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IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL.

No. 33 of 1970

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

R. SAMBASIVAM Appellant

- and -

- 1. THE PUBLIC SERVICES COMMISSION
  - 2. THE GOVERNMENT OF THE FEDERATION OF MALAYA
- Respondents

R E C O R D    O F    P R O C E E D I N G S

UNIVERSITY OF LONDON  
**INSTITUTE OF ADVANCED**  
 LEGAL STUDIES  
 - 7 APR 1972  
 25 RUSSELL SQUARE  
 LONDON, W.C.1.

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Solicitors for the Appellant.

Solicitors for the Respondents.

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL.

No. 33 of 1970

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

R. SAMBASIVAM

Appellant

- and -

1. THE PUBLIC SERVICES COMMISSION
2. THE GOVERNMENT OF THE FEDERATION  
OF MALAYA

Respondents

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R E C O R D     O F     P R O C E E D I N G S

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1.

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 33 of 1970

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

R. SAMBASIVAM Appellant  
- and -  
1. THE PUBLIC SERVICES COMMISSION  
2. THE GOVERNMENT OF THE FEDERATION  
OF MALAYA Respondents

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10 R E C O R D O F P R O C E E D I N G S

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No. 1  
Originating Motion.

In the  
High Court

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Originating Motion No: 11 of 1968

No.1  
Originating  
Motion  
22nd June 1968

In the matter of an application by R.  
Sambasivam for leave to apply for an order of  
certiorari

And

20 In the matter of the termination by the  
Public Services Commission of the appointment  
of R. Sambasivam as Junior Assistant  
Commissioner of Labour in the Government of  
the Federation of Malaysia.

Between R. Sambasivam ... Applicant  
and  
1. The Public Services Commission  
2. The Government of the  
Federation of Malaya Respondents

In the  
High Court

ORIGINATING MOTION

No.1  
Originating  
Motion  
22nd June 1968  
(continued)

TAKE NOTICE that this Honourable Court will be moved on Monday the 22nd day of July 1968 at 10.00 o'clock in the forenoon or so soon thereafter as counsel can be heard by Inche M. Shankar of counsel for the abovenamed Applicant for an order that:-

- (a) The Court be pleased to grant leave to the Applicant to apply for an order of certiorari to remove into this Honourable Court and quash a decision made by the Public Services Commission and communicated by letter dated the 30th April 1968 terminating forthwith the appointment of the Applicant as a Junior Assistant Commissioner for Labour in the Government of the Federation of Malaysia. 10
- (b) By way of a consequential relief a declaration in lieu of mandamus that the Applicant is entitled to be reinstated in his employment as Junior Assistant Commissioner for Labour.
- (c) The costs of this application be costs in the cause or in the discretion of the Court. 20

Dated this 22nd day of June 1968.

Sgd. Shearn Delamore  
Applicant's Solicitors

Sgd. illegible  
Senior Assistant  
Registrar, High  
Court, Kuala Lumpur.

This Notice of Motion is taken out by Messrs. Shearn Delamore & Co. solicitors for the Applicant whose address for service is No: 2 Benteng, Kuala Lumpur. 30

The application made in this Notice of Motion is made ex parte and it is not intended to be served on anybody.

The statement pursuant to Order 1 Rule 2 of the Rules of the Supreme Court 1957 as read with Order 59 rule 3(2) of the Rules of the Supreme Court of England and the Affidavit of R. Sambasivam affirmed on the 21st day of June 1968 is filed herein in support of this Motion.

No. 2  
Affidavit of R. Sambasivam in support of  
Document No. 1 with Exhibits R.S.I to RS.VIII

In the  
High Court

No.2

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

ORIGINATING MOTION NO: 11 OF 1968

In the matter of an application by R. Sambastivam for leave to apply for an order of certiorari

Affidavit of R. Sambasivam in support of Document No.1 with Exhibits RS. I to RS. VIII

21st June 1968

AND

10 In the matter of the termination by the Public Services Commission of the appointment of R. Sambastivam as Junior Assistant Commissioner of Labour in the Government of the Federation of Malaysia.

Between

R. Sambastivam ... Applicant

and

1. The Public Services Commission  
2. The Government of the  
20 Federation of Malaya ... Respondents

A F F I D A V I T

I, R. SAMBASIVAM, a Federal Citizen of full age and presently residing at 153C Jalan Semabok Malacca do solemnly affirm and say as follows:-

1. I am the applicant herein.

2. At all times material to this application I was a member of the general public service of the Federation of Malaysia as defined in Article 132(c) of the Constitution of Malaysia being a Junior Assistant Commissioner of Labour and as such an  
30 officer on the pensionable establishment in Division II of the Public Service.

3. By a letter dated the 8th of December 1966 which I received on the 14th December 1966 I was informed by the Secretary of the Public Services Commission (hereinafter referred to as "the

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High Court

No.2

Affidavit of  
R.Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS.I to RS.VIII

21st June 1968

(continued)

Commission") that my conduct appeared to the Head of Department to merit dismissal and that it was accordingly proposed to dismiss me from the public service on the grounds set forth in the Schedule to that letter.

4. A copy of this letter and the Schedule is annexed to this Affidavit and marked Ex.RS.I.

5. I crave the leave of the Court to direct attention to the fact that the said letter was sent to me through the Secretary to the Ministry of Labour Inche Yeap Kee Aik (as he then was) and whose signature appears on that letter.

10

6. On the 17th January 1967 I submitted my grounds in writing and a copy of this letter is enclosed and marked Ex. RS.II.

7. By a letter dated the 21st February 1967 from the Secretary of the Commission I was requested to make preparations for my defence before a Committee of Inquiry. I have mislaid my copy of this letter but the reference thereto is SPA/4553/3/74.

20

8. On the 3rd March 1967 I was served with a further letter by the Secretary of the Commission, a copy of which is annexed hereto and marked Ex.RS.III.

9. My reply thereto dated the 17th March 1967 is also annexed as Ex. RS.IV.

10. By a letter dated the 6th May 1967 I was informed that an investigation would be held at the Public Services Commission on the 22nd May 1967.

11. The Head of my Department was the Commissioner for Labour who at all material times was Inche S. Kumar.

30

12. Eventually the Committee of Inquiry appointed by the Commission to investigate into the complaints against me sat on the 27th, 28th and 29th November 1967 when hearing was adjourned and resumed again on the 5th, 6th and 7th March 1968.

13. The Committee of Inquiry, (hereafter referred to as "the Committee") consisted of Inche B.T.H.Lee, as Chairman, Inche Mohamed Yeop and Inche Dass. The

proceedings against me were conducted by Inche S. Kumar the Commissioner for Labour and I was represented by Counsel in the person of Inche M. Shankar.

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No.2

14. On the 28th of November 1967 in the course of cross-examination of Inche S. Kumar the following evidence was elicited:-

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RS.I to RS.VIII  
21st June 1968

10

(Q.) The letter dated the 8th December 1966 to Sivam that his conduct appeared to the Head of Department to merit dismissal was sent through the Setia Usaha Kementerian Buroh.

(continued

(A.) Yes.

(Q.) Dato Yeap Kee Aik was then the Secretary of the Minister for Labour.

(A.) Yes.

20

(Q.) The letter was sent through him because it was he who reported to the Public Services Commission that it appeared to him that Sivam's conduct merited dismissal.

(A.) Yes.

(Q.) Did he make this report verbally or in writing.

(A.) He did it in writing by a letter dated the 26th October 1966.

(Q.) So the decision to initiate proceedings against Sivam was his and his alone.

(A.) Yes.

30

(Q.) But it is you who is the Head of Department and not Dato Yeap Kee Aik.

(A.) Yes, I am the Head of Department and not Dato Yeap.

15. When the above evidence was elicited it was immediately pointed out to the Committee of Inquiry that the proceedings initiated against me were ultra vires and that the right to make a full submission on the point was expressly reserved and would be made as



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21st June 1968

(continued)

soon as the cross-examination of Inche S. Kumar was completed.

16. Such a submission was made on the 29th November 1967 in writing and a copy of the written submission handed in is annexed to this Affidavit and marked Ex. RS.V.

17. After this the Committee adjourned to consider the submissions made.

18. By a letter dated the 28th December 1967 my Solicitors requested the Secretary of the Commission for information as to what the decision of the Committee was on the point taken that the proceedings were ultra vires. 10

19. By letter dated the 13th January 1968 the Secretary of the Commission indicated that the Committee had decided to defer its decision pending completion of the inquiry.

20. The inquiry resumed on the 5th March 1968 and again the Committee was informed of my stand in the matter and in the final submission the Committee was again requested to make its decision on the validity of the proceedings and to communicate that decision to me so that my right to bring this matter to Court was not prejudiced. 20

21. Contrary to all this I was never informed by the Committee of Inquiry whether it had decided on the point and if so what the decision was.

22. Instead by a letter dated the 30th April 1968 and served on me on the 1st May 1968 I was notified by the Secretary of the Commission that I was dismissed forthwith. A copy of this letter is annexed hereto and marked Ex.RS.VI. 30

23. If the Committee had informed me of its decision I would have been able at that point to proceed to Court for certiorari and all proceedings would have been stayed pending the decision of the Court.

24. But in acting as it did the Commission has anticipated my remedies and violated my fundamental rights. 40

25. I now respectfully submit that calling upon me

to exculpate myself and then proceeding to constitute a Committee of Inquiry to investigate into the matter the Commission has acted in excess of its jurisdiction because the person to whom it appeared that my conduct merited dismissal was not my Head of Department which is imperative if the jurisdiction of the Commission is to arise, but the Secretary to the Minister for Labour who never at any time was my Head of Department.

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21st June 1968

10 26. Accordingly I submit that the dismissal held pursuant to these proceedings is void inoperative and of no effect.

27. Further I submit that these proceedings are void on the ground that they are contrary to the rules of natural justice.

(continued)

20 28. The letter written by Dato Yeap Kee Aik dated the 26th October 1966 initiating the proceedings which led to my dismissal was shown to me at the hearing on the 28th November 1967. It bore reference No: KBY 8/65 and to the best of my recollection made allegations against me on matters which were not comprised in the charges framed against me particularly on the question of my conduct with regard to the Johore Mining and Stevedoring Company.

30 29. This letter was not formally produced at the hearing on that day but when my solicitors requested the Commissioner of Labour by letter dated the 30th November 1967 he refused to produce it by letter dated 11th January 1968 both annexed and marked RS.VII and VIII.

30. Since the Commission is the adjudicating body on the question of my dismissal, and it is open to construction that they were influenced by that letter in commencing proceedings against me it is my submission that the subject matter of that letter should have been disclosed to me so that I could answer the matters contained in it as well.

40 31. In withholding that letter I was denied an opportunity of making my defence on matters which were cognisant to the Commission but which did not form part of the charges against me.

32. I pray that the said letter and any other letters sent to the Commission following thereon be

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made available as constituting part of the record so that this aspect of the matter is brought into the open.

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21st June 1968

33. On the 2nd day of May 1968 my solicitors wrote to the Commission for a certified true copy of the transcript of the evidence and submission before the Committee of Inquiry but up to date this has still not been received. A copy of the report from the Committee of Inquiry to the Commission has also been requested for but has still not been supplied.

10

(continued)

34. As and when these documents are produced I crave leave to file a further Affidavit on this matter.

35. In regard to the charges 4 - 8 the Committee acted improperly in admitting hearsay evidence against me.

36. I respectfully submit to this Honourable Court that for the above reasons I be given leave to apply for an order of certiorari against the Public Services Commission and a declaration in lieu of mandamus against the Government of the Federation of Malaysia that I am entitled to be reinstated in my employment as Junior Assistant Commissioner of Labour.

20

AFFIRMED by the said )  
R. SAMBASIVAM at Kuala )  
Lumpur this 21st day of )  
June, 1968 at 3.00 p.m. )

Sgd. R. Sambasivam

Before me,

30

Sg. illegible  
PESUROHJAYA SUMPAN,  
Mahkamah Tinggi,  
Kuala Lumpur.

SUROHANJAYA PERKHIDMATAN AWAM,  
(PUBLIC SERVICES COMMISSION),  
YOUNG ROAD,  
KUALA LUMPUR.

SFA./4553/3/67

8hb. Disember, 1966,

In the  
High Court

No.2

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R.Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS. I to RS.  
VIII  
Exhibit RS.I  
21st June 1968  
(continued)

S U L I T.

Tuan,

10 1. I am directed to inform you that your conduct appears to the Head of Department to merit dismissal and it is accordingly proposed to dismiss you from the Public Service upon the grounds set forth in the Schedule hereto.

2. In accordance with the provisions of G.O. Cap. D. 38(a) you are hereby called upon to state in writing any grounds upon which you rely to exculpate yourself.

20 3. Such written grounds should be addressed to the Secretary, Public Services Commission, and submitted through your Head of Department not later than 21 days from the date of receipt of this letter by you.

4. If you do not furnish the statement within the time fixed or if you fail to exculpate yourself to the satisfaction of this Commission, a Committee will be appointed in accordance with G.O.D.38(c), to enquire into the matter.

Saya yang menurut perintah,

(Sgd.)

(MOHD. NOR BIN ABDUL GHANI)

30 b.p. Setia Usaha,  
SURCHANJAYA PERKHIDMATAN AWAM

Inche R. Sambasivam.

