

10/1962

IN THE PRIVY COUNCIL

No. 9 of 1961

ON APPEAL FROM THE COURT OF APPEAL AT KUALA LUMPUR

SUPREME COURT OF THE FEDERATION OF MALAYA

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
20 MAR 1963
25 RUSSELL SQUARE
LONDON, W.C.1.

B E T W E E N :

B. SURINDER SINGH KANDA Appellant
(Plaintiff)

- and -

THE GOVERNMENT OF THE Respondent
FEDERATION OF MALAYA
(Defendant)

68223

10

CASE FOR THE RESPONDENT

RECORD

1. This is an Appeal from the Order of the Court of Appeal of the Supreme Court of the Federation of Malaya dated the 9th December 1960 allowing the appeal of the present Respondent and setting aside the judgment of Rigby J. in the High Court at Penang pursuant to which the present Appellant was awarded the following relief by an Order dated the 24th March 1960:-

P.191-2

P.99

P.120

20

(i) A declaration that the dismissal of the Appellant from the Federation of Malaya Police Force purported to be effected by one W.L.R. Carbonell, the Commissioner of Police of the Federation of Malaya, on the 7th July 1958 was void, inoperative and of no effect, and that he was still a member of the said Force.

30

(ii) That the Respondent should pay to the Appellant all arrears of pay, allowances and other emoluments due and owing to him as an Inspector in the said Force from the 7th July 1958.

P.121

(iii) That the Senior Assistant Registrar should take an account of what was due to the

Appellant in respect of his salary and emoluments due to him as from the 7th July 1958 to the date of payment.

(iv) That the Respondent should pay to the Appellant the sum found due to the Appellant by the Senior Assistant Registrar.

(v) That the costs be taxed and paid by the Respondent to the Appellant.

2. The main issues in the case are:-

(i) Whether the power to appoint and dismiss a superior police officer, which was conferred under the Police Ordinance, 1952 upon the Commissioner of Police, remained vested in him after Merdeka Day (31st August 1957) when the Federal Constitution came into force, or whether the relevant provisions of that Constitution are to be construed as having divested the Commissioner of that power and as having conferred it upon the Police Service Commission. 10

(ii) Whether or not in the course of disciplinary proceedings commenced against the Appellant at Penang on the 16th April 1958 resulting in his dismissal on the 7th July 1958 the Appellant was given a reasonable opportunity of being heard in compliance with Article 135(2) of the Federal Constitution. 20

3. The Police Ordinance, 1952 provides:-

Sec. 2. - "In this Ordinance unless the context otherwise requires:-

"superior police officer" means an Inspector of any grade other than a Sub-Inspector, and includes a Police Lieutenant". 30

Sec. 9(1) -

"A superior police officer may be appointed or promoted within that grade by the Commissioner".

Sec.45(1) -

"Any superior police officer, subordinate police officer or constable who is found guilty, by an

officer authorised in that behalf, of any offence against discipline shall, subject to Police Regulations, be liable to such punishment as is set out in the First Schedule to this Ordinance".

First Schedule -

"POLICE OFFICERS TO WHOM PUNISHMENT MAY BE AWARDED

	Maximum Punishment	To Superior Police Officer
10	1. Dismissal may be awarded by:-	Commissioner of Police
	4. Caution, reprimand or severe reprimand	Commanding Officer."

Sec. 47 -

"Every conviction had and punishment imposed under Section 45 of this Ordinance shall be subject to appeal and review in such manner and to such extent as may be prescribed by Police Regulations;"

20 4. The Police Regulations, 1952 made pursuant to the powers in that behalf conferred upon the Chief Secretary by the Police Ordinance, 1952 provide:-

Reg.2 (a) - "Any superior police officer, subordinate police officer or constable who -

- 30 (8) wilfully disobeys any lawful order or command, whether written or otherwise, or without good cause omits or neglects to carry out promptly any such order or command or perform any duty;
- (44) fails to report any matter which it is his duty to report or fails

to disclose any evidence which he or any other person can, to his knowledge, give for or against any person accused of a criminal offence;

(65) is guilty of any neglect of duty, or of any act, conduct, disorder or neglect to the prejudice of good order and discipline, not herein before specified;

shall be guilty of an offence against discipline." 10

5. The Federal Constitution provides:-

Art. 4(1) - "This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void."

