11, 1968

JUDICIAL COMMITTEE OF THE
IN THE PRIVY COUNCIL

No.35 of 1965

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA



B E T W E E N :

M. VASUDEVAN PILLAI and
M. KUTTAPPAN NAIR Appellants

- and -

THE CITY COUNCIL OF SINGAPORE
Respondents

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CASE FOR THE APPELLANTS

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1. This is an appeal from an order, dated the 22nd February, 1965, of the Federal Court of Malaysia in its appellate jurisdiction (Thomson, L.P., Barakbah and Wee, C.JJ.), dismissing the Appellants' appeal from a judgment, dated the 22nd November, 1963, of the High Court of Singapore (Tan, J.), dismissing an action in which the Appellants claimed that their dismissal from the employment of the Respondents was a nullity, or alternatively wrongful, and certain consequential and alternative relief.

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2. The following statutory provisions are relevant to the appeal:

MUNICIPAL ORDINANCE (Laws of the Straits Settlements, 1936, cap.133).

> 6. (1) The Municipal affairs of every Municipality shall be administered by such number of Commissioners as is in each case determined by the Governor in Council .....
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> X X X X X X X X X X X X
>
> 17. (1) The Commissioners may from time to time make, and when made, amend, add to or rescind, rules for the purpose of maintaining good conduct and discipline among municipal officers and servants .....

RULES RELATING TO DAILY RATED LABOUR

Chapter II: Section IV. p.192

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## DISCIPLINE

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1. The maintenance of discipline is essential and since proof of misconduct or dereliction of duty will be required before an employee can be dismissed, it is necessary for departments to pay particular attention to the question of disciplinary enquiries and the correct procedure to be adopted in disciplinary cases.

Broadly speaking, there are two types of cases which may call for action by departments:-

A. Misconduct which warrants a warning such as absence without permission, minor disobedience, late arrival, poor work.

B. Misconduct which the Head of Department considers warrants dismissal or other disciplinary action such as wilful disobedience to specified orders, theft of property, serious insubordination.

2.(a) In the case of misconduct such as that specified in A above, no formal enquiry need be held but a verbal warning should be given to the employee and a suitable letter written to him by a senior officer, explaining the nature of the misconduct and calling upon the employee to improve his conduct. An acknowledgment of the receipt of such a letter should be obtained from the employee on the departmental copy.

(b) In the event of the employee continuing to commit any misconduct of this nature, the Head of Department should consider whether an official reprimand or dismissal is merited. If the Head of Department considers that the employee's conduct calls for such action, he should make a report to the

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President or Deputy President. p. 192

(c) Departmental copies of warning letters should be filed in the employee's Service Card File. Where the employee has given an indication that notice has been taken of warning letters in a period of say, one year, a note to that effect should be made in the Service Card File. p. 193

3. Misconduct which the Head of Department considers merits dismissal. p. 193

-----O.M.31.10.52; Cir.219/52;O.151/52---

(a) Suspension with a view to dismissal and dismissal must be authorised by the President or Deputy President.

(b) When the conduct of an employee is being considered with a view to his dismissal or punishment, the following procedure must be followed:-

(i) The Head of Department should first send a memo. to or speak to the President or the Deputy President outlining the case as it is then known to him. In the case of gross misconduct, this should be done immediately. If the President or Deputy President considers that the employee should be suspended pending an inquiry, he will authorise it.

(ii) The Head of Department will then hold or cause to be held an inquiry at which a Welfare Officer must be present. There should be no delay in the holding and completing of this enquiry and the record should be available for consideration by the President or Deputy President within two or three days of the matter first being reported.

(iii) It is not part of the Welfare Officer's duty to conduct the enquiry. The p. 194

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enquiry must be conducted by a responsible officer from the department concerned.

(iv) The President or Deputy President will then consider the full record of the enquiry and may cause such further supplementary enquiries to be held as he may deem necessary.

(v) The President or Deputy President will then make his decision which will be conveyed to the Head of Department in writing and the Head of Department will cause the employee to be informed in writing.

(vi) If the decision is to dismiss the employee, a formal letter of dismissal will be signed by the President or Deputy President and conveyed to the employee by the Head of Department. At the same time the employee will be informed that if he wishes to appeal he may give notice to the Secretary of the Establishments Committee within seven days, and that if he gives such notice of appeal the substance of his appeal should be conveyed in writing within fourteen days.

(vii) If the employee wishes to appear before the Establishments Committee, then the officer of his department concerned with the subject matter of the enquiry should also be present at the same time.

