

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No: 6 of 1978

32/79

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

ZAINAL bin HASHIM (Plaintiff) Appellant

- and -

THE GOVERNMENT OF MALAYSIA
(Defendant) Respondent

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

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London SW1E 6HB.
Solicitors for the Appellant.

STEPHENSON HARWOOD,
Saddlers' Hall,
Gutter Lane,
London EC2V 6BS.
Solicitors for the Respondent.

O N A P P E A L
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

ZAINAL bin HASHIM (Plaintiff) Appellant

- and -

THE GOVERNMENT OF MALAYSIA
(Defendant) Respondent

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

I N D E X O F R E F E R E N C E

No.	Description of Document	Date	Page
	<u>In the High Court</u>		
1.	Specially endorsed Writ and Statement of Claim	9th August 1972	1-6
2.	Statement of Defence	9th December 1972	7-9
3.	Proceedings	20th January 1975	9
	<u>Plaintiff's Evidence</u>		
4.	Zainal bin Hashim	20th January 1975	10-11
5.	S.W. Moreira	20th January 1975	11-13

No.	Description of Document	Date	Page
6.	Abdul Kahar bin Ahmad <u>Defendant's Evidence</u>	20th January 1975	14
7.	Badrul bin Haji A.Raof	20th January 1975	14
8.	Dato Sri Mohd Haniff bin Omar	20th January 1975	14-17
9.	Proceedings	21st January 1975	17-23
10.	Judgment of Abdul Hamid J.	21st March 1975	23-31
11.	Order <u>In the Federal Court</u>	21st March 1975	31-32
12.	Notice of Appeal	27th March 1975	32-33
13.	Memorandum of Appeal	7th May 1975	34-35
14.	Notice of Motion	7th March 1977	36-37
15.	Affidavit of Abu Talib bin Othman	9th March 1977	37-39
16.	Affidavit in Reply of G.T. Rajan	5th May 1977	40-41
17.	Amended Memorandum of Appeal	22nd June 1977	41-43
18.	Written Submission for Plaintiff	Undated	44-50
19.	Judgment	21st July 1977	50-57

No.	Description of Document	Date	Page
20.	Order	21st July 1977	57-58
21.	Order Granting Final Leave to Appeal	6th December 1977	59-60

E X H I B I T S

Exhibit Mark	Description of Document	Date	Page
1.	Agreement of Service	1st March 1961	60-61
3.	Translation of Plaintiff's Report, No. 1185/1970	8th September 1970	61-63
5.	Translation of Suspension Notice	20th December 1971	75-76
7.	Translation of Notice of Dismissal	28th December 1971	76-77
9.	Translation of letter Plaintiff to Ketua Pegawai Polis	30th December 1971	78-79
11.	Translation of letter, Ketua Pegawai Polis to Plaintiff	20th January 1972	79-80
13.	Translation of letter, Plaintiff to Ketua Polis Negara	22nd January 1972	81-82
15.	Translation of Decision on Plaintiff's Appeal	7th February 1972	82-83
22.	Letter, G.T. Rajan & Co. to Head- quarters, Malaysia Police	14th June 1972	83-84

Ex- hibit Mark	Description of Document	Date	Page
23.	Letter, Ketua Polis Negara to G.T. Rajan & Co.	19th July 1972	84-85
24.	Letter, G.T. Rajan & Co. to Ketua Polis Negura	21st July 1972	85-86
25.	Letter, Ketua Polis Negara to G.T. Rajan & Co.	14th August 1977	86-87
DIB	Translation, Police From Commission, Instrument of Delegation of Powers and Duties	18th August 1971	64-75

DOCUMENTS TRANSMITTED BUT NOT
REPRODUCED

	<u>In the High Court</u>		
	Notice in lieu of service	9th August 1972	
	<u>In the Federal Court</u>		
	Notes of Suffian, L.P.	22nd June 1977	
	Notes of Lee Hun Hoe, Chief Justice, Borneo	22nd June 1977	
	Notes of Wan Suleiman, F.J.	22nd June 1977	
	Affidavit of Mr. G.T. Rajan	23rd July 1977	
	Notice of Motion	25th July 1977	

	Description of Documents	Date	
	Affidavit of Zainal bin Hashim	6th August 1977	
	Order Granting Conditional Leave to Appeal	15th August 1977	

E X H I B I T S

Ex- hibit Mark	Description of Documents	Date	
	The following Exhibits are in the Malay language. Translations thereof are included in the Record.		
2.	Plaintiff's Report, No. 1185/1970	8th September 1970	
4.	Suspension Notice	20th December 1971	
6.	Notice of Dismissal	28th December 1971	
8.	Letter, Plaintiff to Ketua Pegawai Polis	30th December 1971	
10.	Letter, Ketua Pegawai Polis to Plaintiff	20th January 1972	
12.	Letter, Plaintiff to Ketua Polis Negora	22nd January 1972	
14.	Decision on Plaintiff's Appeal	7th February 1972	
DIA	Police Force Commission, Instrument of Delegation of Powers and duties	18th August 1971	

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

ZAINAL bin HASHIM (Plaintiff) Appellant

- and -

THE GOVERNMENT OF MALAYSIA
(Defendant) Respondent

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

No. 1

Specially Indorsed Writ and
Statement of Claim

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT 1972 No. 731

B E T W E E N :

ZAINAL Bin HASHIM,
82-2, Jalan Timor,
Kajang,
Selangor. Plaintiff

- and -

1. Mohd. HANIFF bin OMAR,
The Chief Police Officer,
Selangor,
Kuala Lumpur.
2. The Government of Malaysia. Defendants

In the High
Court.

No. 1
Specially
Indorsed Writ
and Statement
of Claim
9th August
1972.

In the High Court
No. 1
Specially Indorsed Writ and Statement of Claim
9th August 1972.
(cont'd)

Honourable Tan Sri Ong Hock Thye, P.M.N.,
D.P.M.S., P.S.M. Chief Justice of the High Court
in Malaya, in the name and on behalf of His
Majesty the Yang Di Pertuan Agong,

To:

1. Mohd. Haniff bin Omar,
The Chief Police Officer,
Selangor,
Kuala Lumpur.

2. The Government of Malaysia.

10

WE COMMAND you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of Zainal bin Hashim.

AND TAKE NOTICE that in default to your so doing the Plaintiff may proceed therein and judgment may be given in your absence.

WITNESS

, Registrar

of the High Court in Malaya.

20

Dated the 9th day of August, 1972.

SD. G.T. RAJAN & CO.

SD.

PLAINTIFF SOLICITORS.

SENIOR ASSISTANT REGISTRAR
HIGH COURT,
KUALA LUMPUR.

N.B. This Writ is to be served within twelve months from the date thereof, or, if renewed within six months from the date of last renewal, including the day of such date and not afterwards.

The defendant(or defendants) if he/they wish/wishes to defend must appear hereto to entering an appearance (or appearances) either personally or by Solicitor at the Registry of the High Court, at Kuala Lumpur.

30

A defendant appearing personally, may, if he desires, enter his appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar in the High Court at Kuala Lumpur.

40

If the defendant enters an appearance he must also deliver a defence within fourteen days from the last day of the time limited for appearance, unless such time is extended by the Court or a Judge otherwise judgment may be entered against him without notice, unless he has in the meantime been served with a Summons for judgment.

In the High Court.
No. 1
Specially Indorsed Writ and Statement of Claim
9th August 1972.
(cont'd)

STATEMENT OF CLAIM

- 10 1. The Plaintiff is and was at all material times a police constable.
2. The First Defendant is the Chief Police Officer, Selangor, Kuala Lumpur, is the agent or servant of the Second Defendant, the Government of Malaysia.
- The Second Defendant the Government of Malaysia is the Employer of the First Defendant.
- 20 3. By a letter of appointment signed by the Commandant, Federal Police Depot, Kuala Lumpur, and made between the Plaintiff and the Commandant, Federal Police Depot, Kuala Lumpur, the Plaintiff entered into a contract of service with the Commandant, Federal Police Depot, Kuala Lumpur on the 1st day of March, 1962, as police constable in the Royal Malaysian Police and subsequently confirmed in service and the Commandant, Federal Police Depot, Kuala Lumpur has agreed to pay and was paying to the Plaintiff in consideration of such service at the time of dismissal (a) monthly salary of \$240/= per month with annual increments of \$8/= and (b) housing and language allowance \$35/=.
- 30 4. The said contract of service at the relevant date of agreement was subject to the rules of the Police Ordinance, 1952 and Police Regulation 1952.
5. One of the terms of the said agreement was that in case of breach of discipline the Plaintiff's service shall be determined in accordance to the Police Ordinance, 1952.
- 40 6. The Police Officer S.W. Moreira for on behalf of the First Defendant issued a Notice of Suspension on 20th day of December, 1971, suspending the Plaintiff from service without pay starting from 16th December, 1971 for reasons referred as follows:-

In the High Court.

No. 1
Specially
Indorsed Writ
and Statement
of Claim
9th August
1972.
(cont'd)

"In connection with the letter from the Head quarters RF/31209 dated 17th October, 1971, we have found that you have been accused of an act at the Lower Court Kajang on 16th December, 1971 under Section 353 of the Penal Code and have been convicted with bail amounting to \$500/= and 2 years for good conduct under Section 173A (11) (b) of the Criminal Procedure Code".

7. On 28th December, 1971 the First Defendant by letter gave notice of intention of dismissal to the Plaintiff directing the said Plaintiff to appeal to the said First Defendant and subsequently a notice of dismissal dated 20th January, 1972 was issued by police officer S.W. Moreira for and on behalf of the First Defendant back dating it with effect from 16th December, 1971, thereafter the Plaintiff was directed to Appeal to the Inspector General of Police, against dismissal of the Plaintiff, which Appeal was rejected.

10

20

8. The Plaintiff avers that the First Defendant has no power of dismissal over the Plaintiff and further the Plaintiff was wrongfully directed on question of appeal against his decision. The alleged dismissal is wrongful ab initio contrary to the provisions of the Federal Constitution of Malaysia.

9. At the material time of dismissal only the Police Force Commission has the power to dismiss the Plaintiff and the Plaintiff's dismissal from Police Service is contrary to his rights under the Federal Constitution of Malaysia.

30

10. By the reason of the First Defendant's said repudiation/or breach of the contract by wrongfully determining the Plaintiff's employment, the Plaintiff has suffered loss and damage, and by such wrongful act of dismissal the First and Second Defendants are liable in tort and the Plaintiff claims to be reinstated in service.

11. The Notice of Suspension and the Notice of Dismissal contain no charge and/or the nature of disciplinary offence committed and the procedure adopted is wrong in law and contrary to natural justice.

40

12. The Notice of Dismissal is defective and is nullity for reason the said notice dated 20th

January, 1972 back dates the date of dismissal as from 16th December, 1971 contrary to the rules and regulations governing the Plaintiff's contract of Service.

In the High Court.

No. 1
Specially
Indorsed Writ
and Statement
of Claim
9th August
1972.
(cont'd)

13. The First Defendant alleged dismissal was wrongful without sufficient cause and further the First Defendant wrongfully applied the rules contained in the Police Ordinance 1952 and Police Regulations 1952 and other directives.

10 14. The dismissal was arbitrary and the Plaintiff was not given a reasonable opportunity to defend himself as to the alleged charge brought against him before the proper dismissing authority.

20 15. Furthermore, the Plaintiff was not given a reasonable opportunity to defend himself before the said authority as to the nature of punishment to be awarded against him thereby such act of dismissal is contrary to law and natural justice. The Plaintiff further states that the dismissal was not done in good faith.

PARTICULARS

a) On or about 20th day of December, 1971 S.W. Moreira a police officer on behalf of the First Defendant informed the Plaintiff by letter that the Plaintiff is suspended from service for reasons referred in the said letter as follows :-

30 In connection with the letter from the Headquarters RF/31209 dated 17th October, 1971, we have found that you have been accused of an act at the Lower Court Kajang on 16th December, 1971 under Section 353 of the Penal Code and have been convicted with bail amounting to \$500/= and 2 years for good conduct under Section 173A (11) (b) of the Criminal Code Procedure". In accordance to this you have been suspended of duty without pay starting from 16th December, 1971.

40 On 28th day of December, 1971 the Chief Police Officer issued a Notice of intended dismissal with a request to appeal to him, subsequently Notice of Dismissal was issued on 20th January, 1972 and the Plaintiff was wrongfully directed to appeal to the Inspector General of Police, the appeal was rejected by the

In the High Court.

No. 1
Specially
Indorsed Writ
and Statement
of Claim
9th August
1972.
(cont'd)

Inspector General of Police by letter dated 7th day of February, 1972.

b) The Plaintiff was wrongfully dismissed for reasons that the First Defendant had no power to dismiss the Plaintiff, and the First Defendant wrongfully applied the rules and regulations and the Plaintiff was not given an opportunity to defend himself against the alleged charge brought against him and also on nature of punishment accorded to him. Such dismissal is contrary to law and natural justice.

10

c) Further, the Notice of Dismissal is a nullity and the Plaintiff was mis-directed by the First Defendant as to his rights on appeal.

PARTICULARS OF SPECIAL DAMAGES

Salary of ₹240/= (annual increment of ₹8/=) and housing and language allowance ₹35/= per month from the date of dismissal i.e. 16th December, 1971 ₹2,062.50 and still continuing.

Wherefore the Plaintiff claims:-

20

a) A declaration that the Plaintiff's dismissal from the Royal Malaysian Police, purported to be effective by the First Defendant on 16th December, 1971 was void and inoperative and of no effect and that the Plaintiff is still a member of the Royal Malaysian Police.

b) An Order that an account be taken of the salary and emoluments due to the Plaintiff from the date of such wrongful dismissal to date of reinstatement as referred herein before.

30

c) That such further or other order may be made in the premises as the justice of the case may require.

d) Costs.

Dated this 9th day of August, 1972.

Sd. G.T. Rajan & Co.
Solicitors for the Plaintiff.

Statement of Defence

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 731 OF 1972

B E T W E E N :

ZAINAL bin HASHIM,
82-2, Jalan Timor,
Kajang,
Selangor.

Plaintiff

10 - and -

1. Mohd. HANIFF bin OMAR,
The Chief Police Officer,
Selangor,
Kuala Lumpur.

2. The Government of Malaysia. Defendants

STATEMENT OF DEFENCE

1. Paragraphs 1 and 2 are admitted.

20 2. Save for the words "monthly salary of \$240/= per month", paragraph 3 is admitted. The Defendants aver that the Plaintiff earns \$230/= a month as salary with annual increment of \$10/=.

3. Paragraph 4 is admitted. The Defendants aver that, in addition, the Plaintiff is governed by the Police Ordinance, Standing Orders and the General Orders.

30 4. The Defendants have no knowledge of paragraph 5 and require proof. In any event the Defendants aver that the Plaintiff's service is determined in accordance with the Police Ordinance Rules, Regulations, Standing Orders and General Orders.

5. Paragraph 6 is admitted.

6. Save for the words "directed to the said Plaintiff to appeal ..." the Defendants admit paragraph 7. The Defendants aver that the Plaintiff was asked to make a representation to

In the High Court.

No. 2
Statement of
Defence
9th December
1972.
(cont'd)

the 1st Defendant rather than to make an appeal as stated.

7. Paragraph 8 is denied. The Defendants aver that the 1st Defendant was properly delegated with the power of dismissal by the Police Service Commission. The Defendants further aver that the Plaintiff was properly directed on the question of appeal and his dismissal was contrary to the constitution.

8. Paragraph 9 is denied. The Defendants repeat their argument where applicable in paragraph 6. 10

9. The Defendants make no admission as to any loss or damage or liability in tort or entitlement of the Plaintiff to be reinstated in paragraph 10.

10. Paragraph 11 is denied. The Defendants aver that the proper procedure was adopted under the law in dismissing the Plaintiff and was not contrary to rules of natural justice.

11. Paragraph 12 is denied. The Defendants aver that the Plaintiff was properly dismissed in accordance with the law, retrospectively, as from the 16th December, 1971. 20

12. Paragraph 13 is denied. The Defendants aver that the Plaintiff's dismissal was on the proper application of the law then in force.

13. Paragraphs 14 and 15 are denied. The Defendants repeat their argument in paragraph 10 where applicable.

14. Save as hereinbefore expressly admitted the Defendants deny each and every allegation of fact contained in the Statement of Claim, as if the same were set forth herein seriatim and specifically traversed. 30

15. The Defendants pray that the Plaintiff's claim be dismissed with costs.

Dated this 9th day of December, 1972.