Melalui: Setia Usaha,  
Kementerian Buroh,  
Malaysia,  
Kuala Lumpur.

/RJ.

In the  
High Court

SCHEDULE

No.2

Affidavit of  
R.Sambasivam  
in support of  
Document No.1  
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RS. I to RS.  
VIII .  
Exhibit RS. I  
21st June 1968  
(continued)

1. That you in 1959 on being called upon to disclose all your debts by letter PSC./4553/3/5 dated 12.1.1959 did fail to disclose your debt amounting to \$773.00 with K.C.T. Chidabaram which was the subject of a civil action against you in K.L. Magistrate's Court Civil Suit No. 786/59 in contravention of G.O.D. 27(f).

2. That you have failed to disclose to your Head of Department a serious pecuniary embarrassment resulting in your being adjudged on 16.9.1965 a judgment debtor in the sum of \$1550.40 in K.L. Sessions Court Civil Suit No. 413/65, in contravention of G.O.D. 27(e).

10

3. That you have failed to disclose to your Head of Department a serious pecuniary embarrassment which resulted in your being adjudged on 27.6.1966 a judgment debtor in the sum of \$3875.00 in Ipoh High Court Civil Suit No. 440/63, in contravention of G.O.D. 27(e).

20

4. That you on 15th. July, 1964, did conduct yourself in such a manner as you could reasonably be expected to know was likely to cause a reasonable suspicion in the minds of the public that you had used your public position as Junior Assistant Commissioner of Labour, Johore, for your private advantage, in that after you had inspected Jock Fong Estate, Kulai, Johore, you did issue a cheque No. 059833 for \$1,000/- post-dated 1.12.1965 to the Manager of the said Estate which cheque was not subsequently honoured by your bank, in contravention of G.O.D. 4(a)(ii).

30

5. That you on 9th. September, 1964, did conduct yourself in such a manner as you could reasonably be expected to know was likely to cause a reasonable suspicion in the minds of the public that you had used your public position as Junior Assistant Commissioner of Labour, Johore, for your private advantage, in that after you had inspected Ko Rubber Factory in Kulai, Johore, did issue a cheque No. 035226 for \$1,500/- post-dated 22.12.1964 to the Manager of the said Factory which cheque was not subsequently honoured by your bank, in contravention of G.O.D.4(a)(ii).

40

6. That you on 21st April, 1964, did conduct yourself

in such a manner as you could reasonably be expected to know was likely to cause a reasonable suspicion in the minds of the public that you had used your public position as Junior Assistant Commissioner of Labour, Johore, for your private advantage, in that after you had inspected Foh Sang Mine, Kota Tinggi, Johore, you did issue a cheque No. 071314 for \$1,000/- post-dated 17th May, 1966, to the Manager of the said Mine which cheque was not subsequently honoured by your bank, in contravention of G.O.D. 4(a)(ii).

10

---

R. Sambasivam,  
Dept. of Labour & Industrial  
Relations,  
Melaka.  
17.1.67

Sotia Usaha,  
Surohanjaya Perkhidmatan Awam,  
Young Road,  
Kuala Lumpur.

20

Tuan,

I beg to acknowledge your letters Nos. 67 & 69 in SPA/4553/3/67 of 8.12.66 and 3.1.67 respectively.

2. I have perused the six charges that had been preferred against me as set out in the Schedule attached to your letter of 8.12.66. My answer to the charges are as follows and I sincerely trust that having regard to the facts of my case the explanation given by me, the Commissioner will be good enough to consider my case favourably.

30

3. Charge (1)

According to G.O.D. 27 (e) I am required to report to my Head of Department if I find myself in serious pecuniary embarrassment. In Civil Suit No. 786/59 Judgment was entered against me from a debt of \$773/- in October, 1959 which was settled by me in full immediately after the Judgment. Having regard to the provisions of G.O. D. 27 (d) I wish most respectfully to submit in this case I

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No.2

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RS. I to RS.  
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Exhibit RS.I

21st June 1968

(continued)

Exhibit RS.II

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R.Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS. I to RS.  
VIII  
Exhibit RS.II  
21st June 1968  
(continued)

could not have been deemed to be seriously embarrassed and had therefore not contravened G.D.O.27(f).

4. Charge (2)

In this case I was adjudged on 16.9.65 as Judgement Debtor in the sum of \$1550/40 in Civil Suit 413/65. At that time I was receiving a monthly emolument of \$758.00. Therefore in accordance with the provisions of G.O.D. 27 (d) I could not be deemed to have been seriously embarrassed and accordingly had not contravened G.O.D. 27 (e). In fact, in the particular case the debt was incurred by the Manager of a Printing Press which was owned by my wife. I received the Summons on 2.9.65 to attend Court on 16.9.65. Immediately after receiving the Summons I sent my Cheque for \$1500/- on 4.9.65 in full settlement of the Claim which was in fact cleared by the creditors on 13.9.65 that is before the Court hearing itself. I therefore humbly submit that in this case the debt was settled before Judgement was entered by the Court and I have not contravened any Government Regulations. I crave leave to refer to my letter of 31.10.65 addressed to my Head of Department in this regard which bear out facts given above.

10

20

5. Charge (3)

With regard to the Judgement entered against me on 27.6.66 in Civil Suit No. 440/63 in the sum of \$3875.00 I beg to state that this was also a debt incurred by the Manager of the Printing Press owned by my wife. It will be noticed that the case was dragging on for more than 3 years as I had disputed the Suit. Finally as I had informed my Head of Department on 11.9.66. I settled the sum in full on 28.7.66 soon after being informed of the result of the case on 23.7.66. At the relevant time I was in Johore Bahru and the case was heard in Ipoh. I therefore most humbly pray that any omission on my part to report the debt will be excused having regard to the peculiar circumstances of the case. In any event, as in the case of Charge (2) above I most humbly plead that I did not incur the debt myself.

30

40

6. Charges (4) (5) & (6)

In all humility and with solemnness I wish to submit that in none of these three cases had I

conducted myself in such a manner as to bring my private interest into conflict with my public duties. At no time have I used my public position for my private advantage. In all these 3 cases it is my humble submission that it is not true that:-

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VIII

- 10 (a) I could be reasonably expected to know that my conduct in the particular cases was likely to cause a reasonable suspicion in the minds of the public that I had used my Public position for my private advantage and
- (b) I issued cheques which were not subsequently honoured by my Bank.

Exhibit RS.II  
21st June 1968  
(continued)

7. I attach herewith three letters relating to the 3 charges written by the persons concerned as follows:-

- 20 (a) Letter dated 27.11.66 from Mr. Tan Teng Hin of Kulai regarding my Cheque No. 059833 (4th charge)
- (b) Letter (undated) from Mr. Chang Fatt Chan of Kulai regarding my Cheque No. 035226 (5th charge)
- (c) Letter dated 20.12.66 from Mr. Foo Sah Fong of Kota Tinggi regarding my cheque No. 071314 (6th charge)

30 8. It will be noted from these 3 letters referred to above that the persons concerned are mutual friends who had friendly monetary transactions with me which had nothing to do with my official position at all. All the 3 persons have also affirmed that none of the cheques were ever presented to the Bank. I therefore most respectfully submit that I have not contravened G.O.D.4 (a) (ii) in regard to charges 4, 5 and 6 as alleged.

9. I fervently pray that I have given explanations to the Charges which will be accepted by the Commission as completely exonerating me from any blame in all the six instances.

Thanking you.

40 Ada-lah saya dengan hermat-nya,  
Yang menurut perintah,

( R. SAMBASIVAM )



In the  
High Court

SUROHANJAYA PERKHIDMATAN AWAM,  
(PUBLIC SERVICES COMMISSION),  
YOUNG ROAD,  
KUALA LUMPUR

No.2

Our reference:  
SPA.4553/3/80

3 hb. Mach 1967

Affidavit of  
R.Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS. I to RS.  
VIII

Tuan,

Tindakan Tatatortib Dengan Tujuan  
Buang Kerja Bawah Perintah 'Am  
D. 38

Exhibit RS.III

21st June 1968

(continued)

.....

I am directed to refer you to this office's letter No. (67) in the same series dated 8th December 1966 and to inform you that subsequent to the above letter, the Head of your Department, has further reported another instance of your having breached the General Orders which appears to merit dismissal. Therefore in addition to the charges that have already been forwarded to you in the schedule of the above letter, I am directed to forward herewith two further charges in the schedule hereto for which you are answerable.

10

2. In accordance with the provisions of G.O. Cap. D 38(a) you are hereby called upon to state in writing any grounds upon which you rely to exculpate yourself.

20

3. Such written grounds should be addressed to the Secretary, Public Services Commission, and submitted through your Head of Department not later than 14 days from the date of receipt of this letter by you.

4. If you do not furnish the statement within the time fixed or if you fail to exculpate yourself to the satisfaction of this Commission, a Committee will be appointed in accordance with G.O.D. 38(c) to enquire into the matter.

30

Saya yang menurut perintah,  
(Sgd.)  
(Khalid bin Haji Ismail)  
b.p. Setiausaha,  
Surohanjaya Perkhidmatan Awam.

Enche R. Sambasivam

Melalui: Setiausaha,  
Kementerian Buruh,  
Malaysia,  
KHI/MR KUALA LUMPUR.

40

SULIT

R. Sambasivam,  
Dept. of Labour &  
Industrial Relations,  
Melaka.  
17th March, 1967.

In the  
High Court

No.2

Affidavit of  
R. Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS. I and RS.  
VIII

Exhibit RS.IV  
21st June 1968

(continued)

Setia Usaha,  
Surohanjaya Perkhidmatan Awam,  
Young Road,  
Kuala Lumpur.

10

Tuan,

I beg to acknowledge your letter No.SPA/4553/3/80  
of 3.3.67.

2. I have perused the two additional charges  
that had been preferred against me as set out in  
the Schedule attached to your letter.

20

3. In all humility and with solemnness I wish  
to submit that in this charges I have never  
conducted myself in such a manner as to bring my  
private interest into conflict with my public  
duties. I have never used my public position for  
my private advantage.

4. I fervently pray that I would be excused from  
any blame in these charges.

Thanking you

Ada-lah saya dengan hormat-nya,  
Yang menurut perintah,

(Sgd.)

(R. SAMBASIVAM)

In the  
High Court

No.2

Affidavit of  
R.Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS. I to RS.  
VIII

Exhibit RS.V  
21st June 1968  
(continued)

1. On behalf of Mr. Sambasivam it is submitted that these proceedings are ultra vires.
2. Reference is made to Regulation 38 G.O.D.
3. It is submitted that on the face of that Regulation the Disciplinary Authority can only carry out the procedure provided in Regulation 38(a) et. seq. provided it first appears to the Head of Department that the conduct of the officer merits dismissal.
4. It will be observed that the words used are, "the following procedure WILL be adopted." 10
5. The only person, therefore, who can set the Disciplinary Authority in motion is the Head of Department and no one else.
6. Were it otherwise it can be logically argued that the office thamy could equally set the Disciplinary Authority in motion and this cannot be so because the sole repository of the power is the Head of Department alone.
7. Evidence has already been given by Inche Kumar that he is the Head of Department. 20
8. Reference in this connection is made to the Civil Service List 1.1.65 at page 101.
9. In this case the person to whom it appeared that the conduct of the officer merited dismissal was not Inche Kumar but Dato Yeap Kee Aik who is not the Head of Department.
10. In fact the evidence indicates that Inche Kamar as such did not consider that the conduct of the officer merited dismissal. 30
11. We say this because it will be remembered that when the letter reporting the matter to the P.S.C. was first made on the 26th October 1965 the only matters in so far as these charges are concerned which form the basis of the decision rested on the material of the first three charges alone.
12. The allegations which form the subject matter of the remaining charges were not known either

to the Head of Department or to anybody else because these allegations came to light only towards the end of November.

In the  
High Court

No.2

13. On the allegations which form the subject matter of the first three charges the only action taken on the 15th of August 1966 by the Head of Department Inche Kumar was, "to make an observation" that the officer may be considered disqualified for promotion.
- 10 14. It is difficult to find a precedent on all fours with the present case but the Committee [sic] man care to refer to the case of Kanda (1962) M.L.J. page 169 where it was held that the dismissal was void because the Commissioner of Police had no charge to dismiss, such charge only resting with the Police Service Commission.
- 20 15. Reference may also be made to the recent decision of the Chief Justice of Singapore setting aside a detention order because it was not signed by the Yang di-Pertuar Negara but some one else.
16. Reference may also be made to Article 13 of the Constitution which provides that no person shall be deprived of property save in accordance with law.
17. See also Judicial Review of Administrative Action by S.A. De Smith (1961) page 94 Note 4.
18. And at page 61 line 4 reading:-
- 30 "If the repository of the power fails to comply with these requirements it acts ultra vires."
19. If our submission is correct and it is submitted that it is, the Committee must now decide what is the next step.
20. For precedent see Cargo Handling (1966) 2 M.L.J. page 278 at page 279 F.
- 40 21. Our submission is that the remedy of prerogative writs is part of the equitable jurisdiction of the Courts which are discretionary and will not be exercised unless

Affidavit of  
R.Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS. I to RS.  
VIII  
Exhibit RS.V.  
21st June 1968

(continued)

In the  
High Court

No.2

Affidavit of  
R.Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS. I to RS.  
VIII

Exhibit RS.V  
21st June 1968

(continued)

all other remedies are first exhausted.