(viii) For the information of departments, a breach of any of the following might be held to be misconduct:-

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(1) failure to obey all orders

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that are lawful and within the scope of the service undertaken; p. 195

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3. On the 4th December, 1957, the Appellants issued a writ against the Respondents in the High Court of Singapore, claiming a declaration that their dismissal from the employment of the Respondents had been wrongful, a declaration that they were in the employ of the Respondents, and certain consequential relief.

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4. By their amended Statement of Claim and Particulars, the Appellants pleaded that they had respectively on the 1st May, 1952 and the 2nd February, 1956 accepted employment, in accordance with rules framed under the Municipal Ordinance, with the Respondents as daily rated unskilled labourers. They had been entitled to continue in this employment until it should be determine in accordance with the Rules Relating to Daily Rated Labour. They had been engaged as unskilled labourers, and their duties had consisted of sweeping, levelling earth, etc. outside the Pasir Panjang Power Station. On the 23rd May, 1957, the Respondents had ordered the Appellants to work as boiler cleaners inside the Power Station. This work was not in the course of the Appellants' employment, and carried a higher rate of wages. The Appellants had refused to perform it, as they were entitled to do, and on the 27th May, 1957 the Respondents had wrongfully purported to terminate the Appellants' employment. Further, or alternatively, the Respondents had not been entitled to dismiss the Appellants without first holding an enquiry, in accordance with Rule 3 of Section IV of Chapter II of the Rules Relating to Daily Rated Labour. This rule required the enquiry to be conducted in accordance with the principles of natural justice. The enquiry held by the Respondents had not been so conducted, in particular because statements against the Appellants had been received and recorded in their absence. The proceedings had been a nullity, and the Respondents had had no power to dismiss the Appellants except in compliance with the rules. The Appellants claimed a declaration that they were still in the employment of the Respondents,

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alternatively damages for wrongful dismissal, and certain consequential relief.

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5. By their amended Defence, the Respondents admitted that they had employed the Appellants as unskilled labourers on the dates set out in the amended Statement of Claim. They denied that the employment had been subject to the conditions alleged in the Statement of Claim. They admitted that they had dismissed the Appellants in or about May, 1957 and alleged that they had been entitled to do so. They alleged that an equiry had been duly held pursuant to Section IV of Chapter II of the Rules Relating to Daily Rated Labour. They denied that such an enquiry was of a quasi-judicial nature, but alleged that the enquiry had in fact been conducted in accordance with the principles of natural justice, or, if not, that this defect had been cured by the appeal brought by the Appellants against their dismissal.

6. The following facts were found concurrently by the two Courts below:

(a) the Appellants had been employed at the Power Station at Pasir Panjang.

(b) on the 23rd May, 1957, one Ishak, a Serang employed by the Respondents, had instructed both Appellants to clean the air heaters and the ducting of one of the boilers at the Power Station.

(c) both Appellants had refused to carry out this work, saying that it should be done by boiler cleaners and not by labourers. They had again refused to carry it out when Ishak had repeated his instructions in the presence of the boiler house maintenance engineer.

(d) the maintenance engineer had then reported the matter to Mr. Briggs, the Superintendent of the Power Station. In Mr. Briggs' office the Appellants had again refused to do the work, whereupon Mr. Briggs had told them to see the labour and welfare officer in the City Hall. They had

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refused to go.

(e) on the 25th May, 1957 Mr. Roper, the Deputy Electrical Engineer, had held an enquiry into the incident. After the enquiry the matter had been referred to the Deputy President of the City Council, and it had been decided to terminate the employment of both Appellants with effect from the 27th May, 1957. Notice of this had been served on each of the Appellants on the 28th May. They had appealed against the decision, and the appeal had been heard by a sub-Committee of the Establishments Committee on the 9th July, 1957, and had been dismissed.

(f) no skill had been required for the cleaning of air heaters and ducting. That work had been well within the capabilities of an ordinary labourer, and both the second Appellant and other labourers had done it before the 23rd May, 1957.

7. The action came on for trial before Tan, J. on thirteen days between the 22nd July, and the 22nd of November, 1963. On the 22nd November, 1963 it was dismissed with costs. pp. 19-93

8. In his reasons for judgment, Tan, J. made the findings of fact set out in Paragraph 6 above. He went on to say that at the enquiry of the 25th May, 1957 the statements of some of the witnesses had been recorded in the absence of the Appellants. Furthermore, Mr. Roper, after completing the enquiry and sending his report to the Deputy President of the City Council, had supplied certain additional information relating to the subject matter of the enquiry to the Deputy President at the latter's request. The Appellants had not been informed at the time of these communications between Mr. Roper and the Deputy President. In conducting the enquiry Mr. Roper had been acting in a quasi-judicial capacity. The failure to record the statements of all the witnesses in the presence of the Appellants, and the supplying of information to the Deputy President without the Appellants' knowledge, had constituted a breach of the rules of natural justice. p. 93