Sgd.
Senior Federal Counsel,
for and on behalf of the Defendants
whose address for service is c/o
the Attorney-General's Chambers, 40
Kuala Lumpur.

To:

Messrs. G.T. Rajan & Co.,
Solicitors,
No. 14, Jalan Station, Klang,
SELANGOR.

In the High
Court.
No. 2
Statement of
Defence
9th December
1972.
(cont'd)

No. 3

Proceedings

No. 3
Proceedings
20th January
1975.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

10 In Open Court,
Before Abdul Hamid, J.,
This 20th day of January, 1975.

CIVIL SUIT NO. 731/72

Mr. G.T. Rajan for Plaintiff.

En. Abu Talib bin Othman for 1st and 2nd Defendants.

En Talib says that first defendant has not
been served with writ.

(Court: Service of writ - from Court file has
only been served on the second defendant).

20 Agreed bundle of documents shall be marked
after the bundle has been sorted out by the parties.

En. Rajan: As regards service even if the
writ has not been served, defence has been put up
against both the first and second defendants.

(Rajan concedes - except that defendants
should not raise this as an issue to defeat the
plaintiff's claim).

30 (En. Rajan withdraws case against the first
defendant. Claim against the first defendant is
dismissed. En. Abu Talib agree that no costs be
awarded. No order as to costs).

In the High Court.

No. 4

Plaintiff's Evidence

Zainal bin Hashim

No. 4
Zainal bin Hashim
Examination

PWL: Zainal bin Hashim, affirmed and speaks in Malay, 33 years. Unemployed. 82-2, Jalan Timor, Kajang.

(Document dated 1.3.62 referred). This is the service agreement. I served 3 years' probation.

At the time of dismissal I was on the Permanent and Pensionable Establishment. At that time I had about 10 years service. I last drew my salary on 20.12.71 - \$250.

10

(Notice of suspension dated 20.12.71 referred). I received it.

(Notice of dismissal dated 28.12.71 referred). I was given 14 days to appeal. On 30.12.71 I made representation to the Chief Police Officer, Selangor.

I was dismissed on 20.1.72. I was told that I could appeal to the I.G.P. and no one else.

20

I made a representation to the I.G.P. on 22.1.72.

It was rejected by the I.G.P. by his letter dated 7.2.72.

There was no orderly room procedure, and there was no oral hearing before I was dismissed.

I was wrongfully dismissed by the C.P.O. I claim reinstatement, arrears and costs and also ask for a declaration.

Cross-Examination

Cross-examination:

30

The C.P.O. at that time was En. Haniff - new I.G.P. En. S.W. Moreira was the Deputy C.P.O.

I admit that I was charged with an offence under section 353 of the Penal Code. I claimed trial to the charge. Later I pleaded guilty. I was bound over in the sum of \$500.00 for two years.

I did not appeal against that decision.
Following the finding of guilty I was suspended
and later dismissed.

In the High
Court.

I was not given an oral hearing. I did not
ask for an oral hearing. I know the procedure.
I did not know the reason for my dismissal.

Plaintiff's
Evidence
No. 4
Zainal bin
Hashim
Cross-
Examination
(cont'd)
Re-examination

Re-examination:

Opportunity for an oral hearing was not
given to me.

10

No. 5

S. W. Moreira

No. 5
S.W. Moreira
Examination

PW2: S.W. Moreira, affirmed and speaks in English.
Security Officer Mining Company.

Plaintiff was a police constable under my
control. He was on the Permanent and Pensionable
Establishment at the time of suspension.

The letter of suspension dated 20.12.71 was
done under G.O. 31(4). In my view that was the
right provision.

20

(G.O. 28 Cap. D referred). I am aware of the
orderly room procedure. In cases where a man was
charged in Court and found guilty, it was the
practice not to hold orderly room.

30

I acted under G.O. 31(4). Notice of
suspension was sent after I discussed the matter
thoroughly with the C.P.O. Only when I was
satisfied that the C.P.O. wanted the letter of
suspension to be issued that I sent the letter.
The decision to suspend was the decision of the
C.P.O. I sent the letter. I presented the facts
to the C.P.O. The decision to suspend was the
C.P.O.'s exclusive decision.

Plaintiff was not there when I discussed the
matter with the C.P.O.

I was not one of the Gazetted Officers to

In the High Court.
Plaintiff's Evidence
No. 5
S.W. Moreira
Examination
(cont'd)

give the letter of suspension. I asked the C.P.O. and he agreed to the steps to be taken by me. I conveyed the C.P.O.'s decision to plaintiff.

If I remember correctly I asked the C.P.O. whether I should inform the plaintiff of his (C.P.O.'s) decision to send the notice of suspension. I had this letter written to convey the decision of the C.P.O. I only translated the wishes of the C.P.O. when I wrote the notice of suspension. No other matter prevailed in my mind.

10

The notice of dismissal dated 28.12.71 was issued by the C.P.O. himself.

The letter of 20.1.72 was written by me for and on behalf of the C.P.O. The dismissal was backdated to 16.12.71.

I cannot remember when the discussion with the C.P.O. was held before 20.12.71. I believe we talked about this case further because there was a letter of representation. We spoke further to consider whether in the light of this representation, the C.P.O. would change his decision. The C.P.O. still considered that the plaintiff should be dismissed. I would not know whether that was his final decision.

20

Cross-
Examination

Cross - examination:

I assumed office as Deputy C.P.O. Selangor on 28.5.70. I relinquished the appointment on 24.7.72 - on leave prior to retirement. Prior to that date En. Haniff was the C.P.O.

Proceeding was taken under G.O. 31(4) Cap. D 1969. The dismissal was effected in accordance with G.O. 34 (3) and (4).

30

(Letter of suspension dated 20.12.71 referred). My attention was drawn to the fact that plaintiff was found guilty under section 353 of the Penal Code and was bound over under section 173A of the Criminal Procedure Code. Investigation papers were brought to me and I briefed the C.P.O. of the facts of this case. It was the C.P.O.'s decision that plaintiff be suspended. He made known his decision at that meeting. I asked the C.P.O. whether or not I should convey his decision to plaintiff. He said "Yes". Hence the letter of 20.12.71 was sent. It was sent on the

40

C.P.O.'s instruction and on his behalf.

In the High Court.

As the Deputy C.P.O. I was in charge of administration. Decisions of the C.P.O. were passed to me for execution. This was the practice then.

Plaintiff's Evidence No. 5 S.W. Moreira Cross-Examination (cont'd)

10

Subsequent to the letter of 20.12.71 I received and passed to the C.P.O. the past record of service, representation of the plaintiff and the recommendation of the O.C.P.D. Kajang under whom plaintiff was serving. I brought all these to the C.P.O. I brief the C.P.O. again. He considered this representation himself.

(Agreed bundle at this point is produced and marked AB).

20

(Page 4 AB referred). This letter was considered by the C.P.O. himself. The C.P.O. also considered the past record of service, representation of the plaintiff and the recommendation of the C.P.D. Kajang. He was still satisfied that plaintiff should be dismissed. At that stage I asked the C.P.O. whether I should convey his decision. He said, "Yes." I did not at any time influence him in his decision.

(Page 6AB referred - Notice of dismissal dated 20.1.72 - paragraph 2). In the context of this letter the word "saya" refers to the C.P.O. - not to myself. I wrote in on behalf of the C.P.O.

Re-examination:

Re-examination

30

Either I or the C.P.O. could write the letter of suspension.

I did not act on my own in this case.

(Page 4 AB referred). I received this letter. I considered this letter and I took this to brief the C.P.O. The C.P.O. then made the decision. I did discuss the letter but it was for the C.P.O. to consider it himself.

In the High
Court.

No. 6

Abdul Kahar bin Ahmad

No. 6
Abdul Kahar bin
Ahmad.
Examination

PW3: Abdul Kahar bin Ahmad, affirmed and speaks in
English, O.C.P.D. Kajang.

I have provided the service record of the
plaintiff to the C.P.O., Selangor for onward
transmission to Police Headquarters.

(Plaintiff's case is closed).

Defendant's
Evidence
No. 7
Badrul bin
Haji A. Raof
Examination

No. 7

Badrul bin Haji A. Raof

10

DW1: Badrul bin Haji. A. Raof, affirmed and speaks
in English. Assistant Secretary, Police Force
Commission.

I am in charge of matters relating to the
affairs of the Commission. I produce the original
delegation under Article 140 (6) (b) of the Federal
Constitution. (Marked D1 A and B. D1A - Malay.
D1B - English). It is duly signed by the Members
of the Commission at page 3.

Cross-
Examination

Cross-examination:

20

Members No. 1 and No. 2 have since died.

No. 8
Dato Sri Mohd.
Haniff bin Omar
Examination

No. 8

Dato Sri Mohd. Haniff bin Omar

DW2: Dato Sri Mohd. Haniff bin Omar, affirmed and
speaks in English. Inspector General of Police,
Police Headquarters, Kuala Lumpur.

I was C.P.O. Selangor from 6.12.71 to 30.1.72.

I am aware that the Police Force Commission delegated powers as set out in D1.

In the High Court.

(Fifth Schedule referred). I was aware of this provision. I am aware of the provision under the headings "Constables" and "Appeals".

No. 8
Dato Sri Mohd.
Haniff bin Omar
Examination
(cont'd)

10 (Plaintiff's service record referred). In 1971 plaintiff was serving in Kajang. (I.P. No. 43/71 Kajang referred). Plaintiff was then P.C. No. 31209. His salary at the time he was dismissed was \$230 per mensem and his increment was \$10 per annum. He received Tamil Language allowance of \$15 per mensem.

Plaintiff was on 29.4.71 charged with an offence under section 353 of the Penal Code on the instruction of the D.P.P. He was found guilty and bound over in the sum of \$500 for two years under section 173A of the Criminal Procedure Code.

20 The I.P. was subsequently sent to me. Even before that I was informed of the finding. I told Moreira that I had decided to suspend plaintiff from service. The decision to suspend was based on the finding of guilty of a criminal offence. My decision was made upon a briefing given to me by the Deputy C.P.O. I told Moreira my decision to suspend plaintiff and it was for him to inform plaintiff of my decision.

30 Subsequently, - after the suspension - I received I.P. No. 43/71. Having perused the I.P. and the record of service, I directed on the I.P. that plaintiff be asked to show cause as to why he should not be dismissed. This I did on 23.12.71.

40 (Page 3 AB referred). I sent this letter to plaintiff on 28.12.71. I based my decision to send this letter to show cause on the fact that he was found guilty on a criminal charge. Also when he committed the offence he was under an order of interdiction from duty. My decision was also based upon his record of service which shows weakness of character. It also shows that he had been given chances to make good before.

All the documents and relevant papers were brought to me by the Deputy C.P.O. After 28.12.71 I received the letter of representation from plaintiff. This was also handed to me by the Deputy

In the High Court.
No. 8
Dato Sri Mohd. Haniff bin Omar
Examination
(cont'd)

C.P.O. I considered that - also in the light of other documents and the recommendation of the O.C.P.D. Kajang. I decided to dismiss the plaintiff. I told the Deputy C.P.O. of my decision. He asked me if I wanted my decision to be conveyed to plaintiff. I said "Yes."

I proceeded against plaintiff under Cap. D General Orders, 1969 - G.O. 34 (4). I did not call for all the documents contemplated by 34 (1) because I was aware of the facts of the case from all the documents I had in my possession. I did not call for the notes of evidence and statement of witnesses. I had all these in the I.P. including the charge brought against the plaintiff.

10

Plaintiff was not asked at any time to give oral evidence.

Cross -
examination

Cross-examination:

The decision to dismiss was my own decision. I was not under the direction or control of any other person. I suspended plaintiff on 20.12.71.

20

It was the procedure in my office that I conveyed the suspension. There is no letter of authority or notification that the Deputy C.P.O. can issue a letter of suspension.

I am not certain whether the delegation of power was gazetted or not.

(G.O. 34 Cap. D 1969 referred). I acted under G.O. 34 Cap. D No charge was preferred against plaintiff. Plaintiff was given two weeks to make a representation. The action taken was a disciplinary action.

30

(G.O. 33 Cap. D referred). I agree that in the Police Regulations, 1952, there is provision relating to disciplinary proceedings.

Orderly room procedure was not conducted in this case.

In this case plaintiff was found guilty after due trial. There was no necessity to hold Orderly Room.

The Deputy C.P.O. initiated the proceedings which resulted in my decision.

40

The letter of 20.12.71 and the notice of 28.12.71 did not mention the relevant provision under which I was exercising the powers.

In the High Court.

(Page 6 AB referred). I was not aware of the contents of the letter at the time the letter was written. I agreed that he was to convey my decision to dismiss the plaintiff.

No. 8
Dato Sri Mohd.
Haniff bin Omar
Cross -
examination
(cont'd)

The letter was not brought back to my notice.

Re-examination:

Re-examination

- 10 It was not usual for the Deputy C.P.O. to come back and inform me that my instruction had been carried out.
- (Translation of documents in Ab marked ABT).
- (Defendants' case is closed).
- (Court is adjourned to tomorrow at 9.30 a.m.).

No. 9

No. 9
Proceedings
21st January
1975.

Proceedings

This 21st day of January 1975

Hearing continues.

20 Parties as before.

En.Abu Talib submits:

Defence contention is that the plaintiff is rightly dismissed.

Plaintiff's contentions are :-

- (1) First defendant has no power;
- (2) Plaintiff was wrongly directed on the question of appeal;
- (3) Order of dismissal was contrary to his right;
- 30 (4) Notice of dismissal, etc. was wrong in law and contrary to the principle of natural justice; and

In the High Court.

No. 9
Proceedings
21st January
1975.
(cont'd)

(5) No opportunity to defend himself -
opportunity of being heard.

The dismissal was made under Cap. D G.O. 34. It is in evidence and it is not contested that the power to decide is that of the first defendant.

The letter of suspension by the Deputy C.P.O. was on the instruction of the C.P.O. and pursuant to the C.P.O.'s decision.

First defendant made the decision which was his own. He personally considered the written representation made by plaintiff. He found no merit in the representation and hence his decision to dismiss plaintiff effective from 16.12.71. An appeal was made to the I.G.P. The order was confirmed.

10

The decision raises the following questions:-

- (a) Whether at relevant time first defendant had the power to dismiss;
- (b) Whether the first defendant in dismissing plaintiff adopted the proper procedure applicable to plaintiff; and
- (c) Whether plaintiff was given a reasonable opportunity of being heard.

20

Authority: Police Force Commission. See Article 140 of Federal Constitution - exercise of disciplinary action.

Delegation of power - see Article 140 (6) (b).

Police Force Commission delegated the power - D1. See Fifth Schedule (p.8). See also page 10.

Appeal - to I.G.P.

30

Submits: In law the Police Force Commission had the power to delegate powers. The first defendant was then the C.P.O. Selangor. Plaintiff was serving under him - then as a police constable. At the relevant time the C.P.O. was the appropriate Disciplinary Authority with the power to dismiss.

The I.G.P. was the proper authority to hear and had power for such purposes.

Procedure: See Moreira's evidence. They proceeded in accordance with Cap. D.

In the High Court.
No. 9
Proceedings
21st January
1975.
(cont'd)

Refers to (1973) 2 M.L.J. page 191 - Najar Singh v. Government of Malaysia & Another - except for reasons for dismissal the principle would be applicable.

10 Refers to Federal Court's decision in (1974) 1 M.L.J. page 138 - Najar Singh v. Government of Malaysia & Another - at page 141. The first defendant properly acted under Cap. D.

For purposes of disciplinary proceedings see G.O. Cap. D. p.27 - conviction includes the finding of guilt.

Suspension - governed by Cap. D G.O. 31 (4). Plaintiff was suspended after he was found guilty.

Submits that there is no need for first defendant to call for all the documents, e.g. record of proceedings, etc. This is only discretionary - not mandatory.

20 The show cause letter was signed by the C.P.O. personally. The first defendant acted strictly in accordance with Cap. D.

Refers to (1969) 1 M.L.J. p.6 - Haji Ariffin v. Government of Pahang. At p.9 (last paragraph left-hand column) -

30 "The first ground is tied up with the last ground in that if the "termination" is classified as a penalty, then the plaintiff should be given a reasonable opportunity of being heard. The second ground must fail. The notice of termination was no doubt written by the Head of the Religious Affairs Department, but that letter must not be read in isolation. In the light of the correspondence with the Private Secretary to the Ruler, the notice can properly be considered as emanating from the Ruler himself."