22. Our initial remedy is at the hands of the Disciplinary Authority because it holds that these proceedings have been improperly constituted then it will not be necessary for us to go to Court at all.
23. The Committee acts in a advisory capacity and we submit that the Committee should advise the Disciplinary Authority accordingly.
24. It would seem, therefore, that the proceedings must be stopped at this stage and the question of ultra vires be disposed of first. 10
25. Should the Committee feel that as a domestic tribunal it has some latitude in procedural matters and decides to carry on then the defence wishes to go on record then it remains here and participates in the inquiry without prejudice to its rights and under protest.
26. It again be gainsaid that from the point of view of convenience it may appear to the Committee to be desirable that they should consider this matter only after all the evidence that the Head of Department wishes to tender has already gone on record, to obviate reconvening the inquiry again at a later date and recalling the department's witnesses. 20
27. In this way the Committee may feel that they could not only dispose of the legal point raised but also give the benefit of their views to the Disciplinary Authority on the evidence that has been tendered so far. 30
28. This is, of course, entirely a matter for the Committee but the defence has made the basis of their continued participation in this inquiry clear.

Notes of Proceedings on 29/11/67

Initially I put in the written submission. I read Regulation 38 stressing "Head of Department" and "will". At paragraph 16 I referred to Sheridan Commentary on Article 13. 40

At paragraph 17 I gave the following additional references vis. 47 L.Q.R., Maxwell on the Interpretation of Statutes at page 379 10th edn. and informed Committee that no Assistance was to be derived from, "disciplinary proceedings" against Government servants page 35 - 45 and Alison.

In the  
High Court

No.2

Affidavit of  
R.Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS. I to RS.  
VIII

Exhibit RS. V  
21st June 1968

(continued)

At the end of my submission I was asked what steps the Committee could take and I outlined three steps:-

- 10 (1) That the Committee could stop proceedings here and not take any further action until the point of jurisdiction was disposed of.
- (2) The Committee could hear the department's case and at the end of it report to the Disciplinary Authority its findings on law and the facts to the extent that it supported the legal submission for the Disciplinary Authority to decide whether they wish to proceed with the inquiry.
- 20 (3) That instead of stopping with the department's evidence the Committee could hear out the officer as well and make its comments on the whole case. This was, however, not recommended as the officer should not be put into jeopardy without just cause. If it was held that the proceedings were ultra vires then the officer would have been put into jeopardy without just cause.
- 30

After Kumar's reply I made the following submissions:

- (1) Incorrect to say that Secretaries to the Ministry did not exist when general orders were drafted because G.O.A. Section 3 specifically refers to the Secretary.

Our client did not come within any of the services mentioned in Regulation 41 G.O.A.

40 In any event improper to apply definitions from G.O.A. to G.O.D. where Section 3 provided for its own definition.

Kumar's suggestion that it was established

In the  
High Court

No.2

Affidavit of  
R.Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS. I to RS.  
VIII

Exhibit RS. V  
21st June 1968

(continued)

practice that the Secretary is the Head of Department is not well founded.

The Sections 6 and 18 of the Delegation of Powers Act No: 56 of 1966 had no reference here because there the delegation was from the Minister to the Secretary, not from the Head of Department to the Secretary. Minister is a political appointment and the line should be drawn between the Secretary to the Minister and the Head of Department because in Theory the civil servants should be independent of politics. The Secretary is on the other side of the line for this purpose because he is the Minister's amanuensis.

10

Kumar's point that Regulations 33 and 37 as compared with Regulation 38 was bad because it must be implied from the language of Regulation 38 that it was the Head of Department who should report to the P.S.C. because otherwise there would be no channel of communication between the Head of Department when it appeared to him that conduct merited dismissal, and the P.S.C. on the other hand.

20

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These notes dictated at 4:00 p.m. to 4.30 p.m. 29.11.67 after my return to the office.

Exhibit RS.VI

SUROHANJAYA PERKHIDMATAN AWAM,  
(PUBLIC SERVICES COMMISSION),  
YOUNG ROAD,  
KUALA LUMPUR.

SPA.4553/3 Vol.II(55)

30 hb. April, 1968.

S U L I T

Tuan,

30

Saya di-arah menarek perhatian kepada surat2 tuan bertarikh 17hb. Januari, 1967 dan 17hb. Mach, 1967 masing2 sebagai jawapan kepada surat2 Surohanjaya ini bil.SPA./4553/3/67 bertarikh 8hb. Disember, 1966 dan bil.SPA./4553/3/80 bertarikh 3hb. Mach, 1967 serta kepada penyiasatan yang telah di-ada/terhadap tuan yang di-tamatkan pada 7hb. Mach, 1968.

2. Tuan ada-lah di-maalomkan bahawa sa-telah

menimbangkan perkara tuan, Surohanjaya Perkhidmatuan Awam ini telah mengambil keputusan ia-itu tuan di- buang kerja dengan serta merta.

In the High Court

No.2

Saya yang menurut perintah,

(Sgd.) TAN FOOK SING

(TAN FOOK SING)

b.p. Setia Usaha,  
SUROHANJAYA PERKHIDMATAN AWAM.

Affidavit of R.Sambasivam in support of Document No.1 with Exhibits RS. I to RS. VIII

Exhibit RS.V  
21st June 1968  
(continued)

Enche R. Sambasivam,

10 Melalui: Setia Usaha,  
Kementerian Buroh,  
Malaysia,  
Kuala Lumpur.

/RA

KEMENTERIAN BUROH

Exhibit RS.VII

Tallpon:

Surat Kita: (108 dlm.LIR.SR.(7)140-53 Cov.3  
Surat Tuan: SD (S) 20215

JABATAN BUROH DAN  
PERHUBONGAN PERUSAHAAN  
Jalan Raja,  
Kuala Lumpur.

20

SULIT

11hb. Januari, 1968

Messrs.Shearn, Delamore & Co.,  
P.O.Box 148,  
The Eastern bank Building,  
2, Benteng, Kuala Lumpur.

Tuan,

Tindakan Tatatertib dengan tujuan  
buang kerja bawah Perintah 'Am D.38

30 Dengan hormat-yna, saya merujuk lagi kepada surat tuan SD(S) 20215 bertarikh 30hb.November 1967.

2. Saya dukachita bahawa salinan surat Dato' Yeap Kee Aik itu bertarikh 26hb. Oktober, 1966 kepada Surohanjaya Perkhidmatan Awam tidak boleh di-beri kepada tuan2. Sila lihat 'The Services Commissions Ordinance, 1957 - Section 3'.

Saya yang menurut perintah,

(Sgd.) S. KUMAR

(S.Kumar

40 SK/lgi.

Pesurohjaya Buroh, Tanah Melayu.



In the  
High Court

S.D. (S)20215

30th November, 1967.

No.2

Affidavit of  
R.Sambasivam  
in support of  
Document No.1  
with Exhibits  
RS. I to RS.  
VIII  
Exhibit RS.VIII  
21st June 1968  
(continued)

Inche V. Kumar,  
Pesuruhjaya Buroh,  
Jabatan Buroh & Perhubungan Perusahaan  
KUALA LUMPUR

Tuan,

Tindakan Tatatertib dengan tujuan  
buang kerja bawah Perintah "Am D.38

We shall be grateful if you will kindly let  
us have a copy of Dato Yeap Kee Aik's letter dated  
the 26th of October 1966 to the Public Service  
Commission.

10

Yang benar,

O./30.

No.3

Statement filed  
under Order 59  
Rule 3(2) of  
the Rules of  
the Supreme  
Court, England  
1883  
22nd June 1968

No. 3

Statement filed under Order 59  
Rule 3(2) of the Rules of the  
Supreme Court England 1883

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

20

Originating Motion No: 11 of 1968

In the matter of an application by  
R.Sambasivam 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 R. Sambasivam as Junior Assistant  
Commissioner of Labour in the Government of the  
Federation of Malaysia.

30

Between

R. Sambasivam

...

and

- 1. The Public Services Commission
- 2. The Government of the Federation of Malaya

...

Applicant

Respondents

In the High Court

No. 3

Statement filed under Order 59 Rule 3(2) of the Supreme Court, England 1883

22nd June 1968

(continued)

STATEMENT FILED UNDER ORDER 59  
 RULE 3(2) OF THE RULES OF THE  
 SUPREME COURT ENGLAND 1883

- 10 1. The name and description of the Applicant is R. Sambasivam, of 153C Jalan Semabok Malacca.
- 2. The Applicant is at present unemployed having been dismissed by the Public Services Commission on the 1st of May 1968.

3. The relief sought is:-

20 (a) An order of certiorari to remove into this Honourable Court and quash a decision made by the Public Services Commission and communicated by letter dated the 30th of April 1968 received by the Applicant on the 1st of May 1968 terminating forthwith the appointment of the Applicant as a Junior Assistant Commissioner for Labour in the Government of the Federation of Malaysia

30 (b) By way of a consequential relief a declaration in lieu of mandamus that the Applicant is entitled to be reinstated in his employment as Junior Assistant Commissioner for Labour.

4. The grounds on which the said relief is sought are set out in full in the Affidavit in support of the Notice of Motion in concisely with which this statement is filed but oconsisely these grounds are as follows:-

(a) The proceedings resulting in the dismissal of the Applicant were ultra vires the Public Services Commission and the Committee of Inquiry appointed by

In the  
High Court

No.3

Statement filed  
under Order 59  
Rule 3(2) of  
the Supreme  
Court, England  
1883

22nd June 1968

(continued)

the said Commission which acted without or  
in excess of their jurisdiction.

(b) In failing to communicate its decision to  
the Applicant on the point taken in the  
course of the inquiry by the said  
Committee of Inquiry that the proceedings  
were ultra vires the said Committee of  
inquiry acted in disregard of the rules of  
natural justice.

(c) In receiving a letter from the Secretary  
to the Ministry of Labour dated the 26th  
of October 1966 which contained references  
adverse to the Applicant which were not  
made the subject matter of the charges  
brought against the Applicant the  
Public Services Commission acted in  
disregard of the rules of natural justice.

(d) In admitting hearsay evidence in the  
course of the inquiry by the Committee of  
Inquiry the said Committee acted without  
or in excess of their jurisdiction.

10

20

5. The Applicant contends that by reason of the  
above matters his dismissal was void inoperative and  
of no effect.

Dated this 22nd day of June 1968.

Sgd. Shearn Delamore

Sgd. R. Sambasivam

Solicitors for the  
Applicant

Applicant's Signature

---

No. 4  
Written Submission for Applicant

In the  
High Court

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

No.4

Originating Motion No: 11 of 1968

Written sub-  
mission for  
Applicant

In the matter of an application by  
R. Sambasivam for leave to apply for an order  
of certiorari

(Undated)

and

10           In the matter of the termination by the  
Public Services Commission of the appointment  
of R.Sambasivam as Junior Assistant Commissioner  
of Labour in the Government of the Federation  
of Malaysia.

Between

R. Sambasivam                   ...           Applicant

and

1.   The Public Services Commission
2.   The Government of the Federation  
      of Malaya                   ...           Respondents

20                                   SUBMISSION FOR APPLICANT

1.   This Motion is made ex-parte for leave to  
      apply for an order of certiorari to quash a  
      decision made by the Public Services  
      Commission terminating the appointment of  
      the applicant as a Junior Assistant Commissioner  
      for Labour and for relief consequential  
      thereon.
2.   The cause papers consist of the Motion itself,  
      an Affidavit in support thereto and the  
30   applicant's statement as required by the Rules  
      of the Supreme Court.

JURISDICTION

3.   The jurisdiction of the Court to entertain  
      these proceedings is set out in the Courts  
      of Judicature Act No: 7 of 1964 First Schedule

In the  
High Court

No.4

Written sub-  
mission for  
Applicant

(Undated)  
(continued)

Article 1 : Read.

PROCEDURE

4. As of necessity we have to adopt the English procedure on applications of this nature because our Rules of the Supreme Court so provide.
- 5(a) Refer to Rules of the Supreme Court 1957 Order 1 Rule 2 : read.
- (b) Also refer to Mallal's Supreme Court Practice Commentary under Order 2 Rule 1 at page 5: read. 10
6. The passages there make it clear that we have to adopt the English procedure.
7. The application for leave is made ex-parte: See Halsbury's Laws of England 3rd edn. Volume 11 paragraph 128 page 70.
8. The procedure is also dealt with in Judicial Review of Administrative Action by Smith at page 319: read.
9. There are also the commentaries and forms to which reference may be made in Atkin's Encyclopaedia of Court Forms and Precedents Vol. 10: 20
- See page 263 : Practice  
page 247 : Practice  
pages 317,320: Forms 74 & 79  
page 285 Form 22: Precedent for order  
page 292 Form 30: Precedent for Affidavit used in this case.
10. There is already judicial precedent that the Public Services Commission is amenable to certiorari see for example COELHO v. Public Service Commission (1964) M.L.J. p.12 30
- MUNUSAMY v. Public Service Commission (1964)  
M.L.J. p. 239.
11. We have followed the procedure in Coelho's case but as facts in these cases are far removed from present case no further reference is intended to be made to them.

12. The English practice has now been codified under the new rules Order 53 (R.S.C. 1965) to which reference may be made : see Annual Practice 1967 page 690.