Art.132(1) - "For the purposes of this Constitution, the public services are - 20
(d) the police service"

Art.135(1) - "No member of any of the services mentioned in paragraphs (b) to (g) of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank."

(2) - "No member of such a service as 30
aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard."

Art.140(1) - "There shall be a Police Service Commission, whose jurisdiction shall, subject to Article 144, extend to all persons who are members of the police service."

Art.144(1) - "Subject to the provisions of any existing law and to the provisions of

this Constitution, it shall be the duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends."

10 Art.160(2) - "In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:-

"Existing law" means any law in operation in the Federation or any part thereof immediately before Merdeka Day;

"Merdeka Day" means the thirty-first day of August, nineteen hundred and fifty-seven."

20 Art.162(1) - "Subject to the following provisions of this Article and Article 163, the existing laws shall, until repealed by the authority having power to do so under this Constitution, continue in force on and after Merdeka Day, with such modifications as may be made therein under this Article and subject to any amendments made by Federal or State law."

30 (4) - "The Yang di-Pertuan Agong may, within a period of two years beginning with Merdeka Day, by order make such modifications in any existing law, other than the Constitution of any State, as appear to him necessary or expedient for the purpose of bringing the provisions of that law into accord with the provisions of this Constitution;"

40 (6) - "Any court or tribunal applying the provision of any existing law which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications as may be necessary to bring it into accord with

RECORD

the provisions of this Constitution."

(7) - "In this Article "modification" includes amendment, adaptation and repeal."

Art.176(1) - "Subject to the provisions of this Constitution and any existing law, all persons serving in connection with the affairs of the Federation immediately before Merdeka Day shall continue to have the same powers and to exercise the same functions on Merdeka Day on the same terms and conditions as were applicable to them immediately before that day."

(2) - "This Article does not apply to the High Commissioner or the Chief Secretary".

P.100
Pp.104-113
6. The facts of the case are fully set out in paragraph 3 and paragraphs 6 to 14 of the judgment of Rigby J. These facts are summarised in paragraphs 7 to 17 of this Case.

P.100
1.10
7. On the 1st June 1953 the Appellant was confirmed in the substantive rank of Police Inspector in the Federation of Malaya Police Force and he retained that rank until the date of his dismissal on the 7th July 1958. He was therefore a "superior police officer" at all material times for the purposes of the Police Ordinance, 1952.

P.104
1.24
8. In September 1957 two persons, who had allegedly been trapped by the police with the assistance of two informers, were unsuccessfully prosecuted in the Supreme Court at Penang on charges involving possession of forged lottery tickets contrary to section 474 of the Penal Code. As the officer in charge of the Special Crime Branch at Penang the Appellant had played an active part in the initial stages of the case and he had taken charge of the investigation after the trap had been sprung.

P.105 1.49
P.106
1.1
9. The two informers and at least two police officers committed perjury at the trial and as a result of the failure of the prosecution a Board of Enquiry comprising three senior police officers was convened to enquire into several aspects of the case. The Board which was presided over by Mr. D.W. Yates an

P.231
1.22

Acting Senior Assistant Commissioner at C.I.D. Headquarters Kuala Lumpur sat for a number of days during December 1957 and January 1958 and, after recording the unsworn statements of 18 witnesses including the Appellant and the two informers, it produced an exhaustive Report of its findings in which it dealt inter alia with the part played by each police officer concerned with the case.

P.232 1.30
P.245

10 10. The Board's findings included adverse comment on the part played in the case by the Appellant who was described as the "villain of the piece". In the Board's opinion he had not only suborned the police witnesses in order to simplify the case and cut short the evidence but had also suborned the two police informers with the motive of dishonestly strengthening the case against both accused in order to ensure a conviction. At the end of their findings concerning the Appellant the Board concluded that he was ambitious and unscrupulous and prepared to enhance his reputation as a successful investigator by going to any lengths including the fabrication of false evidence.