At page 13 (right-hand column first paragraph -

40 "I agree, however, with the learned trial judge that on the facts as disclosed by the correspondence, the plaintiff's appointment had indeed been revoked by the Rules himself,

In the High Court.
No. 9
Proceedings
21st January
1975.
(cont'd)

though the letter giving him notice was not signed by the Ruler. Mr. Devaser indeed conceded that it was unnecessary for the Ruler himself to sign that letter. Accordingly the second contention fails."

As for notice of suspension although it was signed by the Deputy C.P.O., it emanated from the C.P.O. himself.

As for notice of dismissal, similarly although it was signed by the Deputy C.P.O., it was written for and on behalf of the C.P.O. 10

On retrospective effect of dismissal - refers to A.I.R. (1960) vol. 47 M.P. paragraph (13) - page 277.

Refers to (1973) 2 M.L.J. p.143 -

Isman bin Osman v. Government of Malaysia - at p. 147.

Refers to A.I.R. 1955 Supreme Court p. 600 at p.603.

Reasonable opportunity of being heard: 20

A written representation in the circumstances was enough. No oral hearing was asked for. There was sufficient compliance with the rules of natural justice.

See also (1973) 2 M.L.J. p.143.

Good faith: There is no evidence of bad faith. The motive of the employer is immaterial.

Refers to Haji Ariffin v. Government of Pahang, (1969) M.L.J. page 6 at page 10 paragraph E and also page 16. See also A.I.R. 1956, vol. 43 (Bombay) 455, Shrinivas Ganesh vs. Union of India. 30

There is no evidence of bad faith.

Asks that the claim be dismissed with costs.

Instrument of delegation: There is no provision that this must be gazetted.

Apart from the Constitution, there is also provision in the Delegation of Powers Ordinance,

1956. The instrument of delegation of powers is not bad for want of notification. It is valid notwithstanding that it was not gazetted.

In the High Court.

En. G.T. Rajan submits:

No. 9
Proceedings
21st January
1975
(cont'd)

Where Indian authority is cited it is only persuasive.

Whether the C.P.O. had power to dismiss plaintiff:

10 Contention: C.P.O. had no power of dismissal over the plaintiff. Refers to (1973) 2 M.L.J. page 143 -

Isman bin Osman v. Government of Malaysia - at page 148 the reasons.

The delegation is by reason of Article 140 and the instrument of delegation is at page 2 paragraph (e). The power is under the Police Act, 1967 and not under General Orders.

20 Defence contention: Since the C.P.O. acted under General Orders, 1969 the General Order is a written law and not the Constitution. The Delegation of Powers Ordinance, 1956 covers the General Orders.

The delegation of powers by the Police Force Commission must be done under and in accordance with the Delegation of Powers Ordinance, 1956. There must be notification in the Gazette. Refers to M. Ratnavale v. The Government of The Federation of Malaya, (1963) M.L.J. page 393.

30 Refers to Article 144 (1) and (6); (1973) 2 M.L.J. page 143 at page 145; (1971) 2 M.L.J. page 172, Lionel v. Government of Malaysia at page 173.

Instrument of Delegation - Refers to paragraph 10 at page 11 and also to page 6 AB - C.P.O.'s direction to appeal to I.G.P. This is ultra vires the Constitution. Plaintiff's right was prejudiced. See Article 144 (5A) (b) of Constitution. There are two functions which it cannot delegate - one of them is appeal. The appeal to the I.G.P. is therefore ultra vires. The decision is therefore wrong and not final.

40 Contention: Having acted ultra vires the Constitution the decision cannot be final.

In the High Court.
No. 9
Proceedings
21st January
1975.
(cont'd)

Further, in all matters of dismissal the plaintiff must be heard. The General Order makes exception - if convicted he can forthwith be dismissed. Refers to Article 135 of Federal Constitution.

Contention: The C.P.O. himself had no power to delegate. The facts prove that the C.P.O. did not know of the letter of dismissal. No specific charge was preferred against the plaintiff. The notice of dismissal itself was defective. It did not say under what relevant General Order he was acting. It should not also be backdated. Refers to Isman bin Osman v. Government of Malaysia, (1973) 2 M.L.J. page 143. In the 1969 General Orders there is no provision to backdate the date of dismissal.

10

(Page 3 AB referred). At that point there was only an intention to take action to dismiss plaintiff.

Refers to Najar Singh v. Government of Malaysia and Another, (1973) 2 M.L.J. page 191 at page 193. A distinction can be drawn from the present case.

20

Refers to page 2 AB - finding of guilty under section 353 of Penal Code.

Refers to 1970 Police Regulations - the fundamental guarantee has not been granted to the plaintiff.

The fact of conviction in Court does not dispense with Article 135 of Federal Constitution.

30

Refers to Judicial Review of Administrative Action by S.A. de Smith, second edition page 212 and says that the 1970 Police Regulations should apply - not the General Orders. Also refers to page 188 - "(b) Form of the Hearing" and says that under Article 135 of Federal Constitution an oral hearing must be given. Failure to do so would be a breach of the Constitution.

Raises the question whether the Director of Operations has the power to enact the 1969 General Orders under paragraph 8 of the Statement of Claim.

40

[Court: The submission and point raised is not covered by the pleadings].

En. Rajan says G.O. 31 - "conviction."
Plaintiff was "discharged" and therefore was free
of charge and thus there was no conviction.

In the High
Court.
No. 9
Proceedings
21st January
1975.
(cont'd)

Asks for the declaration and the
consequential order.

En. Abu Talib with leave of the Court submits:

The G.O. is the law but the power is derived
from the Constitution. Delegation must therefore
be pursuant to Constitution.

10 Refers to Article 144 (5A) (b) of Federal
Constitution and says there is nothing to prevent
the delegation of power in regard to appeal. This
has to be read with Article 144 (6) (b) of the
Constitution.

The delegation in Isman's Case [(1973) 2
M.L.J. page 143] is only in regard to powers in the
1952 Police Regulations.

20 En Rajan asks Court to refer to Article 140
(b) of Constitution which is subject to Article 144
(5A) (b) of the Constitution.

[Court: Reserve judgement]

SGD. ABDUL HAMID
JUDGE,
HIGH COURT, MALAYA,
KUALA LUMPUR.

No. 10

Judgement of Abdul Hamid, J.

No. 10
Judgment of
Abdul Hamid, J.
21st March
1975.

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 731 OF 1972.

30 B E T W E E N:

ZAINAL bin HASHIM

Plaintiff

AND

In the High Court.
No. 10
Judgment of Abdul Hamid, J.
21st March 1975.
(cont'd)

1. Mohd. HANIFF bin OMAR,
The Chief Police Officer,
Selangor, Kuala Lumpur

and

2. THE GOVERNMENT OF MALAYSIA Defendants

JUDGMENT OF ABDUL HAMID, J.

In an action against the Government of Malaysia, Zainal bin Hashim the plaintiff is asking the Court to make an Order -

- (a) declaring that his dismissal from the Royal Malaysian Police Force, effective on December 16, 1971, was void and inoperative and of no effect and that he is still a member of the Royal Malaysian Police Force; and 10
- (b) that an account be taken of the salary and emoluments due to him from the date of such wrongful dismissal to the date of reinstatement.

The plaintiff joined the Service in the Police Force in 1962. On April 29, 1971 he was charged in the Magistrate's Court, Kajang for an offence under section 353 of the Penal Code for which he pleaded guilty. He was discharged conditionally upon his entering into a bond in the sum of \$500/= for a period of two years under section 173A (ii) (b) of the Criminal Procedure Code. 20

At the material time the plaintiff was serving in Kajang as police constable No. 31209. On December 20, 1971 Mr. S.W. Moreira, Deputy Chief Police Officer, Selangor in his letter (page 2 AB) addressed to and served upon the plaintiff, suspended the plaintiff's service with effect from December 16, 1971 the date the plaintiff was found guilty in the Magistrate's Court at Kajang. Mr. Moreira who wrote for and on behalf of the Chief Police Officer, Selangor stated that as the plaintiff was found guilty of a charge under section 353 of the Penal Code at the Lower Court, Kajang on 16th December, 1971 and was ordered to execute a bond in the sum of \$500/= to be of good behaviour for two years under section 173A of the 30

Criminal Procedure Code, he (plaintiff) was therefore suspended from duties without pay with effect from December 16, 1971.

In the High Court.

At the time the plaintiff was suspended from service he was on the Permanent and Pensionable Establishment drawing a salary of \$230/= per month with \$10/= increment per annum and a Tamil Language Allowance of \$15/= per month.

No. 10
Judgment of
Abdul Hamid, J.
21st March
1975.
(cont'd)

10 Subsequent to the letter of suspension the plaintiff was, on December 28, 1971 served with a dismissal notice signed by the Chief Police Officer, Selangor (page 3 AB) which reads as follows -

20 "I am hereby directed to inform you that I intend to take an action to dismiss you from the Royal Malaysian Police Force for having been found guilty of a charge at the Lower Court, Kajang on 16.12.71 and for having been ordered to execute a bond of \$500/= to be of good behaviour for a period of 2 years under Section 173A (ii) (b) Criminal Procedure Code.

You are therefore given the opportunity to make any representation in respect of the above matter within a period of 14 days with effect from the date of receipt of this letter.

Your representation should be in writing and addressed to me.

Sgd: Mohd. Haniff bin Omar
Chief Police Officer,
Selangor."

30 On December 30, 1971 plaintiff in a letter addressed to the Chief Police Officer, Selangor made a representation stating, among other things, that with reference to the Kajang Magistrate's Court case he was only ordered to execute a bond to be of good behaviour for 2 years without any conviction being recorded. The plaintiff admitted making a mistake but promised that he would not repeat the same offence. He urged the Chief Police Officer, Selangor to show mercy and kind
40 consideration.

On January 20, 1972 Mr. Moreira signing for and on behalf of the Chief Police Officer, Selangor wrote to the plaintiff stating that pursuant to the letter dated December 28, 1971 and after considering

In the High Court.
No. 10
Judgment of Abdul Hamid, J.
21st March 1975.
(cont'd)

the representation and the circumstances surrounding the commission of the offence the plaintiff was dismissed with effect from 16.12.71.

The plaintiff was also informed that he could make representation in respect of the matter to the Inspector-General of Police within 10 days from the date of the receipt of the letter.

Two days later on January 22, 1972 plaintiff wrote a letter addressed to the Inspector-General of Police appealing that he be reinstated in Service. In this letter the plaintiff, appealed that the order for dismissal be reconsidered on compassionate grounds. 10

On February 7 1972 the Inspector-General of Police wrote a letter to the plaintiff stating that his appeal had been given careful consideration and that having regard to the evidence adduced and from the Record of Service he was not fit to continue in the Service and that the order of dismissal made against him by the Chief Police Officer, Selangor was fair and appropriate. In the circumstances, the plaintiff's representation was rejected and the order of dismissal was confirmed. 20

On July 21, 1972 the solicitors for the plaintiff served a notice on the Inspector-General of Police asking him to reinstate the plaintiff maintaining that the dismissal of the plaintiff from the service was irregular and wrong in law and that the plaintiff was denied natural justice at all stages leading to his dismissal. A reply was sent to the solicitors by the Inspector-General of Police stating that the plaintiff was properly dismissed in accordance with the law and that the Inspector-General of Police had no intention to reinstate the plaintiff. 30

It is the contention of the defendants that the Chief Police Officer, Selangor acted properly and within the powers conferred by the Police Force Commission under an Instrument of Delegation of Powers and Duties (Exhibit D1) (I shall herein after call "the instrument"). For purposes of this case the relevant clauses of the instrument are as follows :- 40

(i) Composition of Boards:

.....
.....

(ii) Appointment, confirmation and
emplacement on the Permanent or
Pensionable Establishment.

In the High
Court.
No. 10
Judgment of
Abdul Hamid, J.
21st March
1975.
(cont'd)

.....
.....

(iii) Promotion:

.....
.....

(iv) Transfer:

.....
.....

(v) Exercise of disciplinary Control:

10

In accordance with Article 140 (6)
(b) of the Federal Constitution the
Police Force Commission hereby delegates
its functions relating to exercise of
disciplinary control, so as to be
exercised by the members of the police
force or boards of police officers, to the
extent set forth in the Fourth Schedule
hereto. The Fifth Schedule, the relevant
part of which reads -

FIFTH SCHEDULE

Discipline

20

The functions of the Police Force
Commission relating to discipline
(including functions vested in a
disciplinary authority and which have
not been delegated elsewhere in this or
any other Instrument of Delegation)
under Article 140 (1) of the Federal
Constitution, or under any other written
law, subsidiary legislation or
administrative instructions of Government,
shall be exercised by the Inspector-
General of Police, subject to the
following provisos:-

30

Senior Police Officers

(i)

(ii)

In the High Court.

No. 10
Judgment of
Abdul Hamid, J.
21st March
1975.
(cont'd)

Junior Police Officers

(iii)

(iv)

Constables

(v) the power to award disciplinary punishment of dismissal may be exercised by a senior police officer of and above the rank of Senior Assistant Commissioner of Police or a Chief Police Officer, in respect of constables;

(vi)

Now, one of the Plaintiff's contentions is that the Chief Police Officer, Selangor had no power of dismissal. The plaintiff's argument was, however, directed mainly towards the question of the validity of the delegation, namely that the delegation of powers by the Police Force Commission must be done under and in accordance with the Delegation of Powers Ordinance, 1956. 10

For purposes of this particular case I do not propose to deal with the various grounds raised by the plaintiff. Suffice if I say that in the light of paragraph 8 of the statement of claim, the question of the Chief Police Officer's power of dismissal is directly in issue. I would therefore proceed to determine, first of all, whether under the Instrument of Delegation, the Chief Police Officer had, in law, been properly vested with the power of dismissal. In determining the question, I shall have regard to Article 135 of the Constitution, which, I think, is very pertinent to the issue under consideration even though counsel for the plaintiff had not made any submission on this point. To my mind, Article 135 of the Federal Constitution is very relevant when considering the validity of a power of dismissal delegated under Article 140. 20 30

Article 135 (1) of the Constitution clearly provides that no member of any of the services mentioned in certain paragraphs - (b) to (h) - of Clause (1) of Article 132, and this includes the Police Force, shall be dismissed by an 40

authority subordinate to that which, at the time of dismissal, has power to appoint a member of that service of equal rank. In the instant case the power of dismissal over constables was delegated by the Police Force Commission to the Chief Police Officer in accordance with Article 140 (6) (b) of the Federal Constitution. However, the Police Force Commission delegated in the same instrument the power to appoint constables to the Inspector-General of Police. The Second Schedule of the instrument reads as follows -

In the High Court.
No. 10
Judgment of Abdul Hamid, J.
21st March 1975
(cont'd)

10

"Appointments

The functions of the Police Force Commission relating to appointments (including functions vested in an appointing authority) under Article 140 (1) of the Federal Constitution, or under any other written law, subsidiary legislation or administrative instruction of Government, shall be exercised by :-

20

(i)

(ii) The Inspector-General of Police in respect of constables."

It is therefore abundantly clear that the Chief Police Officer, Selangor was not delegated with the power to appoint but merely with the power of dismissal. The Federal Court judgment in the case of The Government of Malaysia v. Iznan bin Osman / Federal Court Civil Appeal No. 114/73 - unreported 7 is, I think directly in point. In the course of his judgment His Lordship Suffian, L.P. said -

30

"The defendants Government sought to prove that the P.F.C. had delegated the power to dismiss constables to the C.P.O. The defendant should also have sought to prove that the P.F.C. have also delegated to the C.P.O. power to appoint a constable."

Now, speaking of Article 135 (1) of the Federal Constitution, His Lordship had this to say -

40

"If the Commission delegate the power to appoint and dismiss a constable to a C.P.O., the C.P.O. may appoint and dismiss.

If they delegate only the power to dismiss,

In the High Court.
No. 10
Judgment of
Abdul Hamid, J.
21st March
1975.
(cont'd)

not power to appoint, the C.P.O. cannot dismiss, because he is subordinate to the P.F.C. and Article 135 (1) says that no constable may be dismissed by an authority subordinate to the authority which, at the time of the dismissal, has power to appoint a constable.

On the contrary if federal law or regulations made by the Yang di-Pertuan Agong under clause(5A) of Article 144 empower a C.P.O. to dismiss a constable, the C.P.O. may validly dismiss him, even if the C.P.O. is not empowered to appoint a constable. The words "notwithstanding the provisions of clause (1) of Article 135" in that clause are the authority for that proposition. But for these words, the C.P.O. may not validly dismiss unless he is empowered to appoint also.