In the  
High Court

No.4

MERITS

Written sub-  
mission for  
Applicant

13. Since this is only an ex-parte application for leave to apply for an order it is submitted that it is not necessary for the Court to go into a full hearing on the merits at this stage of the proceedings.

(Undated)  
(continued)

10

14. A prima facie case will be sufficient and that has to be made out on the supporting documents to the Motion.

15. This must be so because the statement filed and verified by Affidavit must not set out ALL the facts but only the relief sought and the grounds on which the relief is sought: see Practice Note (1939) W.N. 76 and Annual Practice 1967 p. 694.

20

16. We submit there is a prima facie case here for intervention by this Court.

17. Reference is now made to the Affidavit Paragraphs 14 to 26 and Exhibit R.S.V.

18. This really constitutes the main ground on which the validity of the proceedings which led to this dismissal is being attached.

30

19. In sum what we are saying here is that the only person who can set proceedings for dismissal in motion is the Head of Department. That is clear from the wording of General Orders "D" Regulation 38 which in material particularly reads:

"If the conduct of an officer on the pensionable establishment in ... Div.II of the Public Service appears to the Head of Department to merit dismissal the following procedure will be adopted unless the method of dismissal is otherwise provided for either in these Regulations, or by special legislation":

40

In the  
High Court

No.4

Written sub-  
mission for  
Applicant

(Undated)

(continued)

20. The procedure adopted in this case in convening the enquiry makes it clear that the Public Service Commission purported to act under Regulation 38 and indeed reference was made to this Regulation by them in their letters to the applicant: see Ex. R.S. I.
21. The evidence adduced at the enquiry made two points clear:
- (1) that the person who initiated proceedings was NOT the Head of Department 10
  - (2) that as far as the Head of Department was concerned the conduct of the officer on the matters of which he was then cognisant i.e. on 15th August 1966 merely seemed to disqualify the applicant for promotion:  
See para. 13 of Ex. R.S. V.
22. The law on the point is clearly set out in Smith at page 60 last paragraph and page 61 first paragraph which for easy reference is reproduced here:- 20
- "A public authority may exceed its powers by adopting an improper procedure as well as by going wrong on a matter of substance. Procedural ultra vires will be considered later in this chapter. Substantive ultra vires may relate to matters of law and fact or to matters of discretion. Discretionary powers must be exercised for the purposes for which they were granted; relevant consideration must be taken into account and irrelevant considerations disregarded; they must be exercised in good faith and not arbitrarily or capriciously. If the repository of the power fails to comply with these requirements it acts ultra vires." 30
23. And at page 94 first paragraph last sentence reads: 40
- "A provision requiring consultation with named bodies before a statutory power is exercised is also likely to be construed as mandatory" and the cases cited thereunder.

24. Here it was not a question of consultation but a question of the repository of the power not having acted at all.
25. It was incumbent upon the Head of Department to genuinely apply his mind to the question of whether the conduct of the officer appeared to merit dismissal.
26. This he did not do.
- 10 27. The procedure provided in Regulation 38(a) et seq. can only be applied and indeed must be applied only when the prerequisite that the Head of Department has felt that dismissal is warranted has been fulfilled.
28. This is a sine qua non and the function can be fulfilled by the Head of Department and by him alone.
- 20 29. In this context it is our submission that the Regulation is "imperative" that the conduct in question must appear to warrant dismissal and not merely directory.
- 30 30. There is extensive discussion on whether a requirement is imperative or directory in Maxwell on Interpretation of Statutes 11th edn. at page 362 and whether a particular administrative act is void or merely voidable (see (1967) Law Quarterly Review page 499) and numerous cases on either side of the line (see Volume 47 Law Quarterly Review) but as this is only an application for leave we do not propose to go into these authorities here.
31. It is sufficient to refer to Kanda's case (1962) M.L.J. page 169 where the dismissal was held void because the repository of the power i.e. the Police Services Commission did not act but the Commissioner of Police who did not have power purported to dismiss.
32. Apart from this main point there are several subsidiary points.
- 40 33. Although Article 13 of the Constitution provides that no person shall be deprived of property save in accordance with law here we

In the  
High Court

No.4

Written sub-  
mission for  
Applicant

(Undated)

(continued)



In the  
High Court

No.4

Written sub-  
mission for  
Applicant

(undated)

(continued)

have a situation where even though the validity of the proceedings was attacked, no decision has been made, or if made communicated to the appellant.

- 34. This has been left to be implied from the letter of dismissal but the point was taken before by the Committee and we do not know what it decided.
- 35. If the rules of natural justice require that a party has a right to be heard, that must imply a right to know what the decision of the body doing the hearing is. 10
- 36. There is also the matter of paragraph 28 of the applicant's Affidavit which discloses that prejudicial matter was put before the P.S.C. which the applicant was not given any opportunity to rebut.
- 37. Our request for a transcript of the evidence and the Committee's report has been turned down and a further Affidavit will not be of any use as we have not got any further information. 20
- 38. But once leave is granted the transcript will have to be disclosed under the rules for discovery and the Court will then be in a position to assess the full effect of the breach of the rules regarding this aspect of the matter as well as the admission of hear-say evidence.

SUMMING UP

30

- 39. It is reiterated that all that need be done at this stage is to show a prima facie case and this it is submitted has been done.
- 40. The Court is accordingly moved to grant an order in terms.





In the  
High Court

No.5

Order

28th August  
1968

(continued)

fit a declaration be made in lieu of mandamus that the Applicant is entitled to be reinstated in his employment as Junior Assistant Commissioner for Labour AND IT IS ALSO ORDERED that the costs of this application be costs in the cause.

Given under my hand and the Seal of the Court this 28th day of August, 1968.

Sgd. DEPUTY REGISTRAR  
HIGH COURT  
KUALA LUMPUR.

10

No.6

Notice  
of Motion

11th October  
1968

No. 6  
Notice of Motion

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

Originating Motion No: 11 of 1968

In the matter of an application by R. Sambasivam 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 R. Sambasivam as Junior Assistant Commissioner of Labour in the Government of the Federation of Malaysia.

20

Between

R. Sambasivam                   ...           Applicant

and

- 1. The Public Services Commission
- 2. The Government of the Federation of Malaya                   ...           Respondents

NOTICE OF MOTION

30

TAKE NOTICE that in pursuant to leave given by an Order made herein on 28th August 1968 this Honourable Court will be moved on Monday the 11th

day of November 1968 at 10.00 o'clock in the forenoon or so soon thereafter as counsel can be heard by Inche M. Shankar of counsel for the abovenamed Applicant upon the grounds set forth in the statement and Affidavit used on the application for leave to issue this Notice of Motion:-

In the  
High Court

No.6

Notice  
of Motion

11th October  
1968

(continued)

- 10 (a) For an order of certiorari to remove into this Honourable Court and quash a decision made by the Public Services Commission and communicated by letter dated the 30th April 1968 terminating forthwith the appointment of the Applicant as a Junior Assistant Commissioner for Labour in the Government of the Federation of Malaysia.
- 20 (b) By way of a consequential relief for a declaration in lieu of mandamus that the Applicant is entitled to be reinstated in his employment as Junior Assistant Commissioner for Labour.
- (c) The costs of this application be costs in the cause or in the discretion of the Court.

Dated this 11th day of October, 1968

Sgd. Shearn Delamore  
Applicant's Solicitors

Sgd. Abdul Hamid bin Tan  
Sri Azmi  
Senior Assistant  
Registrar High Court,  
Kuala Lumpur

30 To:

The Respondents abovenamed  
c/o. Peguam Negara,  
Kuala Lumpur.

This Notice of Motion is taken out by Messrs. Shearn Delamore & Co., solicitors for the Applicant whose address for service is No: 2 Benteng, Kuala Lumpur.

This Notice of Motion is intended to be served on the Respondents.

40 The statement pursuant to Order 1 Rule 2 of the Rules of the Supreme Court 1957 as read with

In the  
High Court

No.6

Notice  
of Motion

11th October  
1968

(continued)

Order 59 rule 3(2) of the Rules of the Supreme Court of England and the Affidavit of R. Sambasivam affirmed on the 21st day of June 1968 and filed herein in support of the application for leave to issue this Notice of Motion will be used in support of this Motion and copies thereof will be served on the Respondents herewith.

No.7

Affidavit of  
Abu H.B. Long

28th December  
1968

No. 7

Affidavit of Abu H. B. Long

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

10

ORIGINATING MOTION NO: 11 OF 1968

In the matter of an application by R.Sambasivam 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 R. Sambasivam as Junior Assistant Commissioner of Labour in the Government of the Federation of Malaysia.

Between

20

R. Sambasivam ... Applicant

And

1. The Public Services Commission  
2. The Government of the Federation  
of Malaya ... Respondents

A F F I D A V I T

I, ABU HANIFAH BIN LONG, of full age and residing at 51, Jalan Bukit, Petaling Jaya, do solemnly and sincerely affirm and state as follows:

1. I am the Assistant Secretary (Promotion/  
Discipline) Public Services Commission and I am  
authorised to make this affidavit.

30

2. I crave leave to refer to the Notice of

Motion dated 11th October, 1968, to the Order of Court dated 28th August, 1968 and to the affidavit affirmed by the applicant dated 21st June, 1968.

In the  
High Court

No.7

Affidavit of  
Abu H.B.Long  
28th December  
1968

(continued)

10 3. I refer to the letter dated 8th December, 1966, which is exhibited in the applicant's affidavit as "Ex.RS.I". Paragraph 1 of this letter makes it quite clear that the conduct of the applicant appears to the head of department to merit dismissal. Dato' Yeap Kee Aik was the Secretary to the Minister for Labour and the said letter Ex.RS.I was addressed to the applicant through the Ministry of Labour. The applicant was at all material times a Junior Assistant Commissioner of Labour and came within the ambit of the Ministry of Labour. As such Dato' Yeap Kee Aik being the Secretary to the Ministry of Labour was also the head of department in which the applicant was then serving.

20 4. I refer to the letter marked Ex.RS.VI. The decision of the Public Services Commission to dismiss the applicant was made after due consideration of the report of the Committee of Inquiry which was duly appointed under General Order Cap.D. On the question of whether or not Dato' Yeap Kee Aik was the head of department, the Committee found that Dato' Yeap Kee Aik was the applicant's head of department and alternatively the Committee found that even if he was not the head of department there was nothing in G.O. D 38 which makes it incumbent for the head of department himself to make a report so long as the applicant's conduct appeared to the head of department to merit dismissal. This was complied as set out in paragraph 1 of the said letter Ex.RS.I.

30

5. With reference to paragraph 28 of the applicant's affidavit the letter dated 26th October, 1966, referred therein was not part of the proceedings of the Inquiry and it in no way influenced the decision of the Public Services Commission.

40 6. With reference to paragraph 35 of the applicant's affidavit the Committee of Inquiry set out a full report with regard to hearsay evidence. The Public Services Commission having accepted the report had come to the conclusion that there was no irregularity whatsoever with regard to this allegation.

7. I deny that there was any breach of the rules

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No.7

Affidavit of  
Abu H.B.Long  
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(continued)

of natural justice. The rules and regulations relating to disciplinary action were meticulously observed throughout this matter, the applicant was given a reasonable opportunity to be heard, the Committee of Inquiry went through the evidence very carefully and submitted a fairly exhaustive report to the Public Services Commission. Thereafter, the Public Services Commission after duly considering the said report were of the opinion that the applicant should be dismissed.

10

8. I respectfully pray, therefore, that the order of certiorari asked for be refused.

Affirmed by the above-named )  
Abu Hanifah bin Long at Kuala )  
Lumpur this 28th day of ) Sgd. Abu Hanifah  
December 1968 at 12.35 p.m. ) bin Long

Before me,

Sgd. W.P.Sarathy  
Pesuruhjaya Sumpah,  
Mahkamah Tinggi  
Kuala Lumpur.

20

This Affidavit was taken out by the Senior Federal Counsel for and on behalf of the Respondents whose address for service is c/o Attorney-General's Chambers, Kuala Lumpur.

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In the  
High Court

admitted hearsay evidence against the charges preferred against the Applicant.

No.8

I. INQUIRY IMPROPERLY INSTITUTED

Written submission of Applicant  
(Undated)  
(continued)

2. It is submitted that the proceedings before the Committee were improperly instituted and that an order of certiorari would lie to quash these proceedings for lack of jurisdiction:-

(i) Halsbury, volume 11, at page 145, 3rd edition

(ii) S.A. de Smith - Judicial Review of Administrative Action, 2nd edition at page 407.

10

3. Regulation 38, General Order Cap.D reads as follows:-

"If the conduct of an officer on the pensionable establishment in Division I or II of the Public Service appears to the Head of Department to merit dismissal, the following procedure will be adopted, unless the method of dismissal is otherwise provided for either in these Regulations, or by special legislation....."

20

4. The 2 cardinal and categorical requirements of this Regulation are:-

(i) That it is the Head of Department to whom the conduct of the officer must appear to merit dismissal and who should set in motion the necessary Inquiry, and

(ii) That the procedure in this respect is imperative.

30

HEAD OF DEPARTMENT

5. It is submitted that the only person who is competent or qualified by Regulation 38 of Cap.D to set the Disciplinary Authority in motion is the Head of Department. This procedure is imperative as the Regulation expressly states that the "following procedure will be adopted".

