

IN THE PRIVY COUNCIL

26/1962  
No. 8 of 1961

ON APPEAL

FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N :

JEROME FRANCIS (Plaintiff) Appellant

-- and --

THE MUNICIPAL COUNCILLORS OF  
KUALA LUMPUR (Defendants) Respondents

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

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CASE FOR THE RESPONDENTS  
\_\_\_\_\_

68218

MESSRS. C. GROBEL, SON & CO.,  
4 New Court,  
Lincoln's Inn,  
W.C.2.

Solicitors for the Respondents.

ON APPEAL

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CASE FOR THE RESPONDENTS

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1. This is an Appeal from a Judgment and Order of the Court of Appeal of the Supreme Court of the Federation of Malaya dated the 30th day of May 1960 when by a majority decision (Hill and Good JJ. A., Thomson C.J. dissenting) the said Court allowed the appeal of the Appellant from the decision of the Trial Judge (Ong. J.) Dated the 14th day of December 1959 whereby he dismissed the Appellant's claim. Although the majority decision of the said Court of Appeal was in favour of the Appellant he now appeals against the said Order and seeks further and different relief from that granted to him by the said Court of Appeal.

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PP. 27-33

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2. The issue in this Appeal may be summarized briefly by saying that the Trial Judge (Ong J.) supported in the said Court of Appeal by the dissenting judgment of Thomson C.J, held that the Appellant had not proved that the termination of his employment with the Kuala Lumpur Municipal Council on or about the 30th September 1957 amounted to a wrongful dismissal. The majority of the said Court of Appeal (Hill and Good JJ.A.) allowed the appeal on the grounds that the Appellant had been wrongfully dismissed by the said Municipal Council on the 30th September 1957,



(5) The proceedings of the said sub-committee were conducted in an improper manner in that

(a) the said sub-committee proceeded in the absence of the Appellant; and

(b) referred to certain Confidential Reports relating to the Appellant, and for these reasons the said proceedings were contrary to natural justice and equity, and were outside the scope of the said terms of reference, ultra vires and void. In so far as the said Establishment Committee or the President of the Municipal Council of Kuala Lumpur relied upon the said proceedings and/or recommendations in arriving at the decision to terminate the Appellant's said employment the said decision was equally improper, ultra vires and void.

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20 (6) The action of the said Establishment Committee in terminating the Appellant's said employment was in breach of the terms thereof and contrary to natural justice.

(7) Alternatively, if it were the said President who had dismissed the Appellant, the said President was acting contrary to natural justice and was wrong in law.

4. The Appellant claimed inter alia the following relief :-

30 (a) a declaration that the termination of his said employment was wrongful and void and that he has the right to continue his employment with the Respondents as from the 1st October, 1957;

Alternatively

(b) damages for wrongful dismissal and in lieu of reasonable notice of termination of service.

40 5. Attached to the said Amended Statement of Plaintiff in the form of appendices were copies of :-

PP. 5-10.

(1) a letter from the Municipal Treasurer to the Appellant dated the 21st June, 1957

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informing him that his said cheques had not been met on presentation (Appendix A).

- (2) the Notes of the said inquiry made by the said sub-committee together with part of the Minutes of a meeting of the said Establishment Committee on the 18th September, 1957 (Appendix B).

PP. 11-14

6. The Respondents by their written Amended Statement of Defence dated the 5th May, 1959 inter alia denied that the Appellant had been dismissed by the said Establishment Committee and alleged that the said President had dismissed the Appellant properly and in accordance with his powers under Section 16 Subsection 5 of the Municipal Ordinance (Cap. 133 of the Laws of the Straits Settlements as applied to the former Malaya States including Selangor by the Municipal Ordinance (Extended Application) Ordinance, 1948 and as subsequently amended by Federal Law);

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7. The Appellant delivered a Reply dated the 12th May, 1959 in which he denied that the said President had acted under the said Section 16 Subsection 5 of the said Municipal Ordinance.

PP. 15-18

8. The hearing commenced on the 24th November, 1959 and the evidence given by the witnesses called for both sides may be summarized as follows :-

- (1) The Appellant stated that he was employed originally in a temporary capacity by the Respondents on the 1st July, 1950 and confirmed in his appointment on the 1st June, 1953. About the 21st June, 1957 he received a letter from the Municipal Treasurer (Exhibit P.1.) informing him that certain cheques which he had cashed at the Municipal Treasury has not been met on presentation. He further stated that it was the practice in the Municipality that members of the staff with private banking accounts could cash their personal cheques at the said Treasury. About the 25th June, 1957 he received a letter from the Town

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Superintendent of the said Municipality (Exhibit P.2.) suspending him from duty, to which he replied by a letter dated the 27th June, 1957 (Exhibit P.4.) explaining why his said cheques had not been met on presentation. About the 1st October, 1957 he received a second letter from the said Municipal Treasurer informing him that his said employment had been terminated. In cross-examination he stated that when he went to the said Municipality after receiving the said letter he was left in no doubt that his said employment had been terminated. He further stated that he had been asked to attend an Inquiry before a sub-committee appointed by the Establishment Committee of the Municipality of Kuala Lumpur but had not done so because he had not been informed of the date of the hearing.