10

These words appear also in clause (5A) (i) of Article 144, so that a board appointed by the Yang di-Pertuan Agong under that clause may validly dismiss a member of the service who is within the jurisdiction of the P.S.C. or the Education Service Commission, though the board is regarded as subordinate to the PS.C. or E.S.C. and has no power to appoint an officer of equal rank."

20

On the authority of the case I have just cited, it is my judgment that, in the absence of the power to appoint, the purported dismissal of the plaintiff by the Chief Police Officer, Selangor was therefore in violation of Article 135 (1) of the Constitution and was therefore void.

30

In consideration the plaintiff's claim must necessarily succeed. As the purported dismissal of the plaintiff was void and of no effect, it is my judgment that the plaintiff has to be reinstated effective from the date of the purported date of dismissal. He should be entitled to the salaries and emoluments due to him from the date of the reinstatement.

40

The Government of Malaysia shall pay the plaintiff's cost.

Abdul Hamid
Judge,
High Court Malaya
Kuala Lumpur.

Kuala Lumpur,
Dated March 21, 1975.

In the High
Court.

Mr. G.T. Rajan for plaintiff. En. Abu Talib bin
Othman, Senior Federal Counsel, for First and Second
Defendants.

No. 10
Judgment of
Abdul Hamid, J.
21st March
1975.
(cont'd)

No. 11

Order

No. 11
Order
21st March
1975

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL SUIT NO. 731 OF 1972

10 B E T W E E N:

ZAINAL bin HASHIM

Plaintiff

AND

1. Mohd. HANIFF bin OMAR

2. THE GOVT. OF MALAYSIA

Defendants

BEFORE THE HONOURABLE MR.
JUSTICE ABDUL HAMID

IN OPEN COURT

THIS 21ST DAY OF MARCH, 1975.

O R D E R

20 UPON this suit coming up for hearing before
the Honourable Mr. Justice Abdul Hamid on 20th and
21st days of January, 1975 in the presence of Mr.
G.T. Rajan of Counsel for the Plaintiff and Encik
Abu Talib bin Othman, Senior Federal Counsel
appearing for and on behalf of the Defendants IT
WAS ORDERED that this suit be adjourned for
delivery of Judgment AND UPON this suit coming up for
judgment on this day in the presence of Mr. G.T.
Rajan of Counsel for the Plaintiff and Encik Abu
30 Talib bin Othman, Senior Federal Counsel appearing
for and on behalf of the Defendants IT IS ORDERED
that Judgment be and is hereby entered in favour of
the Plaintiff AND IT IS FURTHER ORDERED and declared

In the High Court.

No. 11
Order
21st March
1975
(cont'd)

that the Plaintiff's dismissal from service was null and void, inoperative and of no effect and that he still continues to be a member of the Royal Malaysian Police Force AND IT IS FURTHER ORDERED that the Plaintiff is entitled to all the arrears of salary as from the date of his purported dismissal i.e. 28th December, 1971 AND IT IS LASTLY ORDERED that the Defendant do also pay the COSTS of this Suit to the Plaintiff.

GIVEN under my hand and seal of the Court this 21st day of March, 1975.

10

Sd.

Senior Assistant Registrar,
High Court,
KUALA LUMPUR.

This Order is filed by M/s. G.T. Rajan & Co., Solicitors for the Plaintiff above named and whose address for service is at No. 1-A, Jalan Melayu, Klang, Selangor.

In the Federal Court.

No. 12
Notice of Appeal
27th March
1975

No. 12

20

Notice of Appeal

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 49 OF 1975

B E T W E E N :

THE GOVERNMENT OF MALAYSIA

Appellant

AND

ZAINAL bin HASHIM

Respondent

(In the Matter of Civil Suit No. 731 of 1972
In the High Court in Malaya at Kuala Lumpur

30

B E T W E E N :

ZAINAL bin HASHIM

Plaintiff

AND

1. Mohd. HANIFF bin OMAR

2. THE GOVERNMENT OF MALAYSIA Defendants)

NOTICE OF APPEAL

TAKE NOTICE that the Government of Malaysia, the Appellant above-named, being dissatisfied with the decision of the Honourable Mr. Justice Datuk Abdul Hamid bin Omar given at Kuala Lumpur on the 21st day of March, 1975 appeal to the Federal Court against the whole of the said decision.

In the Federal Court.

No. 12
Notice of Appeal
27th March 1975.
(cont'd)

10 Dated this 27th day of March, 1975.

Sd.
(ABU TALIB BIN OTHMAN)
Senior Federal Counsel,
for and on behalf of the Appellant.

Kepada:

(1) Ketua Pendaftar,
Mahkamah Persekutuan,
Malaysia,
KUALA LUMPUR.

20 Dan Kepada:

(2) Penolong Kanan Pendaftar,
Mahkamah Tinggi,
KUALA LUMPUR.

(3) Tetuan G.T. Rajan & Co.,
1A Jalan Melayu,
Kelang,
SELANGOR.

(Solicitors for the Respondent)

30 The Appellant's address for service is c/o
Attorney-General's Chambers, Jalan Raja, Kuala Lumpur.

PN. (SIVIL) 808/1.

In the Federal Court.

No. 13

No. 13
Memorandum of Appeal
7th May 1975.

Memorandum of Appeal

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 49 OF 1975

B E T W E E N :

THE GOVERNMENT OF MALAYSIA

Appellant

AND

ZAINAL bin HASHIM,
82-2, Jalan Timor,
Kajang, Selangor.

10

Respondent

(In the matter of the Kuala Lumpur High Court
Civil Suit No. 731 of 1972)

B E T W E E N :

ZAINAL bin HASHIM,
82-2 Jalan Timor,
Kajang, Selangor.

Plaintiff

AND

1. MOHD. HANIFF bin OMAR,
The Chief Police Officer,
Selangor, Kuala Lumpur.

20

2. THE GOVERNMENT OF MALAYSIA

Defendants)

MEMORANDUM OF APPEAL

The Government of Malaysia, the Appellant above-named, appeals against the whole decision of the Honourable Mr. Justice Dato' Abdul Hamid given at Kuala Lumpur on the 21st day of March, 1975 on the following grounds:-

1. The learned trial Judge failed to consider the provisions of Article 140(6)(b) of the Federal Constitution adequately, or at all.

30

10 2. The learned trial Judge after having held that the Police Force Commission had delegated the power of dismissal over constables to the Chief Police Officer under the Instrument of Delegation of Powers and Duties dated 18th day of August, 1971 (Exh. D.1) erred in law in holding that the dismissal of the Plaintiff was in violation of Article 135(1) of the Federal Constitution and was therefore void on the ground that the Chief Police Officer, though delegated with the power to dismiss constables, had no power to appoint.

In the Federal Court.
No. 13
Memorandum of Appeal
7th May 1975.
(cont'd)

3. The learned trial Judge erred in law in not holding that the Plaintiff's dismissal from service effective from the date of his suspension (16.12.71) was valid in law having regard to the fact that the Chief Police Officer in exercising the power of dismissal over constables delegated to him by the Police Force Commission had complied strictly with the proper procedure when he dismissed the Plaintiff.

20 Dated this 7th day of May, 1975.

Senior Federal Counsel,
for and on behalf of the
Appellant.

- To: (1) The Chief Registrar,
Federal Court of Malaysia,
Kuala Lumpur.
- (2) The Senior Assistant Registrar,
High Court,
Kuala Lumpur.
- 30 (3) Messrs. G.T. Rajan & Co.,
No. 1A, Jalan Melayu,
Kelang,
Selangor.

(Solicitors for the Respondent)

Appellant's address for service is c/o
Attorney-General's Chambers, Kuala Lumpur.

PN. (SIVIL) 808/1.

In the Federal Court.

No. 14

Notice of Motion

No. 14
Notice of Motion

7th March 1977.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR.

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 49 OF 1975

B E T W E E N :

THE GOVERNMENT OF MALAYSIA

Appellant

AND

ZAINAL bin HASHIM,
82-2, Jalan Timor,
Kajang, Selangor.

10

Respondent

(In the Matter of the Kuala Lumpur High Court
Civil Suit No. 731 of 1972

B E T W E E N :

ZAINAL bin HASHIM,
82-2, Jalan Timor,
Kajang, Selangor.

Plaintiff

AND

1. MOHD. HANIFF bin OMAR,
The Chief Police Officer,
Selangor, Kuala Lumpur.

20

2. THE GOVERNMENT OF MALAYSIA

Defendants)

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on Monday the 23rd day of May, 1977 at 9.30 o'clock in the forenoon or so soon as thereafter as Counsel can be heard by the Senior Federal Counsel, Attorney-General's Chambers, Kuala Lumpur for the above-named Appellant for an order that:

30

- (1) the Appellant be granted leave to file and serve an Amended Memorandum of Appeal dated the 22nd day of February,

1977 a copy of which is annexed hereto with the proposed amendment underlined in red, and

(2) the costs of an incidental to this application be costs in the cause.

DATED this 7th day of March, 1977.

In the Federal Court.

No. 14
Notice of Motion
7th March 1977.
(cont'd)

10

Sgd:
Senior Federal Counsel
for and on behalf of the
Appellant.

DATED at Kuala Lumpur this 22nd day of April, 1977.

Sgd: Anuar bin Dato' Zainal
Abidin.
CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA,
KUALA LUMPUR.

TO:

20

Messrs. G.T. Rajan & Co.,
1A Jalan Melayu,
Kelang,
Selangor.

(Solicitors for the Respondent).

This Notice of Motion was taken out by the Senior Federal Counsel for and on behalf of the Appellant whose address for Service is c/o Attorney-General's Chambers, Jalan Raja, Kuala Lumpur.

30

It is supported by the Affidavit of Encik Abu Talib bin Othman, Senior Federal Counsel.

No. 15

Affidavit of Abu Talib bin
Othman

No. 15
Affidavit of
Abu Talib bin
Othman
9th March
1977.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

In the Federal Court .

FEDERAL COURT CIVIL APPEAL NO. 49 OF 1975

No. 15
Affidavit of
Abu Talib bin
Othman
9th March
1977.
(cont'd)

B E T W E E N :

THE GOVERNMENT OF MALAYSIA Appellant

and

ZAINAL bin HASHIM,
82-2, Jalan Timor,
Kajang, Selangor. Respondent

(In the Matter of the Kuala Lumpur High Court
Civil Suit No. 731 of 1972

B E T W E E N :

10

ZAINAL bin HASHIM,
82-2 Jalan Timor,
Kajang, Selangor. Plaintiff

and

1. MOHD. HANIFF bin OMAR,
The Chief Police Officer,
Selangor, Kuala Lumpur.
2. THE GOVERNMENT OF MALAYSIA Defendants)

A F F I D A V I T

I, Abu Talib bin Othman, of full age and
residing at No. 2518, Jalan Belfield, Kuala Lumpur,
do hereby solemnly and sincerely affirm and say as
follows:

20

1. I am a Senior Federal Counsel in the Attorney-
General's Chambers, Kuala Lumpur and am competent
to make this Affidavit.

2. On 21st day of March, 1975 His Lordship the
Trial Judge in Civil Suit No. 731 of 1972 of High
Court Malaya at Kuala Lumpur delivered his judgment
in favour of the Plaintiff. Thereupon the Defendant
filed and served a Notice of Appeal on or about the
27th day of March, 1975.

30

3. The Record of Appeal was duly filed and served
on or about the 16th day of May, 1975.

4. Parliament at its sitting in July-August, 1976
passed the Constitution (Amendment) Act 1976 (Act

A354) which inter alia amended Article 135(1) of the Constitution as follows:

In the Federal Court.

10 "And provided further that this Clause shall not apply to a case where a member of any of the services mentioned in this Clause is dismissed or reduced in rank by an authority in pursuance of a power delegated to it by a Commission to which this Part applies, and this proviso shall be deemed to have been an integral part of this Clause as from Merdeka Day.";

No. 15
Affidavit of
Abu Talib bin
Othman
9th March
1977.
(cont'd)

The Constitution (Amendment) Act 1976 came into force on 27th day of August, 1976.

5. In the above premises, it is now necessary to amend the Memorandum of Appeal dated 7th day of May, 1975 by adding a further ground of appeal as follows:-

20 "By virtue of section 30 of the Constitution (Amendment) Act, 1976, the dismissal of the Plaintiff by the Chief Police Officer in pursuance of the power delegated to him by the Police Force Commission was valid and in accordance with the Constitution notwithstanding that the said Chief Police Officer had at the time of such dismissal no power to appoint a member of the said service of equal rank."

30 6. I verily believe that the aforesaid additional ground raises an important issue of law which will greatly affect the outcome of this Appeal. In the circumstances I pray that this Honourable Court will allow the aforesaid amendment to the said Memorandum of Appeal.

AFFIRMED by the above-named)
Abu Talib bin Othman at)
Kuala Lumpur, this 9th day of) Sgd: ABU TALIB BIN
March, 1977, at 2.30 p.m.) OTHMAN

Before me,

Sgd: _____

Commissioner for Oaths
High Court, Kuala Lumpur.

40 This Affidavit is filed by the Senior Federal Counsel for and on behalf of the Appellant whose address for service is c/o Attorney-General's Chambers, Jalan Raja, Kuala Lumpur.

In the Federal
Court.

No. 16

No. 16
Affidavit in
reply of G.T.
Rajan
5th May 1977.

Affidavit in reply of G.T. Rajan

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA
LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 49 OF 1975

B E T W E E N :

THE GOVERNMENT OF MALAYSIA Appellant

AND

ZAINAL bin HASHIM, 10
82-2 Jalan Timor,
Kajang, Selangor. Respondent

(In the Matter of Kuala Lumpur High Court Civil
Suit No. 731 of 1972

B E T W E E N :

ZAINAL bin HASHIM,
82-2 Jalan Timor,
Kajang, Selangor. Plaintiff

AND

1. MOHD. HANIFF bin OMAR, 20
The Chief Police Officer,
Selangor, Kuala Lumpur.
2. THE GOVERNMENT OF MALAYSIA (Defendants)

AFFIDAVIT - IN - REPLY

I, G.T. RAJAN of full age and residing at No.
108 Jalan Emas, Kelang, Selangor do hereby
solemnly and sincerely affirm and say as follows:-

1. I am an Advocate and Solicitor practising
under the style of Messrs. G.T. Rajan & Co. and I
have been authorised to make this Affidavit-in-Reply 30
and I am in Charge of this matter aforesaid.
2. I aver that the Appellants have no right in

law to amend the Memorandum of Appeal and include Sec. 30 of the Constitution (Amendment) Act 1976 as a ground since the time to file the same has expired.

In the Federal Court.

No. 16
Affidavit in reply of G.T. Rajan
5th May 1977.
(cont'd)

10

3. There is no merit in this application for the simple reason this amendment which is a retrospective piece of legislation could not apply in a matter that is pendente lite and particularly when the Respondent has acquired a property interest in an award handed over by the trial Judge and to deprive the same is contrary to law.

4. The whole Appeal as it stands has no merit whatsoever in view of recent decision by the Privy Council vide Government of Malaysia vs. Isnan bin Osman decided on 22nd day of March, 1977.

5. In the premises above it is prayed that this Honourable Court do dismiss the Notice of Motion with costs.

20

AFFIRMED by the above named)
G.T. RAJAN at Klang in the)
State of Selangor this 5th) Sd: G.T. RAJAN
day of May, 1977 at 11.00)
a.m.)

Before me,

Sd: Wing Tong Sang
Commissioner for Oaths.

30

This Affidavit-in-Reply is filed by Messrs. G.T. Rajan & Co., for and on behalf of the Respondent above named whose address for service is c/o No. 1-A, Jalan Melayu, (Top Floor) Kelang, Selangor.

No. 17

Amended Memorandum of Appeal

No. 17
Amended
Memorandum of
Appeal
22nd June 1977

AMENDED MEMORANDUM OF APPEAL
Amended this 22nd day of June,
1977 pursuant to the Order of
the Federal Court dated the
22nd day of June, 1977.

In the Federal Court.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

No. 17
Amended
Memorandum of Appeal
22nd June 1977
(cont'd)

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 49 OF 1975

B E T W E E N :

THE GOVERNMENT OF MALAYSIA

Appellant

AND

ZAINAL BIN HASHIM,
82-2, Jalan Timor,
Kajang, Selangor.

Respondent

10

(In the Matter of the Kuala Lumpur High Court Civil Suit No. 731 of 1972)

B E T W E E N :

ZAINAL bin HASHIM,
82-2 Jalan Timor,
Kajang, Selangor.

