his work and suggests his reversion to the substantive post, its action cannot be characterised either as by way of retribution or of correction."

20

In the present case, as he did not have the necessary qualification for the post of Assistant Passport Officer, namely the possession of a School Certificate, in my view, it cannot be said that he suffered a punishment by his removal on that ground.

30

Munusamy was in the public service for seven years prior to his appointment as probationary passport officer. He went back to the same public service when he was found under-qualified for confirmation. There never was any hiatus in his employment in the public service. He continued in the service, where he still is today. Then where is the dismissal? In my view, a shifting from one department to another is an administrative decision to which Article 135(2) does not apply.

40

Here there was neither dismissal nor reduction in rank. Therefore, in my opinion the question of 'audi alteram partem' does not arise.

I have referred to some Indian Authorities in this judgment and as the learned trial Judge had remarked, although they have no binding force in our Courts, they are entitled to consideration as they are relevant to the present case.

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of Appeal

No. 19.

Judgment of  
Barakbah C.J.  
(continued)

21st February,  
1964.

It seems to me that the learned trial Judge had dealt with the matter carefully and thoroughly in his judgment and with respect I agree with his reasoning and finding and I would therefore dismiss the appeal. I make no order as to costs.

As this is a case which concerns the Government and its employees it would be well to quote the observations made in the case of Laximinaravan Chironjilal Bhargava v The Union of India (Supra).

10

"In the interest, not only of the employees of Government but also in that of the administration itself, the authorities concerned should observe the law and the rules not merely in form but also in spirit. Where that has not been done, the error can be easily rectified by a reconsideration of the matter after hearing the employee who feels aggrieved by the action taken against him. Such a course instead of showing any weakness on the part of the authorities will not only clear them of a charge of lack of sympathy for their subordinates but would go a long way towards promoting confidence in the mind of the subordinates in the sense of justice and fair play on the part of their superiors".

20

Sd: S.S. BARAKBAH.  
(SYED SHEH BARAKBAH).  
CHIEF JUSTICE.  
MALAYA.

30

Kuala Lumpur

21st February, 1964.

V.K. Palasuntharam Esq., for Appellant

Au Ah Wah Esq. for Respondent.

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PROCEEDINGS.

In the Court  
of Appeal

No. 20.

Proceedings

21st February,  
1964.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(APPELLATE JURISDICTION)

Federal Court Civil Appeal No. 5 of 1964.

(K.L. High Court Originating Motions Nos. 2/59 &  
3/59).

Rasih Munusamy

Appellant

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v.

The Public Services Commission

Respondents.

Cor: Thomson, Lord President, Malaysia.  
Syed Sheh Barakbah, Chief Justice, Malaya.

NOTES OF PROCEEDINGS RECORDED BY  
THOMSON, LORD PRESIDENT, MALAYSIA

Friday, 21st February, 1964.

For Appt: Palasuntharam.

For Respts: Ah Wah.

Neal J. ceased to be a Judge on 29.12.63.

20 Both Counsel agree appeal shd. be dealt with under  
Courts Ordinance s. 16.

Thomson L.P. wd allow the appeal.

Barakbah C.J. wd dismiss it.

. . . dismissed. No order as to costs. Deposit  
to be paid out to appt.

Intld. J.B.T.

21.2.64.

In the Court  
of Appeal

No. 21.

Order

21st February,  
1964.

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AG.1943

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(APPELLATE JURISDICTION).

FEDERAL COURT CIVIL APPEAL NO. 5 OF 1964

(F.M. Civil Appeal No. 41 of 1960).

Between

Rasih Munusamy

Appellant

10

and

The Public Services Commission

Respondent.

(In the matter of Kuala Lumpur High Court  
Originating Motions Nos. 2 of 1959 and  
3 of 1959

Between

Rasih Munusamy

Applicant

And

The Public Services  
Commission

Respondent).

20

BEFORE:

THE HONOURABLE DATO' SIR JAMES THOMSON,  
P.M.N., P.J.K., LORD PRESIDENT, FEDERAL  
COURT, MALAYSIA

AND

THE HONOURABLE MR. JUSTICE SYED SHEH  
BARAKBAH, B.D.L., CHIEF JUSTICE, HIGH  
COURT IN MALAYA.

IN OPEN COURT

This 21st day of February, 1964.

30



O R D E RIn the Court  
of Appeal

No. 21.

Order  
(continued)21st February,  
1964.