P.245 1.6

P.245 1.10

P.245 1.18

P.247 1.27

30 11. Following upon the findings of the Board Mr. H. W. Strathairn (hereinafter called "the Adjudicating Officer") who was then acting as Chief Police Officer, Penang was instructed by a letter dated the 12th March 1958, and signed by the said Mr. D.W. Yates for the Commissioner of Police, that the Deputy Commissioner wished him to act as adjudicating officer in a defaulter case against the Appellant. The said letter contained instructions regarding the conduct of the proposed disciplinary proceedings and was accompanied by the original copy of the Board of Enquiry papers and a specimen charge drafted by Mr. Yates after consultation with the Deputy Commissioner and the Assistant Commissioner Personnel. The Adjudicating Officer was instructed that the specimen charge was only a guide which he could amend at his discretion and that in any event the Deputy Commissioner would like him to discuss it with the Deputy Public Prosecutor before the case was heard.

P.227

40

RECORD

P.198
P.200

12. In the event the specimen charge was not preferred against the Appellant and in the ensuing disciplinary proceedings which began on the 16th April 1958 the alternative charges preferred against him were those set out fully in a letter addressed to him by the Adjudicating Officer on the 1st April 1958 and a second charge of less gravity which was set out fully in the Police Defaulter Report marked "Exhibit A 45" in the record of these proceedings. Briefly - 10

(a) The alternative charges against the Appellant were:-

(i) That by failing to disclose particularised items of evidence which he knew could be given for the two accused persons in the said prosecution he contravened Regulation 2(a)(44) of the Police Regulations, 1952 and thereby committed an offence punishable under section 45(1) of the Police Ordinance, 1952. 20

Alternatively

(ii) That he had been guilty of conduct to the prejudice of good order and discipline by submitting an Investigation Paper to his superior officer which he knew to be false in respect of particularised items of evidence, thereby contravening Regulation 2(a)(65) of the Police Regulations, 1952 and committing an offence punishable under section 45(1) of the Police Ordinance, 1952. 30

(b) The second charge against the Appellant was that by failing to carry out the instruction of a superior officer to subpoena a police witness to attend a Court hearing he had contravened Regulation 2(a)(8) of the Police Regulations, 1952 and thereby committed an offence punishable under section 45(1) of the Police Ordinance, 1952. 40

P.226 1.21

13. On the 10th May 1958 the Adjudicating Officer informed the Appellant that the "original charge" was proved and accordingly found him guilty.

- When asked if he wished to say anything the Appellant declared his innocence and referred to his past record and high integrity. The Adjudicating Officer did not expressly inform the Appellant that he proposed to recommend his dismissal but at the trial of the action in the High Court at Penang Rigby J. accepted the evidence of the Adjudicating Officer to the effect that the Adjudicating Officer had made his intention clear to the Appellant by informing him that he proposed to send the case to be dealt with by the Commissioner of Police since he did not himself have the necessary powers to take the action he thought fitting in such a serious case.
- 10
- P.111 1.10
P.68 1.4
14. On the 23rd May 1958 the Adjudicating Officer sent the records of the proceedings to the Commissioner of Police. At paragraph 4 of a covering letter of the same date he recommended that the Appellant be dismissed from the Police Force on the original charge in Defaulter Report 4/58 and reported that he had awarded a severe reprimand in respect of the charge against the Appellant in Default Report 5/58.
- 20
- P.218 1.18
Pp.210-11
P.212
15. On the 5th June 1958 Mr. Yates sent a letter to the Adjudicating Officer giving him further instructions on behalf of the Deputy Commissioner of Police including a direction to record the evidence of the two persons who had been the accused in the unsuccessful prosecution. This additional evidence was duly recorded by the Adjudicating Officer who returned the relevant documents to the Commissioner of Police on the 14th June 1958.
- 30
- P.222
P.225 1.3
P.225 1.25
16. On the 27th June 1958 the Commissioner of Police approved the punishment of dismissal from the Force proposed by the Adjudicating Officer and endorsed the appropriate Defaulter Report relating to the original charge to the effect that the order of dismissal was to operate from the date when the Appellant was notified thereof.
- 40
- P.211 1.30