Plaintiff

AND

1. Mohd. HANIFF bin OMAR,
The Chief Police Officer,
Selangor, Kuala Lumpur.

20

2. THE GOVERNMENT OF MALAYSIA

Defendants)

AMENDED MEMORANDUM OF APPEAL

The Government of Malaysia, the Appellant above-named, appeals against the whole decision of the Honourable Mr. Justice Dato' Abdul Hamid given at Kuala Lumpur on the 21st day of March, 1975 on the following grounds:-

1. The learned trial Judge failed to consider the provisions of Article 140(6)(b) of the Federal Constitution adequately, or at all.

30

2. The learned trial Judge after having held that the Police Force Commission had delegated the power of dismissal over constables to the Chief Police Officer under the Instrument of Delegation of Powers and Duties dated 18th day of August, 1971 (Exh. D.1) erred in law in holding that the

dismissal of the Plaintiff was in violation of Article 135(1) of the Federal Constitution and was therefore void on the ground that the Chief Police Officer, though delegated with the power to dismiss constables, had no power to appoint.

In the Federal Court.

No. 17
Amended
Memorandum of Appeal
22nd June 1977
(cont'd)

10 3. The learned trial Judge erred in law in not holding that the Plaintiff's dismissal from service effective from the date of his suspension (16.12.71) was valid in law having regard to the fact that the Chief Police Officer in exercising the power of dismissal over constables delegated to him by the Police Force Commission had complied strictly with the proper procedure when he dismissed the Plaintiff.

20 4. By virtue of Section 30 of the Constitution (Amendment) Act 1976 the dismissal of the Plaintiff by the Chief Police Officer in pursuance of a power delegated to him by the Police Force Commission was valid and in accordance with the Constitution notwithstanding that the said Chief Police Officer had at the time of such dismissal no power to appoint a member of the said service of equal rank.

Dated this 7th day of May, 1975.

Sd: Abu Talib bin Othman,
Senior Federal Counsel,
for and on behalf of the
Appellant.

Re-dated this 22nd day of June, 1977.

30 Senior Federal Counsel,
for and on behalf of the
Appellant.

- To: (1) The Chief Registrar,
Federal Court of Malaysia,
Kuala Lumpur.
- (2) The Senior Assistant Registrar,
High Court,
Kuala Lumpur.
- (3) Messrs. G.T. Rajan & Co.,
No. 1A Jalan Melayu,
Kelang,
Selangor.

40 (Solicitors for the Respondent)

Appellant's address for service is c/o Attorney-General's Chambers, Jalan Raja, Kuala Lumpur.
PN. (SIVIL) 808/1.

In the Federal
Court.

No. 18

No. 18
Written
Submission for
Plaintiff
(Undated)

Written Submission for Plaintiff

IN THE FEDERAL COURT AT MALAYSIA
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 49 of 1975

BETWEEN :

THE GOVERNMENT OF MALAYSIA Appellant

AND

ZAINAL bin HASHIM Respondent

(In the matter of Civil Suit No. 731 of 1972 In the High Court in Malaya at Kuala Lumpur) 10

BETWEEN :

ZAINAL bin HASHIM Plaintiff

AND

(1) Mohd. HANIFF bin OMAR

(2) THE GOVERNMENT OF MALAYSIA Defendants

SUBMISSION NOTES

It is my contention that Amendment to Article 135(1) and (2) by virtue of Constitution (Amendment) Act 1976 (Act A354) should not affect the Respondent's case in any event for the following reasons :- 20

(a) The amendment to Article 135(1) is with retrospective effect and not Article 135(2) Article 135 in fact should be applied as a whole in matters of disciplinary proceedings since it is not so, this creates anomalies to this case and therefore would become inapplicable. Re: Janis Wijesuriya vs. H.R. Amit Appeal Cases 1966 Pg. 372.

(b) From the nature of the amendment and from the construction of the amending legislation it is informed that this amendment is to apply to fresh 30

cases and not in cases where property rights have in fact accrued vide Privy Council No. 11/1976 - The Government of Malaysia vs. Iznan bin Osman Pg. 5 last para:-

In the Federal Court.

No. 18
Written
Submission for
Plaintiff
(Undated)
(cont'd)

10

"Their Lordships understand that the new argument would have been based upon provisions in the Constitution (Amendment) Act 1976 which purport to take effect retrospectively and this deprive the respondent of a vested right which has already been affirmed by the High Court and by the Federal Court in these proceedings. Thus attempt to deprive a litigation of right of property by retrospective legislation passed pendente lite is a step of a most unusual character."

20

(c) If the intention of the legislature is to affect cases pendente lite then it should so specify in its amending act and the Interpretation of Constitution Sec. 13 under 11th Schedule of the Constitution Pg. 222 must be equally amended. Since this is not the case then the amending act should not apply to this case and deprive the Respondent of his vested property rights.

30

(d) Further this amendment would not affect this case for the mere reason the amendment says "by an authority in pursuance of a power delegated to it by a Commission." In the instant case the Chief Police Officer's dismissal is in question, the Chief Police Officer is a person though described by office refer Pg. 226 Sec. 42 12th Schedule Federal Constitution -

40

PUBLIC OFFICERS:- "A reference in any written law to any public officer by the usual or common title of his office shall, if there be such an office customarily in the Federation or any State and unless the contrary intention appears, be read and construed as referred to the person for the time being holding or carrying out the duties of that office in the Federation or State as the case may be."

A distinction in fact is made as regards person or authority vide Pg. 223 Sec. 29 11th Schedule. The amendment only mentions authority and does not mention person. Authority here refers to a Board and so described as "it" in amending legislation -

In the Federal Court.

No. 18
Written
Submission for
Plaintiff
(Undated)
(cont'd)

In fact this amendment was made in the light of 1963 instrument of delegation as Honourable Chief Justice of Borneo in Government of Malaysia vs. Iznan bin Osman on Pg. 65 para (F) M.L.J. 1975 Vol. II says:-

"It does not appear that the instrument delegates any power to any individual. Hence, it is not possible to read in this instrument any delegation of power to the Chief Police Officer."

10

In the premises above this case would not fall within the ambit of the amendment to Article 135(1) which does not embrace cases of dismissal by a person namely the Chief Police Officer.

Therefore the finding of the trial judge that as at the time of the dismissal only the Commission had power to appoint a constable and the Chief Police Officer was subordinate to the Commission, the dismissal by the Chief Police Officer contravened the prohibition in clause (1) of Article 135 and was therefore void ought not to be upset.

20

II. The procedure under General Order 1969 Clause 34(1) was wrongfully applied.

"34(1) - Where criminal proceedings against an officer result in the conviction, upon receipt of the result of the proceedings, the Head of Department shall apply to the Registrar of the Court in which the proceedings against the officer had taken place for a copy of the record of the said proceedings, i.e. the charge, the Notes of Evidence and Judgment of the Court. Upon receipt of the said record, the Head of Department shall submit the same to the Disciplinary Authority together with full particulars with regard to the officer's past record of service and recommendation of the Head of Department as to whether the officer should be dismissed from the service or otherwise dealt with depending on the nature and gravity of the offence committed in relation to the degree of disrepute which it brings to the service."

30

40

The Chief Police Officer Pg. 33 Notes of Proceedings Appeal Record para C says :-

"I proceeded against Plaintiff under Cap. D General Order 1969 - General Order 34(4). I did not call for all the documents contemplated by 34(1)."

In the Federal Court.

No. 18

Written

Submission for Plaintiff

(Undated)

(cont'd)

10 In view of what the Chief Police Officer has testified the fact remains that exercise of dismissal action ab initio was wrong. The mandatory requirement to consider the Court's documents which is an independent record of proceedings is a meaningful provision under the General Order. On consideration of these documents, the Disciplinary Authority has to think about the nature of punishment to be given depending upon nature of offence and its mitigating circumstances. On consideration of these documents the Chief Police Officer is empowered to give a lesser punishment. It is therefore submitted since court's documents were not called for consideration, the dismissal action was wrong and was a fundamental breach of proceedings under clause 34(1) General Order 1969.

20

Police I.P. cannot substitute court's documents, these are not impartial documents recorded by independent judicial body but biased documents expounding the prosecution case.

30

In the premises above consideration exercised in the absence of Court's documents is no consideration at all and the alleged consideration is defective and punishment awarded under such bases is inherently wrong for reason inter alia the Chief Police Officer could not have come to a correct assessment of gravity of offence and therefore defeats the purpose of clause 34(1) General Order 1969.

III. The notice of suspension on Pg. 71 and Notice of Dismissal on Pg. 80 of Appeal Record is in fact issued by S.W. Moreira PW2 acting for the Chief Police Officer. The Instrument of Delegation Exhibit DLB Pg. 111 para (v) says:-

40

Constables

(v) "The power to award disciplinary punishment of dismissal may be exercised by a Senior Police Officer of and above the rank of Senior Assistant Commissioner of Police or a

In the Federal Court.

Chief Police Officer, in respect of constables."

No. 18
Written
Submission for
Plaintiff
(Undated)
(cont'd)

In view of this delegation of authority no one under the rank of Senior Assistant Commissioner or Chief Police Office can dismiss or dismiss on behalf of a dismissing authority. This power is only given to Chief Police Officer and none other below that rank. In the circumstances the Deputy Chief Police Officer S.W. Moreira PW2 has no authority to issue Notice of Suspension or Notice of Dismissal in his own capacity or acting as agent of the Chief Police Officer. The instrument of Delegation only delegates its power to the Chief Police Officer and to members above that rank. And this power is only to be exercised by person or persons referred in the said para of the Instrument of Delegation.

10

BROOMS LEGAL MAXIMS 10TH EDITION BY R.H. KERSLEY Pg. 570.

"This principle is that a delegated authority cannot be re-delegated, delegate potestas, non-potest delegari, or as it is otherwise expressed 'vicarius non habet vicarium' - one agent cannot lawfully appoint another to perform the duties of his agency. This rule applies wherever the authority involves a trust or discretion in the agent for the exercise of which he is selected."

20

Refer Appeal Record Pg. 34 Notes of Proceedings DW2 Chief Police Officer says Disciplinary proceedings were initiated by the Deputy Chief Police Officer.

30

Para E - "The Deputy Chief Police Officer initiated the proceedings which resulted in my decision."

IV. It is submitted that the Chief Police Officer DW2 did not act as an agent of the Police Force Commission and was not acting on the instructions of the Commission on reading the Notice of Dismissal on Pg. 80 para 2 of the letter the Deputy Chief Police Officer acting on behalf of the Chief Police Officer says:-

40

"Considering all aspects regarding the said incident and also the content of your appeal, I hereby make an order of dismissal with effect from 16th December, 1971."

The Deputy Chief Police Officer's alleges that decision was Chief Police Officer's own decision and this is supported by the Notes of proceedings in the Appeal Record.

In the Federal Court.

No. 18
Written
Submission for
Plaintiff
(Undated)
(cont'd)

This fact is admitted by the Appellant's Counsel himself - refer Pg. 36 Appeal Record para C.

10

"The dismissal was made under Cap. D General Order 34. It is in evidence and it is not contested that the power to decide is that of the first defendant."

Page 36 Appeal Record para D.

"First Defendant made the decision which was his own."

It is further supported by the Chief Police Officer, DW2 own evidence, refer Appeal Record Pg. 33 Para E.

20

"The decision to dismiss was my own decision. I was not under the direction or control of any other person. I suspended plaintiff on 20.12.71."

On the bases of this evidence the Chief Police Officer DW2 did not comply with Article 144(6) of Federal Constitution reads as follows :-

30

"A Commission to which this Part applies may delegate to any officer in a service to which its jurisdiction extends, or to any board of such officers appointed by it, any of its functions under the Clause (1) in respect of any grade of service, and that officer or board shall exercise those functions under the direction and the control of the Commission."

40

It is my submission the Chief Police Officer did not act as an agent under the instructions of the Commission when he dismissed the Respondent and there is no doubt on the evidence disclosed hereinabove the decision to dismiss was Chief Police Officer's own decision or his Deputy which would make that dismissal void.

In support of this I refer to Privy Council Appeal No. 11/1976 - The Government of Malaysia vs.

In the Federal Court.

Iznan bin Osman Pg. 5 para 2.

No. 18
Written
Submission for
Plaintiff
(Undated)
(cont'd)

"Their Lordships are quite unable to accept this argument, having regard to the terms of the letter of dismissal and to the absence of any indictment there or in any other document to which their attention was called that the Chief Police Officer was acting on the instructions of the Commission."

In paragraph 2 of the letter of Dismissal the Chief Police Officer referred clearly to the decision to dismiss as his own ("I have decided to dismiss you") and he stated that he was acting "in accordance with powers conferred on me as per the 1st Schedule to the Police Ordinance 1952. "In the face of that letter it is not possible to hold that the Chief Police Officer was merely acting as the agent or on the instructions of Commission and passing on a decision made by the Commission. This argument therefore fails and in their Lordships' opinion the dismissal was therefore void."

10

20

(V) In any event costs of this appeal and trial court proceedings ought to be given to the Respondent - Duke of Richmond vs. Dewar K.B.D. 1921 Pg. 356.

Sgd: G.T. RAJAN.
(G.T. RAJAN)
Solicitors for the Respondent.

N.B. (The aforesaid underlining is mine).

No. 19
Judgment
21st July
1977 .

No. 19
Judgment

30

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 49 OF 1975

B E T W E E N :

THE GOVERNMENT OF MALAYSIA

Appellant

In the Federal
Court.

AND

ZAINAL BIN HASHIM

Respondent

No. 19
Judgment
21st July
1977.
(cont'd)

(In the matter of Civil Suit No. 731 of 1972 in
the High Court in Malaya at Kuala Lumpur

B E T W E E N :

ZAINAL BIN HASHIM

Plaintiff

AND

1. Mohd. HANIFF bin OMAR

10

2. THE GOVERNMENT OF MALAYSIA

Defendants)

Coram: Suffian, L.P.;
Lee Hun Hoe, C.J. Borneo; and
Wan Suleiman, F.J.

JUDGMENT OF THE COURT

20

Zainal bin Hashim, a police constable ("the
plaintiff"), was on 16th December, 1971, dismissed
by the Chief Police Officer, Selangor, and the
learned trial judge ruled (1) that he had been
wrongfully dismissed, and the Federal Government
has appealed to us.

30

Power to appoint and dismiss P.Cs. is
primarily with the Police Force Commission ("PFC"),
Article 140 of the Malaysian Constitution, but
clause (6) (b) of that Article allows the PFC to
delegate this power to any member of the force. By
an instrument of delegation dated 18th August, 1971,
exhibit D1B, the PFC delegated its power to appoint
constables to the Inspector-General of Police and
power to dismiss them to a Chief Police Officer
among others.

Be it noted that the C.P.O. was not given
power to appoint, only power to dismiss.

Tan Sri Mohd. Haniff bin Omar, then C.P.O.,
Selangor, dismissed the plaintiff, and the learned
judge held, following the decision of this court
in Iznan bin Osman (2) that, as the C.P.O. had no
power to appoint he had no power to dismiss a

(1) (1975) 2 M.L.J. 262
(2) (1975) 2 M.L.J. 61.

In the Federal Court.

No. 19
Judgment
21st July
1977.
(cont'd)

constable, that the dismissal was contrary to Article 135(1) and that accordingly it was wrongful.

That article reads:

"135(1) No member of [the Police Force] shall be dismissed ... by an authority subordinate to that which, at the time of the dismissal ... has power to appoint a member of that service of equal rank:

Provided that ... [the proviso is irrelevant.]"

10

Since the decision of the trial judge another proviso has been added to the above article by the Constitution (Amendment) Act, 1976, ("Act A354"), in the following terms:

"And provided further that this Clause shall not apply to a case where a member of any of the services mentioned in this Clause is dismissed by an authority in pursuance of a power delegated to it by a Commission to which this Part applies" - the PFC is one of them - "and this proviso shall be deemed to have been an integral part of this Clause as from Merdeka Day [i.e. 31st August, 1957]."

20

If this additional proviso applies, then clearly, as the plaintiff was dismissed by an authority in pursuance of power delegated to it by the PFC the dismissal was lawful. Mr. Lim on behalf of the Government argued before us that it does apply, but Mr. Rajan on behalf of the plaintiff argued that the amendment does not apply this case.

30

Thus the issue here is, does the amendment apply to this case?