6. Who then is the Head of Department? The Court

has before it the evidence on Affidavit of the Applicant and the Affidavit of Inche Abu Hanifah bin Long made on behalf of the Respondents.

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Written  
submission of  
Applicant

(Undated)

(continued)

7. In paragraph 14 of the Affidavit of the Applicant evidence is adduced of the cross-examination of Inche S. Kumar. It is submitted that from the evidence it is clear

(a) that Inche S. Kumar was the Head of Department and

10 (b) that it was not Inche S. Kumar but Dato' Yeap Kee Aik, the Secretary to the Minister, who initiated the proceedings of the Committee of Inquiry.

8. The Affidavit of Inche Abu Hanifah does not in any way dispute the evidence of Inche S. Kumar as set out in the Affidavit of the Applicant. It is urged that this Court must, of necessity therefore accept the evidence of Inche S. Kumar.

20 9. Inche S. Kumar was at the material time the Commissioner for Labour. He was clearly aware of his status in the Department of Labour. (Civil Service List 1.1.65 refers).

10. Inche Abu Hanifah is an Assistant Secretary (promotion/Discipline) of the Public Services Commission. He is not an officer of the Federal Establishment Office or an officer with any locus standi to make any pronouncement or affirmation as to who in fact was the Head of Department.

30 11. From the Affidavit made on behalf of the Respondents it is clear that proceedings were instituted by the Secretary to the Ministry of Labour and not the Head of Department. The Respondents do not deny this.

12. Under what circumstances may the Secretary to a Ministry act for or be deemed to be a Head of Department? It is submitted that these powers are clearly set out in General Orders Cap.A.

40 13. This is the chapter that deals with Appointments and Promotions. Section 3(g) of Cap.A reads:

In this chapter:

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(Undated)

(continued)

(g) the term "Head of Department" shall be deemed to include a Secretary to a Minister or Ministry and the Principal Establishment Officer in respect of the services listed in sub-paragraph (a) of General Order 41;

14. It is expressly provided that only in regard to Chapter A will the Head of Department be deemed to include a Secretary to a Minister or Ministry. There is no such provision in regard to Chapter D with which this application is concerned.

10

15. In any event Section 3 of General Order Cap.A concerns services listed in sub-paragraph (a) of General Order 41 and the Applicant is not a member listed under the said paragraph of Regulation 41 of General Order Cap.A.

16. In this matter reference is made to the construction that needs to be placed upon the General Orders. The construction of penal laws and statutes encroaching on rights or imposing burdens require to be strict constructions. Maxwell: Interpretation of Statutes (11th edition, Chap.10, pages 264, 265, 275-276, 290, 348).

20

17. From the authorities cited under reference the Head of Department, even if regarded as an "Omission not Supplied" under General Order Cap.D, cannot include the Secretary to the Ministry.

PROCEDURE

18. The procedure whereby the Committee of Inquiry has to be set up is laid down in Regulation 38 of General Order Cap. D. The procedure is stated with an injunction expressed in the words i.e. "the following procedure WILL be adopted".

30

19. The words of Regulation 38 of General Order Cap. D. are imperative or mandatory. It need hardly be argued that the use of the word "WILL" in this context gives the requirement a compulsory force. Maxwell: Interpretation of Statutes, 11th edition, page 231.

20. The Committee of Inquiry has entered upon an inquiry which is a miscarriage of an imperative procedure. The rule in administrative law is that

40

where such a defect occurs on a procedure which is imperative or mandatory and not merely directory, it will deprive the tribunal of jurisdiction.  
 Griffith & Street: Principles of Administration Law  
 S.A. de Smith : Judicial Review of Administrative Action, 2nd edition, page 97.  
 Maxwell: Interpretation of Statutes, 11th edition, page 362 et seq.  
 Case: Surinder Singh Kanda v. Government of the Federation of Malaya (1962) 28 M.L.J.169

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 submission of  
 Applicant

(Undated)

(continued)

10

21. Further on the question of a disciplinary matter de Smith states "If procedural rules have been laid down... those rules will be treated as mandatory except in so far as they are of minor importance; and upon them will be engrafted the implied requirements of natural justice". (page 212)

20

22. The imperative nature of the institution of procedure is emphasised for were it otherwise it can be logically argued that an office thamby could equally set the Disciplinary Authority in motion. This is out of the question as the sole repository of power is the Head of Department.

(sic)

23. It is submitted that never at any moment was Inche S. Kumar associated with these proceedings brought against the Applicant. Ex. RS.1, the letter of the 8th December, 1966, was a letter of the Public Services Commission sent through the Secretary to the Ministry, Dato' Yeap Kee Aik.

30

24. The repository of power to institute proceedings is the Head of Department. He is Inche S. Kumar. It is he who is required to bring the proceedings. Reference has been made in paragraphs 17 and 18 of Ex. R.S.5 to S.A. de Smiths' (1961) Judicial Review of Administrative Action, where it is stated:-

"If the repository of power fails to comply with these requirements it acts ultra vires".

## II. THE PRELIMINARY AND COLLATERAL QUESTION.

40

25. Reference is made to paragraphs 14-26 of the Affidavit of the Applicant. In the course of proceedings held on the 28th November 1967, it was established

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(continued)

- (a) that Inche S. Kumar was the Head of Department of the Applicant and
- (b) that the Head of Department had no part in initiating proceedings against the Applicant.

26. As such, Counsel for the Applicant made a written submission the following day i.e. 29th November 1967, that the proceedings initiated against the Applicant was ultra vires and that the Committee of Inquiry lacked jurisdiction.

10

27. The Committee adjourned to consider the submission. At the resumed inquiry on the 5th March the Committee was again urged to make its decision on the submission as to its jurisdiction but failed to do so. The Committee had never decided on the point.

28. By a letter dated the 13th January 1968 the Secretary of the Commission indicated that the Committee had decided to defer its decision pending completion of the inquiry.

20

29. There is authority for the view that a tribunal may delay its decision that it lacks jurisdiction until after it has heard the evidence on all questions submitted to it. (R v. Licensing Authority etc. (1949) 2 K.B.17 at 27.)

30. But the Committee is obliged to and must decide this collateral or preliminary question as to its jurisdiction. "The inferior tribunal must, indeed, decide as to the collateral fact, in the first instance....." (Halsbury volume 11, 3rd edition at page 143). This was strongly urged by Counsel for the Applicant (See Ex. R.S. V paragraph 24).

30

31. "In order to give substance to their supervisory jurisdiction the courts have often held that serious procedural errors committed by an inferior tribunal after it has been seized of the issues deprive it of jurisdiction, though in other cases they have held such errors to render the determination voidable but not void". (S.A. de Smith: Judicial Review of Administrative Authority, 2nd edition at page 101).

40

32. It is further submitted that as the question of jurisdiction was attacked and relied on in collateral proceedings the maxim omnia praesumuntur rite esse acta

does not apply and it is for the Respondents to prove that jurisdiction did in fact exist.

In the  
High Court

S.A. de Smith - 2nd edition at page 105

No.8

London Corporation v. Cox (1867) L.R.2 H.L.239

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R v. Pugh (1951) 2 K.B. 623 at 629.

(Undated)

III. BREACH OF RULES OF NATURAL JUSTICE

(continued)

10 33. At the hearing on the 28th November 1967 the letter written by Dato' Yeap Kee Aik dated the 26th October 1966 initiating proceedings was shown to the Applicant. It bore the reference No. KBY 8/68 and made certain allegations against the Applicant which were not comprised in the charges preferred against the Applicant particularly on the question of the Applicants' conduct with regard to the Johore Mining and Stevedoring Company.

20 34. This letter was not formally produced at the hearing and in spite of requests by Counsel for the Applicant production of the said letter was refused (Paragraphs 29-32 of the Affidavit of the Applicant refers).

35. The Public Services Commission was cognisant of an allegation against the Applicant which did not form part of the charges against the Applicant.

36. In withholding the letter which contained the allegation the applicant was denied the opportunity of making his defence on matters which were made known to the Commission but which did not form part of the charges against the Applicant.

30 37. The Public Services Commission is the adjudicating body on the question of dismissal. The inference is inevitable that they were influenced by that letter in commencing proceedings against the Applicant.

40 38. It should be remembered that the Head of Department Inche S. Kumar had no part in initiating proceedings. The evidence indicate that the Head of Department did not consider the conduct of the officer was one that merited dismissal. In fact the only action taken by the Head of Department on the 15th August 1966 was to make the observation that the

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officer should be considered disqualified for promotion.

39. What is the position at law where the Commission is cognizant of allegations against the Applicant but which allegations are neither made known to the Applicant nor is the Applicant afforded an opportunity of stating his case or making his defence?

40. Reference is made to the Judgment of Lord Reed in Ridge v. Baldwin (1964) A.C. 40 and summarised in paragraph 21 above.

10

41. This position here is that the Committee of Inquiry makes its findings and recommendations to the Commission that decides the final question of dismissal. The body that decides is separate from the body that enquires.

42. The requirements of the rules of natural justice are no different in this respect. (See de Smith: Judicial Review etc. at pages 206 and 207).

43. In Jeffs v. New Zealand Dairy Production and Marketing Board (1967) 1 AC 551 the decision of a dairy board was quashed because the report of the investigating sub-committee on which the decision was founded had merely summarised the submissions made before it but had neither incorporated the text of the written submissions, nor stated what evidence had been given, nor had it summarised the evidence. The board therefore, was held not to have "heard" before deciding.

20

44. It is submitted that the present case is analogous to Jeffs' Case cited above. The Commission was aware of an allegation not the subject of a charge. The Committee of Inquiry had refused the Applicant the opportunity to be heard on the allegation. The Commission that finally decided on the matter of dismissal must be deemed not to have "heard" before deciding.

30

45. Bias on the part of the Commission or Committee of Inquiry is not alleged by the Applicant. The Commission may well have been acting in the best possible faith.

40

46. What is alleged and what is required under the

rules of natural justice is that there should be no real likelihood of such bias. Certiorari has been ordered even where there is a reasonable impression of bias (Metropolitan Properties Co. v. Lannon (1968) 3 W.L.R. 694).

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10 47. Further it is submitted that "the courts have often quashed decisions on the strength of the reasonable suspicions of the party aggrieved, without having made any finding that a real likelihood of bias in fact existed" (de Smith, 2nd edition at page 245).

#### IV. HEARSAY EVIDENCE

48. As stated earlier in regard to the allegations which form the subject matter of the first three charges the only action taken by the Head of Department on the 15th August 1966 was to make the observation that the officer may be disqualified for promotion.

20 49. On the remaining charges i.e. charges 4-8, the Committee of Inquiry acted improperly in admitting hearsay evidence against the applicant.

50. The fourth, fifth and seventh charges related to loans which had nothing to do with the applicants' official position.

51. In the case of the sixth charge there was a letter from Mr. Foo to the effect that no money had passed. Mr. Foo's letter was never contradicted.

30 52. There was not the slightest evidence to show that the applicant had used his public position for his private advantage.

53. It is submitted that the Committee's entire reliance on hearsay evidence was a breach of its implied duty to act judicially.

54. There is abundant authority on the rule that certiorari will issue if a Committee has been in breach of its implied duty to act judicially.

Maxwell: Interpretation of Statutes, 11th edition, pages 358, 360.

40 S.A. de Smith: Judicial Review of Administrative Action, 2nd edition pages 398-407.



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Ridge v. Baldwin (1964) A.C. 41 at page 74.

55. ".....there are cases in which a duty to act judicially in accordance with the rules of natural justice has been held to arise by implication from the nature of a power and its impact upon the rights of individuals, despite the absence of any express duty to follow a procedure analogous to the judicial.

56. ".....there are cases in which certiorari has issued to quash decisions made in excess of authority despite the fact that the body concerned was under no express or implied duty to afford a hearing to two contending parties".

10

57. The above two paragraphs emphasise the importance of a Committee to act judicially and the failure so to do would expose its ultimate decision to an order of certiorari.

58. The proceedings before the Committee of Inquiry were a judicial process or a process analogous to the judicial. By the admission of and entire reliance on hearsay evidence the Committee has been in breach of its implied duty to act judicially.

20

(Nakkuda Ali v. Jayaratne (1951) A.C. 66 at page 75.)

59. For the reasons set out above the Applicant pleads that this Honourable Court do grant the relief prayed for in the Notice of Motion.

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High Court

No.9

Judgment

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(continued)

the applicant. The Committee sat on 27th, 28th and 29th November, 1967, when hearing was adjourned, and resumed on 5th, 6th and 7th March, 1968. The proceedings were conducted by Enche S. Kumar the Commissioner for Labour, and Enche M. Shankar represented the applicant.

On 28th November, 1967, in the course of cross-examination of Enche S. Kumar, the following evidence was elicited:

- Q. "The letter dated the 8th December 1966 to Sivam that his conduct appeared to the Head of Department to merit dismissal was sent through the Setia Usaha Kementerian Buroh? 10
- A. Yes.
- Q. Dato Yeap Kee Aik was then the Secretary to the Ministry of Labour?
- A. Yes.
- Q. The letter was sent through him because it was he who reported to the Public Services Commission that it appeared to him that Sivam's conduct merited dismissal? 20
- A. Yes.
- Q. Did he make this report verbally or in writing?
- A. He did it in writing by a letter dated the 26th October 1966.
- Q. So the decision to initiate proceedings against Sivam was his and his alone?
- A. Yes. 30
- Q. But it is you who is Head of Department and not Dato Yeap Kee Aik?
- A. Yes, I am the Head of Department and not Dato Yeap.