In due course the Appellant was duly notified of the Commissioner's order of

RECORD

- P.202 dismissal by a letter dated the 7th July 1958 addressed to him at Ipoh by the Chief Police Officer of the State of Perak.
- P.204 1.12 17. By a letter dated the 14th July 1958 addressed to the Minister for Defence and the Police Service Commission through the Commissioner of Police the Appellant appealed against his conviction and dismissal. In the said letter the Appellant explained that he was addressing his appeal to two authorities because he was not sure who had the power to entertain it. By a letter dated the 29th July 1959, from the Secretary of the Police Service Commission, the Appellant was informed that the Minister for Defence had considered his appeal and that, after careful consideration of the matter, the Minister had decided to reject the appeal. 10
- A204 of Index. See separate copy.
- P.160 1.22 18. It does not appear from the record of the proceedings that either Rigby J. or the Court of Appeal were required to decide any issue as to who was the proper authority to entertain the Appellant's said appeal but, in the course of his judgment, Thomson C.J. observed that from the 31st August 1957 until the 23rd August 1959 the Minister for Defence had been the proper appellate authority. 20
- P.1 19. The Appellant's writ instituting the proceedings in the High Court at Penang was issued on the 1st October 1959 and the hearing of the action took place before Rigby J. between the 9th and the 12th December 1959 and on the 12th, 13th and the 16th January 1960. 30
- P.120 20. In deciding in favour of the Appellant and making the order dated the 24th March 1960 referred to in paragraph 1 of this Case, the reasoning of Rigby J. was briefly as follows:-
- P.101 1.35 (i) The words "subject to the provisions of any existing law and to the provisions of this Constitution" (the underlining is his) must be read as a whole and the effect of Part X of the Constitution was inter alia to place the control of the appointment promotion and dismissal of persons
- P.101 1.40 40

in the Public Services in the various Commissions specifically appointed and entrusted with such functions.

(ii) The statutory powers of the Commissioner of Police to appoint and dismiss superior police officers were impliedly revoked by Article 144 which had conferred those powers on the Police Service Commission and, whilst the relevant sections of the Police Ordinance had not been specifically amended by legislation, they must to that extent be regarded as "modified" or repealed pursuant to Article 162(6). P.102 1.30
P.102 1.15
P.102 1.37

(iii) Reading Article 144(1) in conjunction with Article 135(1) at the time of the Appellant's dismissal the power to dismiss him was vested in the Police Service Commission and the Commissioner of Police, as an authority subordinate to the Commission, had no power to dismiss him. P.103 1.33
P.103 1.40

21. Having decided that the Commissioner of Police had no power to dismiss the Appellant who was accordingly in his judgment entitled to the declaration and consequential relief sought in the Statement of Claim, Rigby J. went on to consider the alternative contention of the Appellant that his dismissal was not effective because, contrary to Article 135(2), he had not been given a reasonable opportunity of being heard. P.104 1.3
P.3
P.104 1.10

22. On this point Rigby J. held:- P.116 1.29

(i) That it was contrary to the fundamental principles of justice governing a fair trial that the Adjudicating Officer who conducted the disciplinary proceedings against the Appellant should have had before him the Report of the Board of Enquiry which was wholly adverse to the Appellant; and P.117 1.3

(ii) That the fact that the Appellant had not been furnished with a copy of the Board's findings amounted to a failure to afford

RECORD

him a reasonable opportunity of being heard in answer to the charge against him resulting in his dismissal.

After giving the above reasons for his judgment on this point Rigby J. made the following observation:-

- P.117 1.23 "I would only add that, in view of the very serious Findings by the Board of Inquiry and its clear conclusions that the Plaintiff was a thoroughly unscrupulous Police Officer and, by necessary implication, wholly unfit to remain a member of the Federation of Malaya Police Force, it is with the greatest possible regret that I have arrived at my conclusions in this case." 10
- P.122 23. The Respondent appealed against the judgment of Rigby J. to the Court of Appeal on the grounds that the learned Judge had been wrong in law in:-
- P.123 1.37 (i) Holding that the dismissal of the Appellant by the Commissioner of Police was void and inoperative on the ground that, by reason of the provisions of Articles 135, 144 and 162 of the Federal Constitution, the Commissioner had no power to dismiss the Appellant at the relevant time. 20
- P.124 1.1 (ii) Holding that the furnishing to the said Adjudicating Officer of a copy of the said Findings of the said Board, coupled with the fact that no such copy was furnished to the Appellant, constituted a failure to afford to the Respondent a reasonable opportunity of being heard in compliance with the provisions of Article 135(2) of the Federal Constitution. 30
- P.124 1.12 (iii) Making a declaration that the Appellant remained a member of the Police Force after the institution of the suit.
- (iv) Ordering an account and payment to the Appellant of salary and emoluments due to him as an Inspector of the Federation Police Force. 40