In Iznan (2) too, a constable was dismissed by a C.P.O. who had been delegated power to dismiss but not appoint constables, and it was held by both the trial judge and this court that the dismissal, being contrary to Article 135(1) was wrongful. However, by the time that case reached the Privy Council (3) the additional proviso to that article had been added by Parliament and there the Government tried to rely on the amendment but were not allowed to do so. Lord Fraser, giving the advice of the Privy Council, observed:

40

- (2) (1975) 2 M.L.J. 61
- (3) (1977) 2 M.L.J. 1

10 "There is one final matter to which their Lordships must refer, Mr. Farquharson sought leave to present an entirely new argument based upon the Constitution (Amendment) Act 1976 (Act A354) which came into force on 26th August, 1976. This argument is nowhere stated or even adumbrated in the appellant's printed case, and no formal notice had been given to the respondent's advisors or to the officials of this Board that leave to present the argument would be sought, although a period of more than five months had elapsed since the Amendment Act came into force. Their Lordships were informed by Mr. Farquharson and they of course accept, that informal notice had been given to the respondent's advisors a few days before the hearing but Mr. Rajan explained that he personally had first heard of the matter when he arrived in London about three days before the hearing. Mr. Rajan objected to the argument being presented without proper notice and without having been formulated in writing.

In the Federal Court.
No. 19
Judgment
21st July
1977.
(cont'd)

20
30
40
50
Their Lordships are of opinion that it would not be proper for them to entertain the new argument in this case. No proper notice of it has been given to the respondent, and the respondent's Counsel has had no opportunity to consider it and, if necessary, to take instructions upon it. At the very least an adjournment for those purposes would have been required and no Motion for such an adjournment was made on behalf of the Appellant. Their Lordships understand that the new argument would have been based upon provisions in the Constitution (Amendment) Act 1976 which purport to take effect retrospectively and thus to deprive the respondent of a vested right which has already been affirmed by the High Court and by the Federal Court in these proceedings. This attempt to deprive a litigant of a right of property by retrospective legislation passed pendente lite is a step of a most unusual character; and that makes it all the more necessary that the respondent should have had an adequate opportunity of meeting the argument, before their Lordships could consider it."

In the Federal Court.

No. 19
Judgment
21st July
1977.
(cont'd)

Mr. Rajan sought to argue that on the authority of the above observation the Government in this appeal too cannot rely on the amendment to save this dismissal. With respect we do not agree. All that the above observation means is that in view of the very short notice given by the Government (three days) of their desire to rely on new arguments Their Lordships did not consider it fair to allow the Government to do so, not that their arguments if presented and considered would not hold water.

10

Here we allowed Government to rely on the amendment because they had given Mr. Rajan three months' notice of their desire to do so, and also because we think it right to hear the arguments on their merit.

Mr. Rajan's argument that the amendment cannot affect the present case runs as follows. The amendment may affect only future cases, not cases already heard and adjudicated on, it cannot take away rights already vested in the plaintiff as a result of the High Court judgment appealed from. For this proposition Mr. Rajan relies on the Interpretation Act, 1967, section 30(1)(b) and the definition of "amend" in section 3.

20

Section 30(1)(b) reads:

"The repeal of a written law in whole or in part shall not ... affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law";

30

and section 3 defines "amend" as including "repeal ...".

Mr. Rajan also argued that section 29 of the Interpretation and General Clauses Malayan Union Ordinances No. 7 of 1948, which by virtue of Article 160(1), applies to the interpretation of the constitution, draws a distinction between on the one hand a "person" and on the other an "authority" with power to appoint or dismiss, whereas the new proviso to Article 135(1) only refers to dismissal "by an authority", not to dismissal by "a person", and as the C.P.O. is a person, not an authority, the amendment does not apply to him and therefore his dismissal of the plaintiff was wrongful.

40

With respect we do not think that there is merit in Mr. Rajan's argument.

In the Federal Court.

10 The C.P.O. was by exhibit D1B given power to dismiss a constable such as the plaintiff by the Commission. This delegation was in proper form. True at the time when the C.P.O. dismissed the plaintiff and at the time when the plaintiff's claim was tried the C.P.O. could not have dismissed the plaintiff because of Article 135(1). But section 30(1)(b) of the 1967 Interpretation Act does not apply where there is express provision to the contrary (it is expressed to take effect from Merdeka Day); clearly since that day the C.P.O. may lawfully dismiss a constable such as the plaintiff and therefore the plaintiff's dismissal was not unlawful.

No. 19
Judgment
21st July
1977.
(cont'd)

20 In Loh Kooi Choon v. The Government of Malaysia (4), this court has held that an amendment to Article 5(4) of the Constitution can be made with retrospective effect. In our view the same applied to amendments to Article 135(1).

30 Appeals to this court are by way of rehearing and we may give any judgment, make any order which ought to have been given or made (by the trial court) and make such further or other orders as the case requires, section 69(1) and (4) of the Courts of Judicature Act No. 7 of 1964. This means, on the authority of Quilter v. Mapleson (5), that we are authorised to make such order on this appeal as ought to be made according to the law as it stands not at the time of the trial but at the time of this appeal.

That case was approved by the House of Lords in Attorney-General v. Birmingham, tane and Res District Drainage Board (6) where Lord Gorell said at pages 801 and 802:

40 "Under the Judicature Acts and Rules the hearing of an appeal from the judgment of a judge is by way of rehearing, and the Court has power to give any judgment and to make any order which ought to have been made, and to make such further or other order as the Court may think fit (see Order LVIII, rr.1 and 4).

(4) Federal Court Civil Appeal No. 157 of 1975.

(5) (1881-2) 9 Q.B.D. 672.

(6) (1912) A.C.788.

In the Federal
Court.

No. 19
Judgment
21st July
1977.
(cont'd)

The Court also has power to take evidence of matters which have occurred after the date of the decision from which the appeal is brought (see Order LVIII,r.4).

It seems clear, therefore, that the Court of Appeal is entitled and ought to rehear the case as at the time of rehearing, and if any authority were required for this proposition, it is to be found in this case of Quilter v. Mapleson. In that case an action of ejectment had been brought under a proviso of re-entry for breach of a covenant in a lease, and Lord Coleridge C.J. gave judgment for the plaintiff. The defendant appealed and obtained a stay, so that the plaintiff did not get actual possession. After the decision and before the appeal was heard the Conveyancing and Law of Property Act, 1881, came into operation, under which power to relieve against a forfeiture was given, and the Court of Appeal, consisting of Jessel M.R. and Lindley and Bowen L.JJ. reversed the decision, and granted the relief sought for by the defendant, holding that on a rehearing such a judgment may be given as ought to be given if the case came at that time before the Court of first instance.

10

20

In my opinion the Court of Appeal was entitled to make such order as the judge could have made if the case had been heard by him at the date on which the appeal was heard."

30

As regards Mr. Rajan's argument based on section 29 of the Interpretation and General Clauses Ordinance No. 7 of 1948, in our view the C.P.O. Selangor, is both a person and an authority and therefore his dismissal of the plaintiff is validated by the new proviso to Article 135(1).

We would therefore allow this appeal.

As regards costs, the plaintiff won in the High Court and was awarded costs. We do not think it right to disturb that order, since the law then was on his side. As regards costs of this appeal, we agree with Mr. Rajan that the plaintiff should get them also. The Government have used their power to deprive the plaintiff of a right that was vested in him under the judgment appealed from and as they are the most powerful body in the country

40

we do not think it unfair that they should also pay the plaintiff costs of this appeal also.

In the Federal Court.

Sgd. M. SUFFIAN
(Tun Mohamed Suffian)
LORD PRESIDENT, MALAYSIA.

No. 19
Judgment
21st July
1977.
(cont'd)

Delivered in Kuala Lumpur
on 21st July, 1977.

Notes:

- 10 1. Argument in Kuala Lumpur on Wednesday, 22nd June, 1977.
- 2. Counsel: Mr. Lim Beng Choon, Senior Federal Counsel, for the Government.

Mr. G.T. Rajan for the plaintiff/respondent.
- 3. Authorities cited other than those mentioned in Judgment:
 - (1) The King v. Kidman (1915) 20 C.L.R. 425, 451.
 - (2) Shanmugam (1962) 2 A.E.R. 609, P.C. 611H.
 - (3) Gulwant (1965) 2 M.L.J. 56.
 - 20 (4) Wijesuria v. Amit (1966) A.C. 372, P.C. 378.

No. 20
Order

No. 20
Order 21st
July 1977

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 49 OF 1975

B E T W E E N :

THE GOVERNMENT OF MALAYSIA

Appellant

AND

ZAINAL BIN HASHIM,
82-2 Jalan Timor,
Kajang, Selangor

Respondent

In the Federal Court.

(In the Matter of the Kuala Lumpur High Court Civil Suit No. 731 of 1972

No. 20
Order 21st
July 1977
(cont'd)

B E T W E E N :

ZAINAL BIN HASHIM,
82-2, Jalan Timor,
Kajang, Selangor.

Plaintiff

AND

1. MOHD. HANIFF BIN OMAR,
The Chief Police Officer,
Kajang, Selangor.

10

2. THE GOVERNMENT OF MALAYSIA Defendants)

CORAM: SUFFIAN, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA; LEE HUN HOE, CHIEF JUSTICE,
HIGH COURT BORNEO; WAN SULEIMAN, JUDGE
FEDERAL COURT, MALAYSIA; IN OPEN COURT

THIS 21ST DAY OF JULY, 1977

O R D E R

THIS APPEAL coming on for hearing on the 22nd day of June 1977 in the presence of Mr. Lim Beng Choon, Senior Federal Counsel appearing for and on behalf of the Appellant and Mr. G.T. Rajan of Counsel for the Respondent AND UPON READING the record of appeal filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this appeal do stand adjourned for judgment AND UPON this appeal coming up for judgment this day in the presence of Counsel as aforesaid IT IS ORDERED that the costs in the High Court and the costs herein be taxed and be paid by the Appellant to the Respondent.

20

GIVEN under my hand and the Seal of the Court this 21st day of July, 1977.

30

Sd:
CHIEF REGISTRAR,
FEDERAL COURT, MALAYSIA.

No. 21

Order granting Final Leave to Appeal

In the Federal Court.

No. 21.
Order granting
Final Leave to
Appeal
6th December
1977.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT PENANG
(APPELLATE JURISDICTION)
CIVIL APPEAL NO. 49 OF 1975

B E T W E E N :

THE GOVERNMENT OF MALAYSIA

Appellant

AND

10 ZAINAL BIN HASHIM,
82-2, Jalan Timor,
Kajang, Selangor

Respondent

(In the Matter of the Kuala Lumpur High Court
Civil Suit No. 731 of 1972)

B E T W E E N :

ZAINAL BIN HASHIM,
82-2, Jalan Timor,
Kajang, Selangor

Plaintiff

AND

20 1. MOHD. HANIFF BIN OMAR,
The Chief Police Officer,
Kajang, Selangor.

2. THE GOVERNMENT OF MALAYSIA

Defendants)

CORAM: H.S. ONG, JUDGE, FEDERAL COURT, MALAYSIA

RAJA AZLAN SHAH, JUDGE, FEDERAL COURT,

MALAYSIA

CHANG MIN TAT, JUDGE, FEDERAL COURT,

MALAYSIA

IN OPEN COURT

THIS 6TH DAY OF DECEMBER, 1977

O R D E R

30 UPON MOTION made unto Court this day by Mr.
G.T. Rajan of Counsel for the Respondent in the

In the Federal Court.

No. 21
Order granting
Final leave to
Appeal
6th December
1977.
(cont'd)

presence of Mr. Lim Beng Choon, Senior Federal Counsel appearing for and on behalf of the Appellant AND UPON READING the Notice of Motion dated the 15th day of November, 1977 and the Affidavit of the said Mr. G.T. Rajan affirmed on the 4th day of November, 1977 and filed herein AND UPON HEARING Counsel as aforesaid for the parties IT IS ORDERED that final leave be and is hereby granted to the Respondent to appeal to His Majesty the Yang di Pertuan Agong against the judgment of the Federal Court given on the 21st day of July, 1977 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 6th day of December, 1977.

.....

CHIEF REGISTRAR,
FEDERAL COURT,
KUALA LUMPUR.

For your approval please,

.....

(M/s. G.T. Rajan & Co.)

.....

(Senior Federal Counsel)

20

Exhibits

1
Agreement of
Service
1st March 1962.

EXHIBIT 1

Agreement of Service

AGREEMENT OF SERVICE

I, Zainal bin Hashim do this day engage under the provisions of the Police Ordinance, 1952, to serve for 3 years from this date, as a Police Constable, or in any rank in the Police Force to which I may be appointed, promoted or reduced.

Interpreted to the Candidate by me.

Sd. Illegible

.....

Sgd. Illegible

.....

Signature of Candidate.

30

I hereby appoint Zainal bin Hashim to be a Police Constable, under the provisions of the Police Ordinance, 1952, for a period of 3 years.

Station Kuala Lumpur

Dated 1st of March, 1962.

Exhibits

1
Agreement of Service
1st March 1962.
(cont'd)

Sgd. Illegible

.....

Commanding Officer



Exhibit 3

Translation of Plaintiff's Report,
No. 1185/1970



3
Translation of Plaintiff's Report, No. 1185/1970, 8th September 1970.

10

Zainal bin Hashim,
No.82/2 Jalan Timor,
Kajang, Selangor.

Telok Datok Report No. 1185/70
on 8.9.70

20

30

At about 3.00 p.m. on 8.9.70 I, together with three friends went for drink at the Morib Inn Bar. At that time I was on a week's leave. My friends were Che Ismail, an ex-S.I. now a pensioner, Che Theriru, a clerk at the Jabatan Kira Kira Kuala Lumpur and Mr. Chew, a clerk attached to Veterinary Dept. Banting. We were seated at a table in the Bar. Two ladies came and asked us what we wished to drink. We asked for Whisky and also some food. While we were drinking, one of the ladies, a Chinese, introduced herself to us as Leng Leng and the other Indian lady as Lachime. They sat and drank with us. Then a Malay lady came and sat with us. She introduced herself as Zaiton. I asked her what drink she would like to have. She replied that she did not want to drink. About 10 minutes later she stood up and left our table. Then I left the table to ease myself behind the kitchen of the Bar. After having eased myself I wanted to return to my table. I saw the Malay lady, Zaiton, talking to a male Malay. I then asked what was the talk about. Zaiton replied 'this is my husband'. Then I said 'If he is your husband, call

Exhibits

3

Translation of
Plaintiff's
Report, No.
1185/1970,
8th September,
1970
(cont'd)

him to have a drink together with us.' Zaiton then said 'It is not necessary because my husband is not a drunkard'. 'If he is not a drunkard, well and good' I said. At that moment both my friends, Mr. Theru and Che Ismail came and asked Zaiton 'Why are you angry, it is alright if you don't want to drink.' but we know that Bar-girls are drinkers'. At that time the man said to be Zaiton's husband left the place to a place not known to us. Zaiton was angry at us and said 'All of you are like Keling (Indians), you are drunk more than what you have drink (minum sikit, mobok banyak - drink very little, but very drunk). Che Ismail asked 'Who is drunk?' At this juncture Zaiton took a chair and wanted to hit me with it. Che Ismail pushed her, but she did not fall. Mr. Chew then came and called us to return home and not to quarrel. I straightaway paid for the drink and we left the bar going back towards Banting.

10

At about 5.30 p.m. on 8.9.70 we reached Banting Town and let Mr. Chew down because he was staying in Banting. Then I, Ince Ismail and Mr. Theriru proceeded to Kajang with the intention of returning home. On reaching the Police Station at Telok Datok, I asked my friends to stop the motor-car because I wanted to report about my leave. On entering the station I saw two ladies i.e. Zaiton and Lechmi. The Police who was on duty at the Police Station informed me that the Malay lady had lodged a report that three of us had kicked her. At that time I asked her whether it was true that we had kicked her. Zaiton replied no. 'Then why did you make a report saying that we had kicked you'. Zaiton replied that the tawkey of the bar had instructed her to do so. Then the policeman asked me to wait with my friends for Che Nordin to come. About 15 minutes later Che Nordin came. He straightaway took Zaiton into his office. Three of us followed the Nordin to his office. On reaching his office Che Nordin did not allow us to enter. He said all of us were drunk. At that time I said 'Che Nordin, please give us a chance to talk to these ladies'. Che Nordin did not allow us to enter at all. I then asked Ismail 'What shall we do now? Let us go and see Tuan P.P.D.P.' Then we returned to the Police Station and asked the Policeman on guard. He said Tuan P.P.D.P. was on leave. Three of us went to the house of the District Officer, Telok Datok, but we could not meet him, instead we met the A.D.O. No. 3. We related to him all that had happened

20

30

40

50

and he took us to the Police Station. On reaching the station A.D.O. No. 3 went to see Inspector Nordin but we did not enter. Then A.D.O. No. 3 asked us for our address. After giving our addresses to him he allowed us to return home. Inspector Nordin did not send us to the hospital. Four days later we (3) were called by Ketua Inspector Tuan Haji Abd. Rahman to give statement. On 15.10.70 I received a letter from Ketua Pegawai Police Selangor informing that I have been interdicted from service with half pay. On 16.10.70 we were brought before Telok Datoh Court charged under Section 323 Penal Code. We engaged a Counsel to defend us. On 16.9.71 the Prosecution failed to produce important witnesses. We were therefore discharged not amounting to an acquittal. I hereby wish to state the actual fact, i.e.