When the above evidence was elicited, Enche Shankar put in a written submission on 29th November 1967, to the effect that the proceedings

initiated against the applicant were ultra vires. The Committee adjourned to consider the submission. On 13th January 1968, the Secretary to the Commission in reply to the applicant's letter of 28th December, 1967, indicated that the Committee had decided to defer its decision pending completion of the Enquiry. It is established that the said decision was never communicated to the applicant. On 30th April, 1968, the applicant was notified of his dismissal.

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High Court  

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Judgment  
7th February  
1969  
(continued)

10

Before me four grounds were relied in support of this application:

- (i) that the proceedings before the Committee of Inquiry of the Public Services Commission were improperly instituted;
- (ii) that the Committee of Inquiry had failed to consider matters preliminary or collateral to the matter before it and affecting its jurisdiction;
- 20 (iii) that the proceedings before the Committee of Inquiry are void on the ground that they are contrary to the rules of natural justice;
- (iv) that the Committee of Inquiry improperly admitted hearsay evidence against the charges preferred against the applicant.

30

40

It is urged on behalf of the petitioner that the proceedings before the committee of inquiry, which were instituted by the Secretary to the Ministry and not by the Head of Department, violated the provisions of G.O. 38 Cap.D, were ultra vires, and therefore void. G.O. 38 reads: "If the conduct of "an officer on the pensionable establishment in "Division I or II of the Public Service appears to "the Head of Department to merit dismissal, the "following procedure will be adopted, unless the "method of dismissal is otherwise provided for "either in these Regulations, or by special "legislation:", and then follows the procedural provisions relating to disciplinary proceedings with a view to dismissal. I agree that these procedural provisions are to be treated as mandatory and therefore must be strictly construed. Reliance is also placed on a passage in S.A. de Smith on

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(continued)

"Judicial Review of Administrative Action" at page 212: "If procedural "rules have been laid down (e.g. for the hearing of "disciplinary charges against police officers), "those rules will be treated as mandatory except "in so far as they are of minor importance; and "upon them there will be engrafted the implied "requirements of natural justice."

It is true that Enche Kumar is the Head of the Department of Labour and not Dato Yeap Kee Aik, but the Department of Labour is one of many Departments in the Ministry of Labour. The overall administrative head of the Ministry is the Secretary. In the light of this observation the meaning to be attached to the provisions of G.O. 3(g) Cap.A is quite clear. The Secretary to the Ministry of Labour is also Head of Department. G.O. 3(g) reads: "The term "Head of Department" shall be deemed to include a "Secretary to a Minister or Ministry and the Principal "Establishment Officer in respect of services "listed in sub-paragraph (a) of General Order 41". It is said that the definition of "Head of Department" as defined in G.O. 3(g) Cap.A which deals with appointments and promotions is not applicable to the provisions under Cap. D i.e., conduct and discipline regulations. The fallacy lies in assuming that there are two different Heads of Departments one dealing with appointments and promotions and the other dealing with disciplinary proceedings. It is obvious that is not the intention of the General Orders. It is then urged that the said regulation concerns services listed in sub-paragraph (a) of G.O. 41 41 Cap. A and the applicant is not a member listed under the said paragraph. In my opinion that is a misinterpretation of the said regulation. Only the services listed in sub-paragraph (a) of G.O.41 Cap.A come within the portfolio of the Principal Establishment Officer while other services come under the administrative heads of the various Ministries. The true view is that while the mandatory provisions of G.O. 38 Cap.D must be strictly construed, the phrase "appears to the Head of Department to merit dismissal" which precedes those provisions is only a machinery providing for the mode in which the question which can only be decided by the Disciplinary Authority is to come before them. There can be no doubt that the power of dismissal remains solely with the Disciplinary Authority.

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High Court

          
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7th February  
1969

(continued)

10 The next argument proffered is that failure to consider the collateral question of jurisdiction is a serious procedural defect which deprives the Committee of jurisdiction: (See S.A. de Smith at page 101). I would associate myself with counsel's submission if that is the correct position but that is not the case here. The Committee did not shut its eyes to the issue. It considered the collateral question but indicated in its letter of 13th January 1968 that it "had decided to defer its decision pending completion of the enquiry". The fact that it completed the enquiry and submitted its report to the Disciplinary Authority is indicative of conduct amounting to rejection of counsel's submission. Regrettably that decision was never conveyed to the applicant. Is failure to do so a serious defect in procedure as to deprive it of jurisdiction? I think not. That cannot be equated with failure to consider the collateral question of jurisdiction or breach of the principles of natural justice both of which are very serious defects which amount to deprivation of jurisdiction.

20

30 The third point relied upon by the applicant is that in initiating proceedings against him the Public Services Commission was influenced by extraneous considerations without giving him an opportunity to explain it, thereby violating the rules of natural justice. In essence it is said that the letter of Dato Yeap Kee Aik of the 26th October 1966 contained allegations of misconduct against the applicant but they were not made the subject-matter of the charges preferred against him. That letter was shown to the applicant on the 2nd day of hearing but it was not formally produced in the course of the enquiry. The net result of such omission, it is alleged, is that he was denied an opportunity of making his defence on matters which the Commission was cognisant but which did not form part of any of the charges, thereby leading to the inevitable inference that the Commission was influenced by that letter in commencing proceedings against him. On behalf of the Commission it is contended that the said letter never formed part of the proceedings and had in no way influenced their decision.

40

The law requires that the Commission should observe the rules of natural justice in the conduct of the enquiry and if they do so, their decision

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No.9

Judgment

7th February  
1969

(continued)

is not liable to be impeached. What is the essence of natural justice in rendering justice? It is well settled that the rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act and the question whether in a particular case they have been contravened must be judged not by any pre-conceived notions of what they may be put in the light of the statutory rules and regulations. As was pointed out by Lord Atkin in General Medical Council v. Spackman (1) at page 341: "The procedure which may be very just in deciding whether to close a school or an insanitary house is not necessarily right in deciding a charge of infamous conduct against a professional man." See also the observations of Tucker, L.J. in Russell v. Duke of Norfolk & Ors.(2) Stating it broadly, and without intending it to be exhaustive, it may be observed that rules of natural justice require a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. There must be no malversation of any kind.

10

20

As I have indicated earlier, that letter is merely an information which entitles the Commission to act. It was shown to the applicant but it was not made use of against him. That is the explanation why it was not formally produced and formed part of any of the charges. That being so, it is beyond comprehension how it can be argued that the applicant was deprived of an opportunity of explaining something which is not the subject matter of any of the charges. In my view the rules of natural justice had not been violated. The case of Jeffs v. New Zealand Dairy Production and Marketing Board(3) relied on by the applicant is too remote for present consideration.

30

40

This application is also supported on the authority of Metropolitan Properties Co. (F.G.C.) Ltd. vs. Lannon(4) which held that certiorari would lie where there is a reasonable impression of bias even though there is no actual bias. Assuming that is an unassailable proportion of law, the probabilities (sic)

in this present case, viewing it objectively, do not justify such an inference, let alone on the basis of "real likelihood" or bias. See S.A. de Smith at pp. 244-246.

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High Court

No.9

Judgment  
7th February  
1969

(continued)

10 The last but by no means the least point for consideration is whether in admitting hearsay evidence in the course of the inquiry by the Committee of Inquiry, the said Committee had violated the implied duty to act judicially. The short answer is that the Committee in exercising quasi-judicial functions is not a court of law. It can obtain any information which is relevant for the purpose of the inquiry, from any source or through any channel unfettered by the strict rules of evidence and procedure which govern court proceedings. The only limitation is that the rules of natural justice must be observed. If the rules are satisfied, the inquiry is not open to attack on the ground that the procedure laid down in the Evidence Ordinance was not strictly followed: see  
20 State of Mysore v. Shivabasappa.(5)

The motion is dismissed with costs.

Kuala Lumpur  
7th Feb. 1969

(RAJA AZLAN SHAH)  
Judge, High Court.

- (1) (1943) 2 A.E.R. 337 @ 341
- (2) (1949) 1 A.E.R. 109 @ 118
- (3) (1967) 1 A.C. 551
- (4) (1968) 1 W.L.R. 694
- (5) (1963) 2 A.I.R. S.C. 375

30 Mr. S. Woodhull for the applicant  
Mr. Ajaib Singh for the respondents.



In the  
Federal Court

No. 10  
Notice of Appeal

No. 10  
Notice  
of Appeal  
13th February  
1969

IN THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)

CIVIL APPEAL NO. X.18 OF 1969

BETWEEN

R. SAMBASIVAM . . . APPELLANT

AND

1. THE PUBLIC SERVICES COMMISSION  
2. THE GOVERNMENT OF THE FEDERATION OF MALAYA . . . RESPONDENTS 10

In the matter of Originating Motion No.11 of  
1968 in the High Court in Malaya at Kuala Lumpur)

BETWEEN

R. SAMBASIVAM . . . APPLICANT

AND

1. THE PUBLIC SERVICES COMMISSION  
2. THE GOVERNMENT OF THE FEDERATION OF MALAYA . . . RESPONDENTS

NOTICE OF APPEAL 20

TAKE NOTICE that R.Sambasivam the Plaintiff abovenamed being dissatisfied with the decision of the Honourable Mr.Justice Raja Azlan Shah given at Kuala Lumpur on the 7th day of February 1969 appeals to the Federal Court against the whole of the said decision.

Dated this 13th day of February 1969.

Sgd. Shearn Delamore  
Solicitors for the Appellant

To: The Registrar,  
Federal Court,  
Kuala Lumpur. 30

and to

1. The Public Services Commission  
2. The Government of the Federation of Malaya and/or their Solicitors, The Senior Federal Counsel, c/o. Attorney-General's Chambers, Kuala Lumpur.

Filed this 13th day of February 1969 and  
\$500/- deposited in Court vide Receipt No. X868277  
dated 13th February 1969.

Sgd. Tam Kam Weng  
Senior Assistant Registrar,  
High Court, Malaya,  
Kuala Lumpur.

In the  
Federal Court

No. 10  
Notice  
of Appeal  
13th February  
1969

(continued)

The address for service of the Appellant is  
Messrs. Shearn, Delamore & Company, Advocates &  
Solicitors, No. 2 Benteng, Kuala Lumpur.

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No. 11  
Memorandum of Appeal

No. 11  
Memorandum of  
Appeal

IN THE FEDERAL COURT OF MALAYSIA

24th March  
1969

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. X18 OF 1969.

Between

R. Sambasivam ... Appellant

And

1. The Public Services Commission  
2. The Government of the Federation  
of Malaya ... Respondents

20

(In the matter of Originating Motion No.11 of  
1968 in the High Court in Malaya at Kuala  
Lumpur)

Between

R. Sambasivam ... Applicant

And

1. The Public Services Commission  
2. The Government of the Federation  
of Malaya ... Respondents

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In the  
Federal Court

MEMORANDUM OF APPEAL  
OF THE APPELLANT ABOVENAMED

No. 11  
Memorandum of  
Appeal  
24th March  
1969  
(continued)

R. Sambasivam the Appellant abovenamed appeals to the Federal Court against the whole of the decision of the Honourable Mr. Justice Raja Azlan Shah given on the 7th day of February 1969 on the following grounds:-

I. The learned Judge was wrong in finding that the proceedings against the Appellant before the Committee of Inquiry of the Public Services Commission were properly instituted. 10

II. The learned Judge erred in concluding that while Enche Kumar was the Head of Department it was within the authority of the Secretary to the Ministry of Labour as overall administrative head of the said Ministry to institute disciplinary proceedings against the Appellant.

III. That while the learned Judge held that it was necessary for proceedings to be instituted by the Head of Department there was no evidence whatsoever upon which the learned Judge could draw the conclusion that the Secretary to the Ministry was in fact the overall administrative head and/or Head of Department with authority to institute proceedings, and that the Appellant contends that the conclusion drawn by the learned Judge was in any event wrong. 20

IV. The learned Judge failed to appreciate:-

(a) that before proceedings were instituted under the provisions of General Orders 38 Cap.D it was an essential pre-condition that the conduct of the Appellant must appear to the Head of Department to merit dismissal; 30

(b) that the evidence clearly established that the conduct of the Appellant did not appear to the Head of Department to merit dismissal;

(c) that the term "Head of Department" referred to in General Orders 3(g) Cap.A is a term given a meaning specifically restricted to Chapter A; 40

(d) that the term "Head of Department" in

Chapter A is given an extended meaning and that no assumption is made that there are two different Heads of Departments one dealing with appointments and promotions and the other dealing with disciplinary proceedings.

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V. The learned Judge erred in concluding that the Secretary to the Minister had authority to institute proceedings against the Appellant.

10 VI. The learned Judge was wrong in finding that the Committee of Inquiry by submitting its report to the Disciplinary Authority thereby rejected the Appellant's submission that the said Committee lacked jurisdiction.

VII. The learned Judge failed to appreciate that by not deciding the question of its jurisdiction it was the duty of the Respondents to prove that the Committee of Inquiry possessed jurisdiction which said duty was never discharged by the Respondents.