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- (2) The second witness called for the Appellant was T. Sivapragasam who stated that in 1957-1958 he had been a Municipal Councillor, a member of the said Establishment Committee and a member of the sub-committee appointed to enquire into the cashing of certain cheques by the Appellant. The said sub-committee, having decided that the Appellant's conduct in the cashing of the said cheques had not been fraudulent, recommended his reinstatement in his duties, but also recommended that further inquiries be made concerning his usefulness in the service of the said Municipality. On the 18th September, 1957 the said Establishment Committee presided over by the President, Mr. Arthur Desmond York decided by a majority vote to dismiss the Appellant.

PP. 18-19

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- (3) The third witness called for the Appellant was Mohamed din bin Ali the Municipal Secretary of the Municipality of Kuala Lumpur who produced Council and Committee Minute Books.

P. 20

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- (4) Finally the Appellant called Goh Keng Swee who stated that he was the Town Superintendent of the Kuala Lumpur Municipality and had been

PP. 20-21

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the Appellant's immediate superior until the suspension of the Appellant from duty. He further stated that the Appellant was not in his view an unsatisfactory employee.

PP. 21-22.

(5) At the conclusion of the evidence of the Appellant's witnesses Arthur Desmond York gave evidence for the Respondents. He stated that he was President of the Kuala Lumpur Municipal Council and had held that position in 1957. He further stated that having received a report that the Appellant's cheques had been dishonoured he ordered the Appellant's suspension from duty and reported the matter to the police. A sub-committee was appointed to consider the matter of the said cheques and its report was made on the 19th August, 1957. The said Establishment Committee on 30th September, 1957 considered the said report and also the Appellant's work and conduct. The decision to dismiss the Appellant had been taken by the said Establishment Committee and the full Council. In cross-examination he stated that in his capacity as President the only communication by him to the Appellant was a letter dated the 28th October 1957 (Exhibit P.7.), and that until that date he had not dismissed the Appellant, and that so far as he was concerned it was the Council's decision.

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PP. 27-33

9. On the 14th December, 1959 the learned trial judge (Ong J.) gave judgment. He began by reviewing the evidence herein before summarized, prefacing that part of his said judgment with the statement that :- "The material facts of this case are not in dispute". Concerning the Defence the learned judge said :- (referring to the Appellant throughout as "Plaintiff") :-

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"The defence, in a nutshell, is that the decision to dismiss the Plaintiff was a decision taken by the President himself, which decision was in fact approved by the Establishment Committee and by the Municipal Council, although such approval was superfluous and unnecessary to the validity of the termination of Plaintiff's

services, and that the President, in dismissing Plaintiff at pleasure, was acting within the powers conferred on him by Section 16(5) of the Municipal Ordinance".

10. In deciding whether the Appellant had been dismissed by the said President the learned judge stated :-

10 "On the evidence it is clear that the matter of the unpaid cheques was brought immediately to the notice of the President, on whose instructions Plaintiff was suspended on June 25. He was cognizant of the complaint when he presided at the Establishment Committee meeting which decided on the dismissal, and he again presided at the full Council Meeting approving the decision of the Committee. The minutes of these meetings showed that he and the Councillors present came to one and the same decision. I am therefore of the opinion  
20 that, even if the letter of the Acting Municipal Treasurer dated October 1, 1957 could have been more appropriately worded in strict compliance with the provisions of Section 16(5), no amount of hair-splitting can alter the fact that the President decided, as the other members of the Council did, to dismiss the Plaintiff.

P.30.  
line 43.

30 For this reason I hold that the purported dismissal in fact was a dismissal by the President with the concurrence and approval of the Municipal Councillors, although such approval was not necessary under Section 16(5), as Plaintiff's commencing salary was under \$200 a month. No question of ultra vires therefore arises".

11. Finally the learned judge held that the effect of the said Section 16 Subsection 5 of the Municipal Ordinance was to give to the said President the power to remove at pleasure any employee whose commencing salary was under \$200 per month.

P.31.  
line 18.

40 12. From this judgment the Appellant appealed to the Court of Appeal upon grounds set out in a Memorandum of Appeal dated the 21st March, 1960, that the learned Trial Judge (Ong. J.) had misdirected himself and erred in law in finding and/or inferring that the said President of the

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Municipal Council had dismissed the Appellant and that the learned Judge should have found that the Appellant's said dismissal had in fact been effected by the Establishment Committee of the said Council. The Appellant further alleged that the learned trial Judge had misdirected himself in that he ought to have held that Section 16(5) of the said Municipal Ordinance should be construed strictly and that the Respondents had not discharged the onus of proof lying on them to show that the President in dismissing the Appellant had acted in accordance with the provisions of the said section. The Court of Appeal held by a majority (Hill and Good J.J.A., Thomson C.J. dissenting) that the said dismissal was not in accordance with the said Section 16 Sub-section 5 of the Municipal Ordinance. Having come to that conclusion Hill J.A. said :

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P.54.  
line 18.