24. The Respondent's appeal was heard by the Court of Appeal (Thomson C.J., Hill J.A., and Neal J.) at Kuala Lumpur on the 22nd and 23rd August 1960 and in the course of the proceedings certain written submissions on the Respondent's behalf were handed to the Court and to Counsel for the Appellant. The Respondent has caused certified copies to be filed and proposes with leave to refer to them at the hearing of this Appeal. On the 9th December 1960 the Court, by a majority of the Judges sitting (Thomson C.J. and Hill J.A.; Neal J. dissenting), allowed the appeal with costs and set aside the whole of the judgment of Rigby J.
25. The majority (consisting of Thomson C.J. and Hill J.A.) held inter alia that at the material time after Merdeka Day the Commissioner of Police had power to dismiss the Appellant.
26. Citing Smith -v- London Transport Executive (1951) A.C.555 per Lord Simonds at pp565 and 569 Thomson C.J. considered that the words "Subject to the provisions of any existing law and to the provisions of this Constitution" occurring in Article 144(1) limited the powers of the Commission and did not merely mean that these powers were to be exercised in accordance with any procedural requirements of the existing laws or of the Constitution. In his judgment these words envisage that the Commission's powers were to be limited by the provisions of the existing law which were not the same as the provisions of the Constitution. Moreover, if the Court were to modify the relevant provisions of the Police Ordinance under Article 162(6) it could only do so by making them identical with the corresponding provisions of the Constitution. The effect would in his judgment be to render the reference in Article 144(1) to the provisions of the existing law meaningless and a piece of surplusage.
27. Hill J.A. applied substantially the same reasoning in arriving at the same conclusion as Thomson C.J. on this point but he also observed that the arguments put forward by the Attorney-General on behalf of the Respondent seemed to be eminently reasonable in relation to Article 176(1) whereby the

P.189-90

See separate copy.

P.168 1.17

P.183 1.25

P.163 1.8

P.167 1.32

P.167 1.40

P.182 1.1

P.183 1.39

P.182 1.26

P.183 1.11

powers of the Commissioner of Police were continued on Merdeka Day.

P.147 1.17

28. Neal J. in a dissenting judgment held that the words "subject to existing law"

(which words it is apprehended were intended to be a reference to the words "Subject to the provisions of any existing law" occurring in

P.140 1.12

Article 144(1)) did not impose a limitation of jurisdiction, which he considered to be unqualified in the case of the Police Commission, but merely required the Commission to exercise its

10

P.147 1.21

jurisdiction within the limits of the laws existing at Merdeka Day. In his judgment Rigby J.

P.150 1.5

was right in holding that the Constitution had given the power to appoint and to dismiss police officers to the Commission to the exclusion of the prior existing powers of the Commissioner of

P.150 1.41

Police. Even if he were wrong in interpreting the Constitution in the above manner Neal J. considered that the application of Article 162(6)

20

P.151 1.1

by the Courts had become necessary to give effect to Article 140 which was a permanent provision of the Constitution.

P.152 1.6

Accordingly he would have allowed the appeal to the extent of confining the operation of the declaration made by Rigby J. to the date the suit was filed.

29. The Court of Appeal was unanimous in holding that Rigby J. had been wrong in deciding that the furnishing to the Adjudicating Officer of a copy of the findings of the Board of

30

Enquiry coupled with the fact that no such copy was furnished to the Appellant amounted to a denial of natural justice and to a failure to afford the Appellant a reasonable opportunity of being heard pursuant to Article 135(2) of the Constitution.

P.133 1.3

30. With reference to the question of bias in relation to the denial of natural justice found by Rigby J. to have occurred:-

40

P.133 1.44

(a) Neal J. after citing dicta from the speech of Lord Thankerton in Franklin -v- Minister of Town and Country Planning (1948) A.C.87 at pp.103-105 concluded that "there