20 VIII. The learned Judge failed to appreciate

(a) that the letter of Dato' Yeap Kee Aik of the 26th October 1966 contained allegations that did not form the subject of a charge against the Appellant;

(b) that the Appellant was denied the opportunity of making his defences to the allegations contained in the said letter;

30 (c) that what was pleaded by the Appellant was not that the Committee of Inquiry was actually influenced or prejudiced but that there was a real likelihood of such influence or prejudice;

40 (d) that what was pleaded by the Appellant was not the right to adduce relevant evidence but the real likelihood of bias on the part of the Committee of Inquiry following on the fact that it was cognizant of allegations prejudicial to the Appellant.

IX. The learned Judge was wrong in holding that

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(continued)

the Committee of Inquiry was free to admit and rely on hearsay evidence and that such admission and reliance was not in breach of its implied duty to act judicially.

Dated this 24th day of March 1969.

Shearn Delamore

Solicitors for the Appellant.

To: The Registrar,  
Federal Court,  
Kuala Lumpur.

10

and to

1. The Public Services Commission,  
Jalan Young, Kuala Lumpur.
2. The Government of the Federation of Malaya  
and/or their Solicitors, The Senior Federal  
Counsel, c/o. Attorney-General's Chambers,  
Kuala Lumpur.

The Address for service of the Appellant is  
c/o. Messrs. Shearn Delamore & Company, Eastern  
Bank Bldg. No. 2 Benteng (Top Floor), Kuala Lumpur.

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Federal Court

No. 12

Written  
submission for  
the Appellant

(Undated)

(continued)

5. In this way we will save a considerable amount of time.

6. Further for ease of reference, we submit that the full position in the matter of submissions for the appellant can be found in the Appeal Record in the following places:-

(1) Pages 7 to 13 which set out the history of the matter in the Appellant's Affidavit.

(2) Pages 20 to 23 which set out the submission made before the Committee of Inquiry. 10

(3) Pages 30 to 37 which set out the concise submission made at first instance in the High Court when an application was made for leave to apply for an Order of certiorari and finally pages 46 to 58 of the Record which set out the detailed written submission in the High Court.

7. To avoid repetition we wish to give the Court notice that these written submissions should be treated as having been delivered and read before the Federal Court. They form part of our submission and the Court must take cognizance of them. 20

8. The substantial question before this Court is whether the proceedings against the Appellant before the Committee of Inquiry were properly instituted.

9. This is covered in points I to V of the Memorandum of Appeal.

10. We propose now to concentrate on ground (iii) which is the crux of the matter : read 30

11. If we may now refer to the judgment at page 59 of the Record we say that the Learned Trial Judge sets out the Legal position quite accurately from pages 59 up to 62B of the Record.

12. It may be useful to refer to pages 61 and 62B: read.

13. Our dissatisfaction with the judgment of the Learned Trial Judge arises out of his reasoning which proceeded from page 62C onwards: read.

14. We would make the following comments about the reasoning :

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submission for  
the Appellant

(Undated)

(continued)

10 (1) There was no evidence whatsoever before the Learned Trial Judge as to the numerous departments in the Ministry of Labour or that the overall head of the Ministry of Labour is the Secretary. Indeed the sworn evidence given by Mr. Kumar before the Committee of Inquiry is that he is the head of the Department of Labour and not Dato Yap Kee Aik. The Trial Judge reversed this position by a process of interpretation of the provisions of Chapter 8 and in doing so we submit that he departed from the very principles which he sets out in the earlier part of his judgment that "these procedural provisions (in Chapter D) must be treated as mandatory and therefore must be strictly construed".

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15. On a strict construction O.G. 38 refers to the Head of Department and in the singular and not to the overall head of the many departments in a particular Ministry. We apprehend that the Head of Department referred to is the head of department whose immediate subordinate is the officer whose conduct is impugned, is. In this case this would be Mr. Kumar and Mr. Sambasivam, respectively. Sight should not be lost of the fact that

30 Commissioner for Labour and Asst. Commissioner for Labour are all appointed by the Yang di-Pertuan Agong by the provisions of the Employment Ordinance No. 38 of 1955 Section 3 which also prescribed their duties. No reference is made anywhere in that Ordinance to the Secretary to the Ministry having any powers or duties over the Commissioner for Labour or his subordinates.

16. The question, therefore, arises as to whether the Learned Trial Judge was right in transposing the interpretation clause under Chapter A to Chapter D.

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17. We submit that this promiscuous interchange all definitions is not warranted by the law: See enclosure.

18. Firstly the definition in Chapter A Section 3



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(continued)

is in terms restricted to that chapter. The words are clear.

19. On that ground alone the Trial Judge should have held that he could not go outside the clear evidence given by Mr. Kumar that it was he who was the Head of Department and not Dato Yap Kee Aik.

20. To go one stage further we would say that when the Learned Trial Judge held that there was a fallacy in assuming that there were 2 different heads of department he was himself in error. 10

21. This must be so because if there is only one head of department which is what the Learned Trial Judge suggests the nett result must be that Mr. Kumar was not the head of department at all.

22. If he was not the head of department then there was no evidence to show what he was.

23. He was certainly not a cipher.

24. Furthermore the interpretation which the Learned Trial Judge put upon G.O. 41 is also we submit in error. The definition 3(g) and G.O.A.41. 20

25. From this we submit that it will be apparent that as there are references to the head of department in 41(b)(c) the definition must be read to mean that only in respect of the services listed in subparagraph in General Order 41 the term head of department is deemed to include a Secretary to a Minister or Ministry and the principal establishment officer.

26. It was established that the Appellant was not a member of any of the services in question. 30

27. Once this Court accepts the position that Mr. Kumar is the head of department and not Dato Yap Kee Aik then it must inevitably follow that the orders prayed for must be granted on the principles of law set out by the Trial Judge himself.

28. There was clear evidence that it never appeared to Mr. Kumar that the conduct of the Appellant merited dismissal. He has given sworn evidence that the decision to dismiss was not made by him but was made by the Secretary to the Ministry. 40

29. For these reasons alone we submit that this appeal must succeed.

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30. As to the other points made in the judgment our arguments in summary are as follows:-

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(continued)

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- (1) As to the point made at page 63D to page 64A we say that it is open to this Court to find that where the rules of natural justice require that a party must be given an opportunity to be heard that rule must carry with it the right of the party to know what decision has been arrived at by the Tribunal on the point on which he has been afforded an opportunity to be heard. If we may refer to page 61 of the judgment at A it was established that the decision if one was made that the proceedings initiated were not ultra vires was not communicated to the Applicant. If the Tribunal are allowed to decide issues without communicating them to the parties which are affected thereby we submit that the rule that a party should be afforded a right to be heard would be almost completely emasculated.

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- (2) As to the third point referred to by the Trial Judge at page 64B to page 66 at C we say as follows. It was on the basis of the letter of the 26th of October 1966 that the Public Services Commission initiated the proceedings for the dismissal of the Appellant. In other words they were moved by the letter in question to the extent that they decided to take proceedings against the Appellant. It is not, therefore, open for the Commission to contend that they were not influenced by it. They were influenced and they acted on the letter. That is where the likelihood of bias arose and was demonstrated. We were unable to carry the matter further at the inquiry because our attempts to get the letter put in and brought out into the open was frustrated by the refusal of the Commissioner to produce the letter. Unfortunately that letter is not now before the Court even though I have seen it. One look at it

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would be enough to imagine what effect it must have had on the minds of any person who read it.

- (3) The last point at page 66D of the judgment is on the question of hearsay evidence. If a quasi judicial Tribunal has the power to admit hearsay evidence we submit that that power must be exercised in the light of the gravity of the actual issues being tried before it. For example, if it was a matter of licensing justices determining whether a licence should be issued in a particular area hearsay evidence may well be admitted. However, where it is a question of charges of misconduct against the individual we submit that tight rules must be observed. In fact Sir Alison Russell on his Notes and Forms on Officer proceedings under the Colonial Regulations against an officer for offences states as follows at page 22 (1948) edn.)

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"15. There are certain rules - for example those relating to the proof of documents which are technical and which in the proper cases, the Committee may justifiably ignore: the question of the admission of hearsay evidence cannot, in any circumstances be regarded as a mere technicality and the Committee should in this respect adhere strictly to the law of evidence."

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31. These principles have in practice been long followed and should be applicable here. Otherwise we have the situation we had here where statements were accepted which were unsworn, uncorroborated, and untested by cross-examination because the persons who allegedly made them were not called as witnesses.

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No. 13  
Notes of Argument of Ong Hock Thye C.J.

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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(Appellate Jurisdiction)

Federal Court Civil Appeal No.X.18 of 1969

Between

R. Sambasivam ... Appellant

And

- 10 1. The Public Services Commission  
2. The Government of the Federation  
of Malaya ... Respondents

(In the Matter of Originating Motion No.11 of  
1968 In the High Court in Malaya at Kuala  
Lumpur

Between

R. Sambasivam ... Applicant

And

- 20 1. The Public Services Commission  
2. The Government of the Federation  
of Malaya ... Respondents

Cor: Ong Hock Thye, C.J.  
Gill, F.J.  
Ali, F.J.

NOTES OF ARGUMENTS RECORDED BY ONG HOCK THYE, C.J.

Wednesday, 11th June 1969

Shankar for applt.

Ajaib Singh for respts.

30 Shankar: hands up written submission and text  
from Swarup's Legislation and Interpretation  
(1968) Ed. p.242.

Ajaib Singh (in reply)

- I. Qn. was Dato Yeap Kee Aik proper head of  
dept. to initiate proceedings.  
G.O.D. ~~##~~ 38  
cf. ~~##~~ 37 plus (a)  
and ~~##~~ 33(a)

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Notes of  
Argument of  
Ong Hock Thye  
C.J.

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C.J.

11th June 1969

(continued)

- submit the difference between O.38 & 37. ss is such that Head of Dept. need not necessarily be the person initiating proceedings under ~~38~~ 38. "the Head" is "his Head of Dept".

Letter of 8/12/66 (p.14 of record) 1st 2 lines. - agst this letter - there is no evidence to the contrary on the record that Kumar thought otherwise.

p. - "machiner".

passage in judgment is adopted by respts. 10

- II. See affidavit of Abu Hanifah (p.22 ) para. 5. - letter of 26/10/66 "not part of proceedings". (1966) A.P. 1728 - "Certiorari" - "But, semble, a mere reference to a document does not make its terms part of the record."

On this point - see judgment at p.64 B-F.

- III. "Hearsay". and see State of Mysore v Shivabasappa (1963) A.I.R. S.C. 375 at 377 20

Shankar:

distinction between ~~33~~ 33, 37 and ~~38~~ 38 is more apparent than real - cf. ~~38~~ 38. "Head of Dept." must communicate - not remain silent as the sphinx.

In ~~33~~ 33 & 37 he has to put up a full report as well; in ~~37~~ 37 the head has need only to say he was satisfied etc.

- (sic) re - Kumar's view as Head of Sept. gn. of jurisdiction (see p. 53 E.) 30

- note Kumar's answers in xxn. He conducted proceedings - and also gave evidence - he didn't take the obvious step - announcing his view (p.20 - para 13). (p.25 - reply refusing letter).

Ajaib Singh:

(letter of 26/10/66 was from Yeap Kee Aik to P.S.C. which started the ball rolling).

C. A. V.

Intld: O.H.T. 40

Wednesday, 10th September 1969.

Wednesday, 10th September 1969

In the  
Federal Court

R. Khoo for applt.  
Ajaib Singh for respts.  
I read judgment - Gill & Ali agree.  
Appeal dismissed with costs.  
Deposit to respts.

No. 13  
Notes of  
Argument of  
Ong Hock Thye  
C.J.  
10th September  
1969

Intld: O.H.T.

No. 14  
Judgment of Ong Hock Thye C.J.

No. 14  
Judgment of  
Ong Hock Thye  
C.J.  
10th September  
1969

10 Between  
R. Sambasivam ... Appellant  
And  
1. The Public Services Commission  
2. The Government of the Federation  
of Malaya ... Respondents  
(In the Matter of Originating Motion No.11 of 1968  
In the High Court in Malaya at Kuala Lumpur

20 Between  
R. Sambasivam ... Applicant  
And  
1. The Public Services Commission  
2. The Government of the Federation  
of Malaya ... Respondents )

Cor: Ong Hock Thye, C.J.  
Gill, F.J.  
Ali, F.J.

JUDGMENT OF ONG HOCK THYE, C.J.

30 A motion for an order of certiorari, to quash  
the decision of the Public Services Commission term-  
inating the appellant's appointment, was dismissed  
by the High Court at Kuala Lumpur on February 7,  
1969. The appellant now appeals to this Court.

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No. 14

Judgment of  
Ong Hock Thye  
C.J.