THIS APPEAL coming on for hearing on the 22nd and 23rd days of August, 1963 and on the 10th and 11th days of September, 1963 before the Court of Appeal of the Supreme Court of the Federation of Malaya comprising of the Honourable Dato' Sir James Thomson, P.M.N., P.J.K., Chief Justice, Federation of Malaya, the Honourable Mr. Justice Syed Sheh Barakbah, B.D.L., Judge of Appeal, Federation of Malaya, and the Honourable Mr. Justice Neal, B.E.M., P.J.K., Judge, Federation of Malaya, in the presence of Mr. V. Kandia Palasuntharam of Counsel for the Appellant and Mr. Au Ah Wah, Federal Counsel, for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING the arguments of Counsel IT WAS ORDERED that the matter do stand for judgment AND the same coming on for judgment this 21st day of February, 1964, before the Federal Court of Malaysia comprising of the Honourable Dato' Sir James Thomson, P.M.N., P.J.K., Lord President of the Federal Court and the Honourable Mr. Justice Syed Sheh Barakbah, B.D.L., Chief Justice of the High Court in Malaya, the Honourable Mr. Justice Neal, B.E.M., P.J.K., having resigned and therefore unable to exercise the functions of a Judge, in the presence of Mr. V. Kandiah Palasuntharam of Counsel for the Appellant and Mr. Au Ah Wah, Federal Counsel, for the Respondent AND the parties to the Matter having consented under section 16 of the Courts Ordinance, 1948 to judgment being given by the remaining two Judges of the Court AND the said two Judges being divided in their opinion IT IS HEREBY ORDERED under section 16(2) of the Courts Ordinance, 1948, that the Judgment of the Honourable Mr. Justice Ong dated the 3rd day of May, 1960, be and is hereby affirmed and that this appeal be dismissed AND IT IS FURTHER ORDERED that there be no order as to costs and that the sum of dollars five hundred (\$500.00) only deposited by the Appellant in the High Court at Kuala Lumpur as security for costs of this appeal be refunded to the Appellant.

GIVEN under my hand and the seal of the Court this 21st day of February, 1964.

Sd: Raja Azlan Shah.  
Chief Registrar,  
Federal Court, Malaysia.  
Kuala Lumpur.

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In the Court  
of Appeal

No. 22.

ORDER GRANTING FINAL LEAVE  
TO APPEAL.

No. 22.

Order  
granting  
Final Leave  
to Appeal

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR  
(Appellate Jurisdiction)

1st September,  
1964.

FEDERAL COURT CIVIL APPEAL NO: 5 OF 1964.

Between

Rasiah Munusamy ... Appellant

And

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The Public Services Commission ... Respondent

(In the matter of Originating Motions  
Nos. 2 and 3 of 1959)

In the High Court in Malaya at Kuala  
Lumpur

Between

Rasiah Munusamy ... Applicant

And

The Public Services  
Commission ... Respondent) 20

BEFORE:

THE HONOURABLE DATO<sup>c</sup> SIR JAMES THOMSON, P.M.M.,  
P.J.K., LORD PRESIDENT, FEDERAL COURT, MALAYSIA.

THE HONOURABLE DATO<sup>c</sup> JUSTICE SYED SHEH BARAKBAH,  
P.M.N., D.P.M.K., P.S.B., CHIEF JUSTICE, HIGH  
COURT IN MALAYA

AND

THE HONOURABLE MR. JUSTICE TAN AH TAH, JUDGE,  
FEDERAL COURT, MALAYSIA.

IN OPEN COURT

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THIS 1ST DAY OF SEPTEMBER, 1964.

O R D E RIn the Court  
of Appeal

No. 22.

Order  
granting  
Final Leave  
to Appeal  
(continued)1st September,  
1964.

10 UPON MOTION made unto this Court this day by Mr. V. Kandiah Palasuntharam of Counsel for the Appellant abovenamed in the presence of Inche Wan Hamzah bin Saleh, Federal Counsel on behalf of the Respondent, AND UPON READING the Notice of Motion dated 11th day of August 1964 and the Affidavit of Rasiyah Munusamy affirmed on the 11th day of August 1964 and filed herein in support of the Motion AND UPON HEARING Counsel as aforesaid:

IT IS ORDERED that the Appellant abovenamed be and is hereby granted final leave to appeal to His Majesty the Yang di-Pertuan Agong from the decision and Order of the Federal Court dated the 21st day of February 1964 affirming the judgment of the Honourable Mr. Justice Ong dated the 3rd day of May 1960 dismissing the Appellant's applications in the abovesaid Originating Motions No. 2 and 3 of 1959.

20 AND IT IS FURTHER ORDERED that the costs of and incidental to this Motion be costs in the cause.

Given under my hand and the seal of the Court this 1st day of September, 1964.

Sgd. Raja Azlan Shah  
Chief Registrar,  
Federal Court of Malaysia,  
Kuala Lumpur.

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IN THE JUDICIAL COMMITTEE OF 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

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RECORD OF PROCEEDINGS

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T.L. WILSON & CO.,  
6, Westminster Palace Gardens,  
London S.W.1.

Solicitors for the Appellant.

WRAY, SMITH & CO.,  
1, King's Bench Walk,  
London, E.C.4.

Solicitors for the Respondent.