- must be an allegation of bias by the Plaintiff/
Respondent supported by either evidence of bias
or evidence from which an inference in the terms
of section 3 of the Evidence Ordinance can be
inferred. He then observed that the question of
bias appeared from the record to have been raised
for the first time by the trial judge in his
judgment but that the record disclosed no
allegation by the Appellant that the Adjudicating
Officer was biased by having read the findings
of the Board of Enquiry.
- 10
- This fact, coupled with the fact that the
Adjudicating Officer had declined to call two
witnesses whose evidence was unduly prejudicial
to the Appellant led Neal J. to conclude that no
bias had been proved nor was any bias to be
assumed on the part of the Adjudicating Officer.
- (b) Hill J.A. applied the same reasoning
as Neal J. In his judgment prejudice on the
part of the Adjudicating Officer was a bare
possibility only and could not be irresistibly
inferred from the circumstances.
- 20
- (c) Thomson C.J. concurred with the
reasoning of Neal J. and Hill J.A. on this
point.
31. With reference to the fact that the
Appellant was not furnished with a copy of the
findings of the Board of Enquiry:-
- (a) Thomson C.J. rejected the proposition
that the findings of the Board were something
the Appellant should have had prior to the
disciplinary proceedings in order fully to
appreciate the case against him and the case
which he had to meet and said "To anyone with
his general police experience and with his
intimate knowledge of the whole lottery tickets
affair the charges themselves must have conveyed
to him the view regarding himself which the Board
of Enquiry had formed."
- 30
- (b) Hill J.A. also observed that the
Appellant knew the charges against him were
the result of investigations of the Board of
Enquiry and went on to say "Had it been necessary
- 40

P.134 1.5

P.134 1.18

P.136 1.18

P.185 1.12
1.24

P.187 1.45

P.170 1.20
P.175 1.32

P.172 1.20

P.173 1.3

P.186 1.7

RECORD

for this astute officer to know the findings of the Board for the purposes of his defence he could have asked for them."

P.186 1.9 In this connection, whilst Hill J.A. seems to have thought that the Appellant did not ask for a copy of the Board's findings, Thomson C.J. seems to have thought that he did do so. The Respondent will contend that on the face of the record of the proceedings the Appellant did not apply for a copy of the findings of the Board. 10

(c) The judgment of Neal J. does not touch upon this matter.

32. As they had decided to allow the Respondent's appeal on grounds (i) and (ii) set out in paragraph 23 of this Case Thomson C.J. and Hill J.A. did not deal with grounds (iii) and (iv) of the Respondent's grounds of appeal which are set out as aforesaid.

P.152 1.6 In view of his dissenting judgment Neal J. would have modified the trial judge's declaration in the manner mentioned at the end of paragraph 28 of this Case and would have ordered a stay, pending a further order of the Court of Appeal, of that part of the trial Judge's order which ordered the Registrar to take an account of what was due to the Appellant in respect of his salary and all other emoluments found to be due to him. 20

P.152 1.12

P.121 1.3

Pp.193-4 33. On the 7th February 1961 the Appellant was by Order of the Court of Appeal granted final leave to appeal to His Majesty the Yang di-Pertuan Agong from the said judgment of the Court of Appeal and the said appeal to His Majesty the Yang di-Pertuan Agong is accordingly referred to the Judicial Committee of Her Majesty's Privy Council for hearing pursuant to Article 131 of the Federal Constitution and Article 2(1) of the Federation of Malaya (Appeals to Privy Council) Order in Council, 1958 (S.I.158 No.426) 30

34. On behalf of the Respondent it will be contended - 40

(A) that the decision of the Court of Appeal

is right and should be upheld; or, in the alternative

- (B) that if, contrary to the aforesaid contention, the dismissal of the Appellant was inoperative then the said declaration made by Rigby J. that the Appellant was still a member of the Force and the order of the said Judge that the Respondent should, after account taken, pay to the Appellant all arrears of pay allowances and other emoluments due to him from the 7th July 1958 to the date of payment, ought not to be restored
- 10 P.120 1.23
- 10 P.121 1.11

for the following among other

R E A S O N S

As to (A)

- (1) Because on the 27th June 1958 when the Commissioner of Police, Federation of Malaya, ordered the dismissal of the Appellant from the Federation of Malaya Police Force and on the 7th July 1958 when his order of dismissal took effect:-
- 20
- (a) the necessary powers in that behalf were vested in him under section 45(1) read together with the First Schedule to the Police Ordinance, 1952; and
- (b) the said provisions of the said Ordinance which were in operation immediately before Merdeka Day were continued in force as "existing law" by virtue of Article 162(1) of the Federal Constitution and had not at any material time been amended or repealed by any federal law.
- 30 (2) Because the jurisdiction extending to all members of the police service conferred upon the Police Service Commission by Article 140 of the Federal Constitution was conferred subject to Article 144 which specified the functions of the said Commission but on terms expressly limiting those functions inter alia by the provisions of any existing law and thereby reserving the said powers of the Commissioner of Police under the said provisions of the Police Ordinance, 1952.
- 40 (3) Because on the 27th June and the 7th July 1958 the Commissioner of Police was also empowered to appoint a superior police officer by virtue of

RECORD

section 9(1) of the Police Ordinance, 1952 which continued in force as "existing law" for the reasons aforesaid so that the dismissal of the Appellant was not contrary to the provisions of Article 135(1) of the Federal Constitution.