1. Zaiton binte Abdullah married only after the incident. Prior to that they were living as man and wife although they were not legally married according to Muslim rites. She conceived before her marriage.
2. Her miscarriage is not as a result of our kick and I have witness who will prove that she had undergone abortion by a midwife and I have seen the place where she had buried the dead baby. The reason for the incident on the 8.9.70 and she was admitted to hospital on 19.9.70 for 4 days was because the abortion was not fully completed.
3. It is possible that Insp. Nordin is angry with me because sometime in April 1965, Che Nordin had matched the daughter of S.M. Ali to be my wife but I refused, and subsequently I was suddenly transferred from Banting to Kajang.

sd. Zainal
18.2.72.

Exhibits

3
Translation of
Plaintiff's
Report, No.
1185/1970,
8th September,
1970.
(cont'd)

Exhibits

EXHIBIT DIB

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.

Translation, Police Force Commission,
Instrument of Delegation of powers
and duties

POLICE FORCE COMMISSION

INSTRUMENT OF DELEGATION OF POWERS AND DUTIES

(1) Composition of Boards

In accordance with Article 140(6)(b) of the Federal Constitution the Police Force Commission hereby establishes a No. 1 Board in the State of Malaya, a No. 1 Board in Sarawak and a No. 1 Board in Sabah constituting of members specified in the First Schedule hereto.

10

(2) Appointment, confirmation and
Emplacement on the permanent
or pensionable establishment

In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions relating to appointments, confirmation and emplacement on the permanent or pensionable establishment, so as to be exercised by the members of the police force or boards of police officers, to the extent set forth in the Second Schedule hereto.

20

(3) Promotion

In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions relating to promotion, so as to be exercised by the members of the police force or boards of police officers, to the extent set forth in the Third Schedule hereto.

30

(4) Transfer

In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions relating to transfer (other than transfer without change of rank within the police force), so as to be exercised by the members of the police force or boards of police officers to the extent set forth in the Fourth Schedule hereto.

40

(5) Exercise of disciplinary control

Exhibits

In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions relating to exercise of disciplinary control, so as to be exercised by the members of the police force or boards of police officers, to the extent set forth in the Fifth Schedule hereto.

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.
(cont'd)

(6) General

10 (a) Any reference in the schedule hereto to officers of any rank or grade shall, unless expressly stated, include officers not on the permanent or pensionable establishment.

(b) Notwithstanding the delegations herein, the Police Force Commission, retains concurrent powers and may, in any individual case, itself exercise the delegated functions.

20 (c) In exercising the functions delegated herein, the delegated authorities shall comply with the relevant legislation, regulations, rules, procedures, administrative instruction and policy of Government, relating to the exercise of such function, or applicable to the officer in respect of whom such functions are exercised.

30 (d) Any function which may be exercised by the Inspector-General of Police by virtue of the delegations herein may, subject to his orders and directions, be exercised by the Deputy Inspector-General of Police, a Commissioner of Police, a Deputy Commissioner of Police. A Senior Assistant Commissioner of Police, or an Assistant Commissioner of Police generally or specially authorised in that behalf by the Inspector-General of Police and any function which may be exercised by a police officer below the rank of Inspector-General of Police may be exercised by the Inspector-General of Police himself.

40 (e) The powers delegated herein shall be deemed to have effect retrospectively from the date on which the Police Act, 1967 came into force provided that nothing in this Instrument shall render invalid any act or thing done, ordered or dealt with by the delegated authorities since the enforcement of the Police Act, 1967 in exercise of

Exhibits

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.
(cont'd)

the powers delegated under the Instrument of Delegation of Powers and Duties repealed by this Instrument or of any supplementary powers delegated during the period between the coming into force of the Police Act, 1967 and the promulgation of the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations, 1970 irrespective of whether or not such powers and the exercise thereof are inconsistent with the spirit and substance of this Instrument.

10

(f) The Police Force Commission Instrument of Delegation of Powers and Duties of 16th September, 1963 is hereby revoked.

Dated this 18th day of August, 1971.

Sgd:

.....
Tun (Dr.) Ismail bin Dato Abdul Rahman,
Pengerusi Suruhanjaya Pasukan Polis.

Sgd:

.....
Tan Sri Dato Mohd. Salleh bin Ismail,
Ahli Suruhanjay Pasukan Polis.

20

Sgd:

.....
Dato Wan Abdul Aziz bin Unguku Haji Abdullah,
Ahli Suruhanjaya Pasukan Polis.

Sgd:

.....
Encik Mohamad Din bin Mohamed Shariff,
Ahli Suruhanjaya Pasukan Polis.

30

Sgd:

.....
Tuan Hakim Y.M. Raja Azlan Shah Ibni
Al-Marhum Sultan Sir Izzudin Yusuf Shah,
Ahli Suruhanjaya Pasukan Polis.

Sgd:

.....
Encik John Nichol anak Kassim,
Ahli Suruhanjaya Pasukan Polis.

Sgd:

.....
Encik Leong Ah Koon,
Ahli Suruhanjaya Pasukan Polis.

Sgd:

.....
Encik Ibrahim bin Ali,
Setiausaha Suruhanjaya Pasukan Polis.

Exhibits

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.
(cont'd)

FIRST SCHEDULE

10 Composition of Boards

The composition of the Boards referred to in Part I of the Instrument of Delegation of Powers and Duties shall be as follows :-

No: 1 Board in the States of Malaya

- 1. The Inspector-General of Police, or in his incapacity or absence, or on his being otherwise engaged, the Deputy Inspector-General of Police - Chairman;
- 20 2. Director, Special Branch, or in his incapacity or absence, or on his being otherwise engaged, the Deputy Director, Special Branch;
- 3. Director, Management, or, in his incapacity or absence, or on his being otherwise engaged, the Deputy Director 'A'.

No: 1 Board in Sarawak

- 30 1. Commissioner of Police, or in his incapacity or absence, or on his otherwise engaged, the Deputy Commissioner of Police - Chairman;
- 2. Deputy Commissioner of Police;
- 3. Assistant Commissioner, Administration;
- 4. Head, Special Branch.

Exhibits

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.
(cont'd)

No: 1 Board in Sabah.

1. Commissioner of Police, or in his incapacity or absence, or on his being otherwise engaged, the Deputy Commissioner of Police - Chairman;
2. Deputy Commissioner of Police;
3. Assistant Commissioner, Administration;
4. Head, Special Branch.

Quorum: A quorum for meetings of the No: 1 Board of the States of Malaya will be formed by all three members, and of the No: 1 Boards of Sarawak and Sabah by any three members.

10

SECOND SCHEDULE

Appointments

The functions of the Police Force Commission relating to appointments (including functions vested in an appointing authority) under Article 140(1) of the Federal Constitution or administrative instruction of Government, shall be exercised by:-

20

- (i) the full Commission in respect of senior officers of and above the rank of Assistant Superintendant of Police;
- (ii) The Inspector-General of Police in respect of senior police officers of the rank of Inspector of any grade, junior police officers and constables;
- (iii) Provided that:-
 - (a) appointments to designated posts under Article 140(4) and (5) of the Federal Constitution shall be made by the Yang di Pertuan Agong on the recommendation of the Commission and the advice of the Prime Minister;
 - (b) appointments in (i) above in respect of senior police officers of the rank of Superintendant of Police and above

30

shall be made after considering the recommendations of the Inspector-General of Police;

Exhibits

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.
(cont'd)

10

- (c) appointments in (i) above in respect of Assistant Superintendant of Police and Deputy Superintendant of Police shall be made after considering the recommendation of the No: 1 Board which shall shortlist and interview the candidates before submitting such recommendations except that the recommendations of the No:1 Boards of Sabah and Sarawak shall be with the concurrence of the Inspector-General of Police.

Acting Appointments

20

The functions of the Police Force Commission relating to action appointments (including functions vested in an appointing authority) under Article 140(1) of the Federal Constitution, or under any other written law, subsidiary legislation or administrative instruction of Government, shall be exercised by the Inspector-General of Police in respect of senior police officers, junior police officers and constables:

Provided that:

30

- (a) acting appointments of senior police officers to the rank of and above Superintendent of Police shall be subject to the approval of the full Commission in cases where the duration of the acting appointment is likely to exceed 3 months;
- (b) acting appointments to designated posts under Article 140(4) of the Federal Constitution shall be made by the Yang di Pertuan Agong on the recommendation of the Commission and the advice of the Prime Minister.

40

Confirmation and emplacement on the permanent or pensionable establishment.

The functions of the Police Force Commission relating to confirmation (including functions vested in a confirming authority) and emplacement on the

Exhibits

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.
(cont'd)

permanent or pensionable establishment under Article 140(1) of the Federal Constitution or under any other written law, subsidiary legislation or administrative instruction of Government shall be exercised by officers of the ranks of Assistant Superintendent of Police and Inspector of any grade, junior police officers and constables.

Provided that:

- (a) the discharge of a direct entry probationary Assistant Superintendent of Police at the end of the probationary period because of failure to qualify for confirmation, shall be subject to the approval of the full Commission; 10
- (b) the reversion of a probationary Assistant Superintendent of Police promoted from the Inspectorate to the rank of Inspector because of failure to qualify for confirmation shall be subject to the approval of the full Commission; 20
- (c) the emplacement on the permanent establishment of a temporary or contract officer of the rank of Assistant Superintendent of Police shall be subject to the approval of the full Commission.

THIRD SCHEDULE

Promotions

The functions of the Police Force Commission relating to promotions (including functions vested in a promoting authority) under Article 140(1) of the Federal Constitution, or under any other written law, subsidiary legislation or administrative instruction of Government shall be exercised by:- 30

- (i) the full Commission in respect of promoting of senior police officers to the rank of Assistant Superintendent of Police and above;
- (ii) the Inspector-General of Police in respect of promotions of junior police officers to Inspectors of any grade and promotions of constables to junior police officers of any rank; 40

Provided that:-

Exhibits

- 10 (a) promotions in (i) above to the ranks which carry posts designated as special posts under Article 140(4) of the Federal Constitution shall be made by the Yang di Pertuan Agong or other authority exercising his functions on the recommendation of the Commission and the advice of the Prime Ministers;
- (b) promotions in (i) above to the rank of Superintendent of Police and above shall be made after considering the recommendations of the Inspector-General of Police;
- 20 (c) promotions in (i) above to the ranks of Assistant Superintendent of Police and Deputy Superintendent of Police shall be made after considering the recommendation of the No: 1 Board which shall shortlist and interview the candidates before submitting such recommendations, except that the recommendations of the No: 1 Boards of Sarawak and Sabah shall be with the concurrence of the Inspector-General of Police;
- 30 (d) promotions or advancement of officers to ranks within the same grade and in the same salary scale may be made by the Inspector-General of Police.

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.
(cont'd)

FOURTH SCHEDULE

Transfers

40 The functions of the Police Force Commission relating to transfer under Article 140(1) of the Federal Constitution or under any other written law, subsidiary legislation or Administrative instructions of Government shall be exercised by the Inspector-General of Police:

Provided that:

- (a) the transfers of officers to posts

Exhibits

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.
(cont'd)

designated as special posts under Article 140(4) of the Federal Constitution shall be subject to the approval of the Yang di Pertuan Agong or other authority exercising his functions on the recommendation of the Commission and the advice of the Prime Minister;

- (b) the transfer of senior police officers which involves a change of rank to that of the above Superintendent of Police, for a period exceeding three months, shall be subject to the approval of a full Commission.

10

FIFTH SCHEDULE

Discipline

The functions of the Police Force Commission relating to discipline (including functions vested in a disciplinary authority and which have not been delegated elsewhere in this or any other Instrument of Delegation) under Article 140(1) of the Federal Constitution, or under any other written law, subsidiary legislation or administrative instructions of Government shall be exercised by the Inspector-General of Police, subject to the following provisos:-

20

Senior Police Officers

- (i) the power to award disciplinary punishment of dismissal, reduction in rank, stoppage or deferment of increment or to terminate the service of an officer on grounds of unsatisfactory work and conduct shall be exercised by:-

30

(a) the full Commission in respect of senior police officers of the rank of Assistant Superintendent of Police and above;

(b) the Inspector-General of Police in respect of senior police officers of the rank of Inspector of any grade;

40

Provided that:

the punishments awarded to senior

police officers in (b) above shall be reported to the full Commission irrespective of whether or not there was an appeal;

Exhibits

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.
(cont'd)

(ii) the power to award disciplinary punishment other than (i) above shall be exercised by:

10

(a) the full Commission in respect of senior police officers of any rank who are the substantive holders of designated posts;

(b) the Inspector-General of Police in respect of senior police officers of and above the rank of Assistant Superintendent of Police save those who are the substantive holders of designated posts;

20

(c) the Inspector-General of Police in respect of senior police officers of the rank of Inspector of any grade;

Junior Police Officers

(iii) the power to award disciplinary punishment of dismissal or reduction in rank may be exercised by a senior police officer of and above the rank of Senior Assistant Commissioner of Police or a Chief Police Officer, in respect of junior police officers;

30

(iv) the power to award disciplinary punishment other than dismissal or reduction in rank may be exercised by a senior police officer of and above the rank of Superintendent of Police or a Divisional Superintendent, in the case of Sabah and Sarawak, in respect of junior officers;

Constables

40

(v) the power to award disciplinary punishment of dismissal may be exercised by a senior police officer of

Exhibits

DIB
Translation
Police Force
Commission,
Instrument of
Delegation of
powers and
duties
18th August
1971.
(cont'd)

and above the rank of Senior
Assistant Commissioner or Police or a
Chief Police Officer, in respect of
constables;

- (vi) the power to award disciplinary
punishment other than dismissal may be
exercised by a senior police officer
of and above the rank of Assistant
Superintendent of Police or an Officer-
in-Charge of Police District, in
respect of constables; 10

All Ranks

- (vii) the power to interdict and suspend an
officer from duty, including other
functions relating to such interdiction
and suspension, shall be exercised by:
- (a) the Inspector-General of Police in
respect of senior police officers
of and above the rank of Assistant
Superintendent of Police; 20
- (b) a Senior Assistant Commissioner of
Police or a Chief Police Officer in
respect of senior police officers
of the rank of Inspector of any
grade, junior police officers and
constables;

Provided that:

the interdiction and suspension in
(a) above shall be reported
forthwith to the full Commission; 30

- (viii) the power to decide on questions
relating the legal aid or legal
representation in matters arising from
an officer's performance of public
duties, shall be exercised only by the
Secretary of the Commission;
- (xi) the power to decide on surcharge under
Section 18 of the Financial Procedure
Ordinance, 1957, with respect to
failure to collect, improper payment,
payment not duly vouched for, deficiency
or destruction of Federation money or
property shall be exercised by: 40

10

- (a) the full Commission in respect of senior police officers of all ranks;
- (b) the No: 1 Board of the States of Malaya in respect of junior police officers and constables in the States of Malaya;
- (c) the No: 1 Board of Sarawak in respect of junior police officers and constables in Sarawak;
- (d) the No: 1 Board of Sabah in respect of junior police officers and constables in Sabah;

Exhibits
 DIB
 Translation
 Police Force
 Commission,
 Instrument of
 Delegation of
 powers and
 duties
 18th August
 1971.
 (cont'd)

Appeals

20

(x) the appellate authorities in respect of disciplinary decisions in matters which have been delegated herein, shall be:-

- (a) the full Commission in respect of decisions of the No: 1 Boards, the Inspector-General of Police or the Secretary of the Commission;
- (b) the Inspector-General of Police in respect of decisions of police officers of and above the rank of Senior Assistant Commissioner of Police or a Chief Police Officer;
- (c) a police officer of and above the rank of Senior Assistant Commissioner of Police or a Chief Police Officer, in respect of decisions of police officers below the rank of Assistant Commissioner of Police.

30

EXHIBIT 5

Translation of Suspension Notice

5
 Translation of
 Suspension
 Notice
 20th December
 1971.

RF/31209.

20th December, 1971.