"I would allow the appeal by giving the Appellant the first declaration he prays for "that the decision of the Establishment Committee of the Municipal Council is ultra vires and/or null and void".

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P.60.  
line 41.

As the Appellant had no vested right to his employment and as his services could have been legally terminated by the President at any time during the past two years or so, I consider that three months' pay and allowances would adequately compensate him and would so order". Good J.A. also held that the Appellant had been wrongfully dismissed and he agreed with the judgment of Hill J.A. as to the quantum of damages, saying that he would allow three months' salary and allowances at the rate applicable to the Appellant in September 1957.

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P.43.

13. The learned Chief Justice, Thomson C.J., considered the said President's powers of dismissal at some length and referred to the provisions of Section 16(5) of the said Municipal Ordinance of the former Straits Settlements (Cap. 133), by which Kuala Lumpur was constituted a Municipality and provided with a Town Council, and by Section 16(1) of which it is provided that the President of the Town Council shall submit annually to the said Council for its

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approval a List of the offices which he thinks necessary "for the purposes of this Ordinance". The said Section 16(5) provides as follows :

10 "The President may appoint such persons as he thinks fit to the offices shown on the list so approved as aforesaid and may remove such persons from office and appoint others in their stead, provided that the appointment and removal of persons to or from an office carrying a commencing salary of two hundred dollars a month and over shall be subject to the approval of the Councillors". Having examined the authorities, in particular the cases of The Queen v. The Governors of Darlington School and Teather v. The Poor Law Commissioners, the learned chief Justice stated :-

P.43  
line 10.

PP.47-48

P.49  
line 44

20 "Returning to the present case, to my mind it is clear in the light of what has been said that the power of the President under Section 16(5) of the Municipal Ordinance to remove officers of the Council from their offices is a power to remove at pleasure and to do so without cause, notice or hearing. It is true that that power must be exercised within the limits imposed by the provisions of the Ordinance, that is to say, it must be exercised in the interest of the good government of the Municipality. The onus, however, of shewing that it has not been so exercised lies fairly and squarely on the

30 shoulders of the party questioning it. He may, of course, discharge the onus in one of two ways. He may discharge it by calling positive evidence of his own, or he may discharge it by pointing to matters of evidence on the other side which gave rise to an inference in his favour. He may, for example, be able to point to something that helps him in the reasons for his dismissal if these reasons are before the Court. The present

40 Appellant has, however, done none of these things and the Court must therefore conclude that the power of the President was properly exercised".

14. Hill and Good JJ.A. agreed with the law as stated in the said judgment of Thomson C.J; but they differed from his finding that the President as the said Council had in fact exercised his power to dismiss the Appellant, and they found

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that the Appellant had in fact been dismissed by the said Council and not by the said President.

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15. The Appellant's appeal was accordingly allowed with costs. By the Order of the Court dated the 30th May, 1960 the Respondents were ordered to pay to the Appellant damages equal to three times the amount of the Appellant's monthly emoluments as on the 30th September, 1957.

16. The Respondents respectfully adopt in its entirety the reasoning of the learned Chief Justice.

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17. Without derogating from the statement contained in the last paragraph, the Respondents further respectfully submit that where a person is employed under a contract of service then, in the absence of a vested interest or a special statutory status in his said employment the repudiation of the said contract or his wrongful dismissal puts an end to the contract, and the contract having been wrongfully put an end to a claim for damages arises. It is necessarily a claim for damages and nothing more. The Respondents will rely inter alia upon the principles laid down in Vine v. National Dock Labour Board (1956) 1 Q.B. 658; (1957) A.C. 488 by the Court of Appeal and the House of Lords; and they will further rely on the principles stated in Barber v. Manchester Regional Hospital Board, (1958) 1 W.L.R. 181 and in White and Carter (Councils) Ltd. v. McGregor (1961) 3 All. E.R. 1178.

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18. The Respondents will therefore submit that this Appeal should be dismissed for the following (among other)

R E A S O N S

(1) BECAUSE the Court of Appeal properly exercised its discretion by not granting the declaration sought by the Appellant.

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(2) BECAUSE the said declaration is not necessary to establish the Appellant's rights.

- (3) BECAUSE the Appellant has in fact been dismissed.
- (4) BECAUSE the Appellant was employed under a contract of service to which the ordinary principles of the law of Master and Servant applied, and when the said contract was repudiated by the Respondents it was put to an end.
- 10 (5) BECAUSE the Appellant prayed in the alternative for relief in the form of damages for wrongful dismissal and that relief was granted.
- (6) BECAUSE the Appellant did not elect to claim relief in the form of a declaration.
- (7) BECAUSE relief in the form of damages is adequate compensation for the wrong suffered by the Appellant.
- 20 (8) FOR the reasons contained in the judgment of the Court of Appeal.

F. MAURICE DRAKE.