10th September  
1969

(continued)

The appellant was a Junior Assistant Commissioner of Labour and as such an officer on the permanent establishment in Division II of the Public Service. On December 8, 1966 the Secretary to the Public Services Commission informed the appellant by letter that "his conduct appears to the Head of the Department to merit dismissal" and called upon him to exculpate himself. This letter, as pointed out, was sent through Dato Yeap Kee Aik, then Secretary to the Ministry of Labour. As the appellant failed to exculpate himself satisfactorily, a Committee was duly set up, under regulation 38(c) of General Orders, Cap. D, to enquire into the matter. The Committee sat on November 27, 28 and 29, 1967, when hearing was adjourned, and resumed on March 5, 6 and 7, 1968. 10

On November 28, 1967 the evidence of Mr. S. Kumar, the Commissioner for Labour, given in cross-examination, was as follows:

- "Q. The letter dated the 8th December 1966 to Sivam that his conduct appeared to the Head of Department to merit dismissal was sent through the Setia Usaha Kementerian Buroh? 20
- A. Yes.
- Q. Dato Yeap Kee Aik was then the Secretary to the Ministry of Labour?
- A. Yes.
- Q. The letter was sent through him because it was he who reported to the Public Services Commission that it appeared to him that Sivam's conduct merited dismissal? 30
- A. Yes.
- Q. Did he make this report verbally or in writing?
- A. He did it in writing by a letter dated the 26th October 1966.
- Q. So the decision to initiate proceedings against Sivam was his and his alone?
- A. Yes. 40

Q. But it was you who is Head of Department and not Dato Yeap Kee Aik?

A. Yes, I am the Head of Department and not Dato Yeap.

Thereupon counsel for the appellant raised an objection that the proceedings thus initiated were ultra vires and, on the following day, made a submission in writing to that effect. The point made was that, under regulation 38, the person concerned, to whom the conduct of a public officer appears to merit dismissal, should have been Mr. Kumar, the Commissioner for Labour, who was "the Head of Department", and not Dato Yeap Kee Aik. Citing Professor S.A. de Smith's Judicial Review of Administrative Action (1961) at page 61, that "if the repository of the power fails to comply with these requirements it acts ultra vires", it was contended that the proceedings should be stopped at that stage and the question of ultra vires disposed of first.

Faced with this problem the Committee decided to adjourn to consider the submission. In reply to a letter by the appellant on December 28, 1967 seeking information as to the decision of the Committee, the Secretary of the Public Services Commission replied on January 13, 1968 that the Committee had decided to defer decision on the point pending completion of the inquiry. Upon its resumption on March 5, 1968 objection to the validity of the proceedings was again raised and put on record. Whatever the decision it was never communicated to the appellant. On April 30, 1968 he was notified of his dismissal.

The substantial question before this Court was also the principal ground raised in support of the application to the High Court. The contention is that the proceedings before the Committee of Inquiry were instituted by the Secretary to the Ministry and not by the Head of Department. This was a violation of the provisions of regulations 38 of General Orders, Cap. D. Consequently the Committee had no jurisdiction to entertain the matter and the proceedings were void. The regulations reads as follows:-

"38. If the conduct of an officer on the pensionable establishment in Division I or II

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Judgment of  
Ong Hock Thye  
C.J.

10th September  
1969

(continued)



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Federal Court

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Judgment of  
Ong Hock Thye  
C.J.

10th September  
1969

(continued)

of the Public Service appears to the Head of Department to merit dismissal, the following procedure will be adopted, unless the method of dismissal is otherwise provided for either in these Regulations, or by special legislation"

The learned Judge held, in my view quite rightly, that the procedural provisions set out thereunder should be treated as mandatory and strictly observed. He agreed that it was true Mr. Kumar was the Head of the Department of Labour and not Dato Yeap Kee Aik, but the reasoning that followed has been criticised, in which it was said :-

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"But the Department of Labour is one of many Departments in the Ministry of Labour. The overall administrative head of the Ministry is the Secretary. In the light of this observation the meaning to be attached to the provisions of G.O. 3(g) Cap.A is quite clear. The Secretary to the Ministry of Labour is also Head of Department. G.O. 3(g) reads: 'The term "Head of Department" shall be deemed to include a Secretary to a Minister or Ministry and the Principal Establishment Officer in respect of the services listed in sub-paragraph (a) of General Order 41'. It is said that the definition Head of Department as defined in G.O. 3(g) Cap. A which deals with appointments and promotions is not applicable to the provisions under Cap. D i.e., conduct and discipline regulations. The fallacy lies in assuming that there are two different Heads of Departments one dealing with appointments and promotions and the other dealing with disciplinary proceedings. It is obvious that is not the intention of the General Orders."

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Before us it was argued that there was no evidence before the judge as to the numerous departments in the Ministry of Labour or that the overall head of the Ministry of Labour is the Secretary, contrary to the evidence of Mr. Kumar himself. Be that as it may, it is to be observed that the learned judge was more concerned with the intention of the General Orders, as to which he went on :-

40

"The true view is that while the mandatory provisions of G. O. 38 Cap. D must be strictly

construed, the phrase 'appears to the Head of Department to merit dismissal' which precedes those provisions is only a machinery providing for the mode in which the question which can only be decided by the Disciplinary Authority is to come before them."

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C.J.

10th September  
1969

(continued)

10 With respect I agree, Putting it another way, regulation 38, in my view, ought properly to be construed, as the judge did, in two parts, even though they are not dichotomous. First, there is the complaint; if accepted, it is followed by the inquiry. Impeachment proceedings, it was argued, might be initiated even by an office boy, unless the sole repository of the power to do so is held as restricted, in terms of the regulation, to the Head of Department. This argument by reductio ad absurdum cuts both ways. "Head of Department" not only bears the primary meaning, but also by implication excludes any irresponsible person. The

20 Secretary to the Ministry, of course, is a responsible person, at least the equal in official status of a Head of Department. Moreover, he cannot set the machinery in motion, without disclosing adequate grounds of complaint, any more than the other can. I think both reasonableness as well as the object and intent of the provision should guide its interpretation. In my view the iron-clad rigidity of the procedure to be observed in the inquiry does not extend to what precedes it, namely,

30 the initiation by complaint. Accordingly the proceedings were not invalid on that account. This disposes of grounds I to V of the Memorandum of Appeal.

The next ground of appeal relates to alleged non-observance of the rules of natural justice. It is said that these rules import the right to be informed of the decision of the Committee on the objection to its jurisdiction - its denial was a serious procedural defect. The learned Judge

40 dealt with this point in his judgment as follows:-

"The Committee did not shut its eyes to the issue. It considered the collateral question but indicated in its letter of 13th January 1968 that it 'had decided to defer its decision pending completion of the enquiry'. The fact that it completed the enquiry and submitted its report to the Disciplinary

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C.J.

10th September  
1969

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Authority is indicative of conduct amounting to rejection of counsel's submission. Regrettably that decision was never conveyed to the applicant. Is failure to do so a serious defect in procedure as to deprive it of jurisdiction? I think not. That cannot be equated with failure to consider the collateral question of jurisdiction or breach of the principles of natural justice both of which are very serious defects which amount to deprivation of jurisdiction." 10

I share the same view. At any rate the Committee did lend its ear to the objection raised to its jurisdiction by the written submission and even if, contrary to the view taken by the judge, the Committee proceeded with the inquiry to completion without deciding whether or not it was competent to do so, it has been held, in this appeal, that the proceedings were not invalid by reason of being initiated by the Secretary of the Ministry. 20

On other aspects of the rules of natural justice, it was further argued that the letter of Dato Yeap Kee Aik dated October 26, 1966 contained allegations of misconduct against the appellant which were not made the subject-matter of the charges preferred against him, with the result that the public Services Commission was possibly influenced by extraneous considerations without giving him an opportunity to explain. The question is whether there is a reasonable impression of bias, or a real likelihood of bias: see Metropolitan Properties Co. v Lannon.<sup>(1)</sup> For my part I am satisfied that the learned judge in no way misdirected himself on this point, and having seen the nature of the charges pursued before the Committee and the appellant's explanation, I need say no more than that I have no reason to doubt that neither the Committee nor the Public Services Commission was influenced in their decision by anything contained in Dato Yeap's letter. 30 40

As to the complaint against reception of hearsay evidence concerning charges 4 to 8, it was said that the fourth, fifth and seventh charges related to loans which had nothing to do with the appellant's official position, that in the case of

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(1) (1968) 3 W.L.R. 694, 707.

the sixth charge there was a letter from the alleged lender, which was never contradicted, stating that no money had passed, and that there was not the slightest evidence to show that the appellant had used his public position for his private advantage. I do not think that, having regard to the explanation given by the appellant regarding these transactions, I should be justified in rejecting the inferences drawn by the Committee.

10 Accordingly this appeal fails and I would dismiss it with costs.

Sgd: H. T. Ong

Chief Justice  
High Court in Malaya

Kuala Lumpur.  
10th September, 1969.

Mr. Shankar Esq., for appellant.  
Ajaib Singh Esq., Senior Federal Counsel for respondents.

20 Gill, Judge, Federal Court, Malaysia.

Ali Hasan, Judge, Federal Court, Malaysia.

Concurred.

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In the  
Federal Court

No. 14

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Ong Hock Thye,  
C.J.

10th September  
1969

(continued)

In the  
Federal Court

No.15  
Order

No. 15  
Order

10th September  
1969

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO. X.18 OF 1969

Between

R. Sambasivam ... Appellant

And

- |    |   |    |
|----|---|----|
| 1. | The Public Services Commission                                | 10 |
| 2. | The Government of the Federation<br>of Malaya ... Respondents |    |

(In the Matter of Originating Motion No.11  
of 1968 in the High Court in Malaya at  
Kuala Lumpur

Between

R. Sambasivam ... Applicant

And

- |    |   |    |
|----|---|----|
| 1. | The Public Services Commission                                |    |
| 2. | The Government of the Federation<br>of Malaya ... Respondents | 20 |

CORAM: ONG HOCK THYE, CHIEF JUSTICE, HIGH COURT  
IN MALAYA;  
GILL, JUDGE, FEDERAL COURT, MALAYSIA;  
ALI, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

This 10th day of September, 1969

O R D E R

THIS APPEAL coming on for hearing on the 11th  
day of June, 1969, in the presence of Mr. N. Shankar 30  
of Counsel for the Appellant abovenamed and Mr.  
Ajaib Singh, Senior Federal Counsel for the  
Respondents abovenamed AND UPON READING the Appeal  
Record herein AND UPON HEARING the arguments of

both Counsel IT WAS ORDERED that this Appeal do stand adjourned for judgment AND the same coming on for judgment on this day in the presence of Mr. Ronnie Khoo of Counsel for the Appellant and Mr. Ajaib Singh, Senior Federal Counsel, of counsel for the Respondents IT IS ORDERED that this Appeal be and is hereby dismissed AND IT IS ORDERED that the costs of this Appeal be taxed and be paid by the Appellant to the Respondents AND IT IS LASTLY ORDERED that the sum of \$500/00 (Dollars Five hundred only) deposited in Court by the Appellants as security for costs of the Appeal be paid to the Respondents against their taxed costs.

10

GIVEN under my hand and the Seal of the Court this 10th day of September, 1969.

Sgd: Au Ah Wah

(L.S.) CHIEF REGISTRAR  
FEDERAL COURT  
MALAYSIA.

In the  
Federal Court

                      
No. 15

Order

10th September  
1969

(continued)

In the  
Federal Court

No. 16

Order granting  
Final leave to  
Appeal to H.M.  
the Yang di-  
Pertuan Agong

20th April  
1970

No. 16  
Order granting Final leave to Appeal to  
H.M. the Yang di-Pertuan Agong

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA  
LUMPUR

(Appellate Jurisdiction)

FEDERAL COURT CIVIL APPEAL NO.X.18 OF 1969

Between

R. Sambasivam ... Appellant

And

10

- 1. The Public Services Commission
- 2. The Government of the Federation  
of Malaya ... Respondents

(In the Matter of Originating Motion No. 11  
of 1968 in the High Court in Malaya at  
Kuala Lumpur

Between

R. Sambasivam ... Applicant

And

20

- 1. The Public Services Commission
- 2. The Government of the Federation  
of Malaya ... Respondents )

CORAM: SUFFIAN, AG. LORD PRESIDENT, FEDERAL COURT,  
MALAYSIA;  
GILL, JUDGE, FEDERAL COURT, MALAYSIA;  
ALI, JUDGE, FEDERAL COURT, MALAYSIA.

IN OPEN COURT

This 20th day of April, 1970

O R D E R

UPON MOTION made unto this Court this day by  
Mr. R.T.S. Khoo of Counsel for the Appellant above-  
named in the presence of Mr. Ajaib Singh, Senior  
Federal Counsel on behalf of the Respondents above-

30

named AND UPON READING the Notice of Motion dated the 30th day of May, 1970 and the Affidavit of Mahadev Shankar affirmed on the 20th day of February, 1970 and filed herein AND UPON HEARING the submissions of Counsel aforesaid IT IS ORDERED that final leave to appeal to His Majesty the Yang di-Pertuan Agong be and is hereby granted to the Appellant AND IT IS ORDERED that the costs of this application be costs in the cause.

10            GIVEN under my hand and the Seal of the Court this 20th day of April, 1970.

Sd: Hj. Mohd. Azmi bin Dato'  
Hj. Kamaruddin

CHIEF REGISTRAR  
FEDERAL COURT  
MALAYSIA.

In the  
Federal Court  
\_\_\_\_\_

No. 16

Order granting  
Final leave to  
Appeal to H.M.  
the Yang di-  
Pertuan Agong

20th April  
1970

(continued)



IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL.

No. 33 of 1970

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N:

R. SAMBASIVAM

Appellant

- and -

1. THE PUBLIC SERVICES COMMISSION
2. THE GOVERNMENT OF THE FEDERATION  
OF MALAYA

Respondents

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R E C O R D     O F     P R O C E E D I N G S

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Solicitors for the Respondents.