Exhibits

Encik Zainal b. Hashim,
Polis 31209

5

Translation
of Suspension
Notice
20th December
1971
(cont'd)

Through:
P.P.D.P.,
Kajang.

NOTICE OF SUSPENSION WITHOUT PAY

In connection with the letter from the
Headquarters RF/31209 dated 17th October, 1971, we
have found that you have been accused of an act at
the Lower Court Kajang on 16th December, 1971 under
Section 353 of the Penal Code and have been
convicted with bail amounting to \$500/= and 2 years
for good conduct under Section 173A (11)(b) of the
Criminal Code Procedure.

10

In accordance to this, you have thus been
suspended of duty without pay starting from 16.12.71.

(S.W. MOREIRA)
KETUA PEGAWAI POLIS,
SELANGOR.

I admit receiving the true copy of the notice
mentioned above.

20

Zainal 31209
.....

Handed over by me
on 22.12.1971.

Signature:
(ABDUL KAHAR BIN AHMAD)

Post: PEGAWAI PENJAGA DAERAH
POLIS KAJANG.

c.c. KPN'A'
MPB Selangor.
Kajang Report No. 339/71.

30

CERTIFIED TRUE COPY.

EXHIBIT 7

7
Translation
of Notice of
Dismissal
28th December
1971.

Translation of Notice of Dismissal

28th December 1971

Encik Zainal bin Hashim,
Police No: 31209

Exhibits

7

Translation
of Notice of
Dismissal
28th December
1971.
(cont'd)

Through:
PPDP., Kajang.

NOTICE OF DISMISSAL

10 I am to inform you that I have the
intention of taking an action to dismiss you from
the Malaysian Royal Police Force for having
accused of an act by the Lower Court, Kajang on
16.12.71 and have been convicted by issuing a bail
of \$500/= with 2 years assurance for good conduct
under Section 173(11)(b) of the Criminal Code
Procedure.

On account of that you are given the
opportunity to make any appeal on the above matter
in a period of 14 days starting from the date you
receive this letter.

Your appeal should be hand-written and
addressed to me.

20

(MOHD HANIFF BIN OMAR)
KETUA PEGAWAI POLIS
SELANGOR.

I admit receiving the true copy of the
Notice mentioned above.

ZAINAL PC 31209

Handed over by me: ABDUL KAHAR BIN AHMAD
on th December, 1971.

Signature:

ABDUL KAHAR BIN AHMAD

30

Post: PEGAWAI PENJAGA DAERAH
POLIS KAJANG.

c.c. KPN'A'
MPB Selangor

CERTIFIED TRUE COPY

9
Translation,
Letter,
Plaintiff to
Ketua Pegawai
Polis.
30th December
1971.

Translation of Letter, Plaintiff
to Ketua Pegawai Polis

Zainal bin Hashim,
PC. 31209,
Ibu Pejabat Polis,
Kajang.
30th December, 1971.

Tuan,

Ketua Pegawai Polis,
Selangor.

10

Through Proper Channel,
Tuan Pegawai Penjaga Daerah Polis,
Kajang.

Tuan,

Appeal for reinstatement
Your letter dated 28.12.71
refers.

With due respect, I would like to ask for
your pardon in the event that you may find this
letter improper.

20

2. Recently, I received a letter from your
Headquarters dated 28.12.71 and on reading the
letter I was greatly distressed. Particularly
about the statement pertaining to my dismissal.
This offence was heard at Kajang Court on 18.12.71
and I was ordered to execute a bond of \$500/= for
good behaviour for a term of two years under
section 173A(ii) (b) Criminal Procedure Code.

3. On 24.12.71 a letter was sent to your office
by my Counsel, Tuan Syed Hassan Aljefiri A.M.N.,
containing particulars in respect of the Court's
decision which is under Section 173A (ii) (b)
Criminal Procedure Code and the conviction was not
recorded. Therefore, my offence is not recorded
anywhere.

30

4. I am only a slave to Allah and bound to
commit some mistake, furthermore I am still young
and inexperienced. Now I promise and sincerely

swear that, with God's will, I will not repeat the same offence. Furthermore I am already advised by the PPDP Kajang to be more diligent and disciplined in facing future duties.

Exhibits

9

Translation
Letter,
Plaintiff to
Ketua Pegawai
Polis.
30th December
1971.
(cont'd)

5. My intention of writing this appeal on a white piece of paper is to indicate that my heart is as white and clean and with hope that you would have mercy and would consider humanely that I am having four school-going children and wife.

10 6. If it is fated that something unfortunate were to happen, the result would be a mishap to the life of my family which is already lacking in every respect.

7. With regards to the action taken against me, I refer the whole matter to you for your decision. I have full faith and hope that you could consider the matter, as this offence is not harmful I again beg for your good offices.

20 8. Although I have been in the Police Force for only a year, I have projected the image of the Police Force by arresting (4) robbers on 4.4.1970 who had succeeded in robbing the Merlin Hotel the sum of \$21,000/= and as a result of which I received a reward from KPP Selangor on 23.4.1970. I hope that you would take view of my good deeds.

9. In conclusion, I would like to ask for your pardon if there are words of mine which are crude in this letter.

30 I thank you for your anticipation and I salute you.

Yours sincerely,

sd. Zainal bin Hashim
PC. 31209.

CERTIFIED TRUE COPY.

EXHIBIT 11

Translation of Letter, Ketua
Pegawai Polis to Plaintiff

11

Translation of
Letter, Ketua
Pegawai Polis
to Plaintiff
20th January
1972.

Exhibits

11

Translation of
Letter, Ketua
Pegawai Polis
to Plaintiff
20th January
1972.
(cont'd)

Pejabat Ketua Pegawai
Polis,
Polis Di Raja Malaysia,
Selangor,
Kuala Lumpur.

20th January, 1972.

Encik Zainal bin Hashim,
PC. 31209.

Through:

Ketua Polis Daerah,
Kajang.

10

NOTICE OF DISMISSAL - P.C. 31209
ZAINAL BIN HASHIM

In furtherance to the letter of this Head
Quarters in the same serial dated 28th December,
1971, I am to inform that your appeal as dated 30th
December, 1971, has been received by this office.

2. Considering all aspects regarding the said
incident and also the content of your appeal, I
hereby make an order of 'dismissal' with effect from
16.12.71.

20

3. In the circumstances, you are given the
opportunity of appealing this matter to the Ketua
Polis Negara, Polis Di Raja Malaysia, Kuala Lumpur
within 10 days from the date of receipt of this
letter.

Sd. (S.W. Moreira)
F. Ketua Polis,
Selangor.

I acknowledge that I have received the copy
of the original of the above statement.

30

Sd. Zainal

Served by me sd. Illegible.
on 21.1.1972.

Signature: Sd. Illegible.
Rank : P.P.P.

c.c. KPN 'A'
MPB Selangor.

CERTIFIED TRUE COPY.

EXHIBIT 13

Exhibits

Translation of Letter, Plaintiff
to Ketua Polis Negara

13
Translation
of Letter,
Plaintiff to
Ketua Polis
Negara
22nd January
1972.

ZAINAL BIN HASHIM MM 31209
BALAI POLIS KAJANG
SELANGOR.

22hb. Januari, 1972.

10 Yang Amat Berhormat,
Tan Sri Ketua Polis Negara,
Polis Di Raja Malaysia,
Jalan Bukit Aman,
KUALA LUMPUR.

Through: Tuan K.D.P. Kajang.

APPEAL FOR REINSTATEMENT IN THE
POLICE FORCE

Tan Sri,

20 I, name as mentioned as above, with due
respect inform that I have received a letter from
Tuan Ketua Polis, Selangor RF/31209 dated 20th
January, 1972 which states that I have been
terminated from my appointment in the Royal
Malaysian Police 'sacked' with effect from 16.12.1971.

30 2. On receiving the decision I feel very sad and
full of regret because I never expect such a
decision. I do hereby beg for honourable Tan Sri to
reconsider the reinstatement of my post. This is
because my whole living is depending on the Police
Force. If it is fated that my application be
rejected, then my hope of living as a useful person
to the community in future will be fruitless. To
think of it, as a human beings and a slave to Allah,
it is not unusual for me to make a mistake. May be
this will teach me a lesson. And from today
onwards, I do declare to Tan Sri that I will never
commit any offence contrary to the Law and I will
be obedient in order to project up the image of the
Malaysian Police.

40 3. However, my good deeds in the police should
not left out where I have succeeded in projecting
up the image of the Police Force by arresting 4

Exhibits

13
Translation
of Letter,
Plaintiff to
Ketua Polis
Negara
22nd January
1972.
(cont'd)

Chinese youths who are responsible for the offence of robbery at Merlin Hotel which involved cash of \$21,000/= belonging to a Chinese contractor. On the arrest of these four male Chinese the money was recovered. As a result of my good deed I was given a gift of \$50/= by the Ketua Polis, Selangor so that my good deed be remembered by the community and also the Royal Malaysian Police.

4. I would like to state here about my personal particulars, i.e. I have been in the Royal Malaysian Police since 1.3.62 with a wife and four children, two of which are still schooling. 10

5. Prior to this letter, I have also sent a letter to honourable Tan Sri regarding the same matter dated 23rd December, 1971.

6. That is all that I have to say in this appeal to Honourable Tan Sri with the hope that you would kindly consider that I be reinstated in the Police Force which I love. Furthermore, I also salute you with millions of thanks and I beg for your apology if there is anything wrong with this letter. 20

Yours sincerely,

(ZAINAL BIN HASHIM) MM 31209
Balai Polis Kajang,
Selangor.

15
Translation
of decision
on Plaintiff's
Appeal
7th February
1972.

EXHIBIT 15

Translation of decision on Plaintiff's
Appeal

RF/31209

7th February 1972

Encik Zainal bin Hashim,
Ex-Police 31209

30

(Through: Chief of Police, Selangor)

APPEAL ON DISMISSAL

For your information, letters of appeal by you through Messrs. Aljeffri & Co. SHA/PME/118/71

dated 3.1.72 and from you dated 22.1.72 regarding the matter mentioned above, have been studied through and given tactful consideration by the Honourable Inspector General of Police himself.

Exhibits

15
Translation
of decision
on Plaintiff's
Appeal
7th February
1972.
(cont'd)

10

2. The Honourable IGP has decided from the facts given and from your record of service, that you are not reliable to continue your service and the penalty imposed upon you by the Chief Police of Selangor, is fair and precise to the complaints made against you.

3. On account of that, your appeal has been rejected and the penalty of dismissal from duty imposed upon you has been confirmed.

(OSMAN BIN AWAL)
b.p. KETUA POLIS NEGARA,
POLIS DI RAJA MALAYSIA.

EXHIBIT 22

Letter, G.T. Rajan & Co. to Head-
quarters, Royal Malaysia Police.

22
Letter, G.T.
Rajan & Co.
to Head-
quarters,
Royal Malaysia
Police
14th June 1972.

20

G.T. RAJAN & CO.,
ADVOCATES & SOLICITORS,
No. 14 Jalan Station,
K L A N G.

14th June, 1972.

Your ref: RF/31209

Our ref: GTR/TMY/295/72

The Headquarters,
The Royal Malaysia Police,
KUALA LUMPUR.

30

Dear Sir,

re: RF/31209 - MM31209
Zainal bin Hashim.

We act for Encik Zainal bin Hashim MM 31209.

We are given to understand that our client's service has been terminated.

Exhibits

22
Letter, G.T.
Rajan & Co.
to Head-
quarters,
Royal Malaysia
Police
14th June 1972.
(cont'd)

We shall be pleased if you will provide us with a copy of his letter of appointment in the Police Force and a copy of your letter sent to our client on the 20th day of January, 1972, RF/31209.

Your co-operation in this matter would be much appreciated.

Thank you.

Yours faithfully,
Sgd. G.T. RAJAN & CO.,

EXHIBIT 23

10

23
Letter, Ketua
Polis Negara
to G.T. Rajan
& Co.
19th July 1972.

Letter, Ketua Polis Negara to G.T.
Rajan & Co.

RF/31209

IBU PEJABAT
POLIS DI RAJA MALAYSIA
KUALA LUMPUR.

HEADQUARTERS,
THE ROYAL MALAYSIA POLICE,
KUALA LUMPUR.

19hb. Julai, 1972.

Messrs. G.T. Rajan & Co.,
Advocates & Solicitors,
No. 14 Jalan Station,
Klang,
SELANGOR.

20

Tuan,

re: Ex-P.C. 31209 Zainal bin Hashim

With reference to your letter GTR/TMY/295/72 dated 14th June, 1972, I am directing to forward herewith a copy of the portion entitled 'Agreement for Service' as per page 1 in the Agreement Sheet and Service Record (Police 1 - Rev. 1/55) of ex-P.C. Zainal b. Hashim as evidence of offer and acceptance of offer of appointment in the Police Force and a copy of letter ref: RF/31209 dated 20th January, 1972 from the Chief Police Officer, Selangor addressed to ex-P.C. Zainal bin Hashim.

30

Saya yang menurut perintah,

Sgd.

(RAHIM M. NOOR)

b.p. Ketua Polis Negara,
Polis Di Raja Malaysia.

Exhibits

23

Letter, Ketua
Polis Negara
to G.T. Rajan
& Co.
19th July 1972.
(cont'd)

EXHIBIT 24

Letter, G.T. Rajan & Co. to Ketua
Polis Negara

24

Letter, G.T.
Rajan & Co. to
Ketua Polis
Negara
21st July 1972.

10

G.T. RAJAN & CO.,
Advocates & Solicitors,
No. 14 Jalan Station,
KLANG.

21st July, 1972.

Your ref: RF/31209

A.R. REGISTERED

Our ref: GTR/GHN/295/72.

Ketua Polis Negara,
Headquarters,
The Royal Malaysia Police,
KUALA LUMPUR.

20

Dear Sir,

re: Wrongful Dismissal of Encik
Zainal bin Hashim MM 31209

We act for Encik Zainal Bin Hashim, MM.31209
of 82-2, Jalan Timor, Kajang, Selangor.

Our client a police constable in your service
informs us that he was dismissed from service as
from 16th day of December, 1971.

30

On perusal of his documents and from the
manner of his dismissal we are of the opinion that
his dismissal by the C.P.O. Selangor is irregular and
wrong in law.

The C.P.O. Selangor has no power to dismiss
our client from service and furthermore our client
was denied natural justice at all stages leading to
his dismissal.

Exhibits

24
Letter, G.T.
Rajan & Co. to
Ketua Polis
Negara
21st July 1972.
(cont'd)

TAKE NOTICE within 14 days as from date hereof if you fail to reinstate our client and pay his salary as from 16th day of December, 1971, our instructions are to institute legal proceedings without further reference to you.

Yours faithfully,

Sgd: G.T. RAJAN & CO.

c.c.

1. Attorney General, KL.
2. to client.

10

25
Letter, Ketua
Polis Negara
to G.T. Rajan
& Co.
14th August
1972.

EXHIBIT 25

Letter, Ketua Polis Negara to G.T.
Rajan & Co.

RF/31209

IBU PEJABAT
POLIS DI RAJA MALAYSIA
KUALA LUMPUR.

HEADQUARTERS,
THE ROYAL MALAYSIA
POLICE,
KUALA LUMPUR.

20

24hb. Ogos, 1972.

Messrs. G.T. Rajan & Co.
Advocates & Solicitors,
No. 14 Jalan Station,
Klang.
SELANGOR.

Tuan,

Ex-PC 31209 Zainal bin Hashim

I am directed to refer to your letter GTR/GHN/295/72 dated 21st July concerning the above subject and to inform you that your client, Encik Zainal bin Hashim, Ex-PC 31209, was properly dismissed in accordance with the law.

30

2. As such, he is no longer a member of the Royal Malaysia Police. Please, therefore, be informed that the Inspector-General of Police does not intend to reinstate your client.

Saya yang menurut perintah,

Sgd.

(RAHIM M. NOOR)
b.p. Ketua Polis Negara,
Polis Di Raja Malaysia.

Exhibits

25

Letter, Ketua
Polis Negara
to G.T. Rajan
& Co.

14th August
1972.

(cont'd)

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No. 6 of
1978

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

ZAINAL bin HASHIM
(Plaintiff)

Appellant

- and -

THE GOVERNMENT OF MALAYSIA
(Defendant)

Respondent

RECORD OF PROCEEDINGS

PHILIP CONWAY THOMAS & CO.,
61 Catherine Place,
London SW1E 6HB.
Solicitors for the Appellant.

STEPHENSON HARWOOD,
Saddlers' Hall,
Gutter Lane,
London EC2V 6BS.
Solicitors for the Respondent.