(4) Because in the premises and in the absence of any order under Article 162(4) of the Federal Constitution modifying the same the relevant provisions of the Police Ordinance, 1952 were at all material times in accord with the provisions of the Constitution and did not therefore require to be applied at any such times with any modification pursuant to Article 162(6) thereof. 10

(5) Because the reasons given by the majority of the Court of Appeal for their judgment that at all material times the Commissioner of Police had power to dismiss the Appellant were right.

(6) Because the reasons given by Rigby J. at the trial and by Neal J. in the Court of Appeal for deciding that the Commissioner of Police did not have the power to dismiss the Appellant were wrong. 20

(7) Because the Appellant was given a reasonable opportunity of being heard in accordance with Article 135(2) of the Federal Constitution and in compliance with the Police Regulations, 1952.

(8) Because the Appellant never demanded a copy of the findings of the Board of Enquiry and cannot therefore be heard to say that he was embarrassed in preparing his defence to the charges preferred against him in the disciplinary proceedings before the Adjudicating Officer. 30

P.3 1.20
P.9

(8) Because the Appellant did not at any time allege in his Statement of Claim or in the Further and Better Particulars thereto that the failure to furnish him with a copy of the findings of the Board of Enquiry was the ground or one of the grounds for his contention at paragraph 13(b) of his Statement of Claim that he had not been given a reasonable opportunity of being heard pursuant to Article 135(2) of the Federal Constitution.

P.7 1.40

(10) Because the Appellant was not called

upon in the disciplinary proceedings before the Adjudicating Officer to answer the findings of the Board of Enquiry but only the charges preferred against him.

(11) Because, in so far as the findings of the Board of Enquiry were relevant to the charges preferred against the Appellant the terms of those charges sufficiently reflected the findings of the Board in relation to him.

10 (12) Because the Appellant did not at any time aver either in his pleadings or in his evidence that the Adjudicating Officer was prejudiced or biased or alternatively that he must be assumed to be so prejudiced or biased against the Appellant by virtue of having read and had in his possession the findings of the Board of Enquiry.

20 (13) Because the evidence adduced at the trial of the suit disclosed that the Adjudicating Officer conducted the disciplinary proceedings in an impartial manner and declined, until ordered to do so by a superior officer, to call two witnesses whose evidence was highly prejudicial to the Appellant.

(14) Because no evidence, or alternatively no sufficient evidence, was adduced to give rise in law to the necessary inference that the Adjudicating Officer must be assumed to have been biased against the Appellant.

30 (15) Because the reasons given in the judgment of all the members of the Court of Appeal that the manner of the Appellant's dismissal contravened neither Article 135(2) of the Federal Constitution nor the principles of natural justice, were right.

40 (16) Because the reasons given in the judgment of Rigby J. for holding that the fact that a copy of the findings of the Board of Enquiry was furnished to the Adjudicating Officer coupled with the fact that no such copy was furnished to the Appellant amounted to both a denial of natural justice and a contravention of Article 135(2) of the Federal Constitution, were wrong.

RECORD

As to (B)

(1) Because Rigby J. was in any event wrong in law in purporting to declare that the Appellant remained a member of the Force without confining the operation of such declaration to the date of the institution of the suit.

(2) Because the judgment of Neal J. in the Court of Appeal on this point, referred to at the end of paragraph 28 of this Case, was right.

(3) Because Rigby J. was in any event wrong in law in purporting to order the Respondent to account to and pay the Appellant salary and other allowances and emoluments due to him.

10

(4) Because the Appellant as a member of one of the public services could not sue for his remuneration in a court of law.

(5) Because the Order of the Court of Appeal now appealed from is right.

SETTLED

BLEDISLOE

P.G. CLOUGH

Lincoln's Inn,