9. The learned Judge then referred to the appeal by the Appellants heard by the sub-committee of

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Establishments Committee. The Appellants had been represented before the sub-committee by counsel. The matter had been re-opened and counsel had cross-examined the various witnesses, including Mr. Roper, Mr. Briggs and Ishak. It was impossible to say that the sub-committee had not complied with the rules of natural justice, and, in the learned Judge's view, the breach of the rules of natural justice at the enquiry had been cured by the proceedings on the appeal.

p. 98 10. The Appellants gave notice of appeal to the Federal Court of Malaysia on the 5th December, 1963. One of the grounds of their appeal was that Tan, J. had been wrong in holding that the failure to comply with the rules of natural justice at the enquiry had been cured by the proceedings on the appeal.

p. 101 11. The appeal was heard on the 14th September, 1964. At the hearing counsel for the Respondents conceded that Mr. Roper had been acting in a quasi-judicial capacity, and there had been a breach of the rules of natural justice. On the 22nd February, 1965, p. 108 judgment was given dismissing the appeal with costs.

pp.108-117 12. Wee, C.J. in his judgment set out the facts, referred to certain matters which do not now arise, and then dealt with the submission that Tan, J. had been wrong in holding that Mr. Roper's failure to observe the rules of natural justice had been cured by the proceedings on the appeal. It was clear that the Respondents, in dismissing the Appellants, had purported to act under the Rules Relating to Daily Rated Labour. Counsel for the Respondents had conceded that Tan, J. had been right in his view that in conducting the enquiry Mr. Roper had not observed the rules of natural justice. It was clear from the rules and from the evidence that the decision of the Deputy President to dismiss the Appellants had been made after consideration of the record of the enquiry before Mr. Roper and the further information supplied by Mr. Roper after the

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enquiry. Under the rules, the appeal had been against the deicision of the Deputy President. In these circumstances, the learned Chief Justice held that Tan, J. had been wrong in concluding that the proceedings on the appeal had cured the defective proceedings before Mr. Roper. Where a quasi-judicial tribunal had failed to observe the rules of natural justice, that failure could not be cured by the fact that an appellate tribunal had conducted its proceedings in accordance with all the rules of natural justice. Notwithstanding the dismissal of the appeal, the decision of the Deputy President dismissing the Appellants was the only existing decision. The learned Chief Justice accordingly held that the Appellants had been wrongfully dismissed under the rules.

13. Wee, C.J. went on to say that, by bringing their action in the Courts, the Appellants had chosen to contest the issues whether they were entitled to refuse to perform the work they had been instructed to do and whether that refusal entitled the Respondents summarily to dismiss them. On the findings made by Tan, J., which had not been challenged in the Federal Court, the Respondents had been entitled, in the learned Chief Justice's view, under the law of master and servant to dismiss the Appellants summarily, and this they had done. The Appellants had failed on this issue, and the learned Chief Justice said it followed that their appeal should be dismissed with costs.

14. Thomson, L.P. said that he agreed that the Appellants had deliberately refused to do work which fell within the scope of their employment. This, he said, had been a repudiation by them of their contract with the Respondents, and entitled the Respondents to treat the contract as at an end. This they had done. In popular language, they had dismissed the Appellants. The learned Lord President said he expressed no opinion on the argument that there had been a failure of natural justice on the part of the Respondents. He said that that argument had been based on the proposition that it was a condition of the contracts of employment that, if the employees repudiated the contracts, the employer should not be at liberty to accept the repudiation unless he

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first conducted an enquiry into the circumstances, and the enquiry was conducted in accordance with the principles "of so-called natural justice". Thomson, L.P. said he could find nothing in the evidence to make out such a contract. Further, the Respondents, he said, had not set up any contractual stipulation that the matter should be concluded by the decision of a domestic tribunal; they had relied on their ordinary contractual rights, and been content to have these rights determined by the Courts. It was, in the learned Lord President's view, the Appellants who had put an end to the contract, and that should be the end of the matter.

15. The Appellants respectfully submit that their employment by the Respondents was governed by the Rules Relating to Daily Rated Labour. Ch.II, sec.IV, rule 3 provides that an employee shall not be dismissed, even in a case of misconduct, except in accordance with the procedure laid down by the rule, which provides for an enquiry and, if required, an appeal to the Establishments Committee. The Appellants therefore had a statutory right, or alternatively a contractual right, not to be dismissed from their employment otherwise than in accordance with that procedure. The learned Judges of the Federal Court were therefore wrong in holding that the Respondents could be entitled to dismiss the Appellants even though they (the Respondents) had not complied with rule 3. In particular, Wee, C.J. (who said the Respondents had been entitled 'under the law of master and servant' to dismiss the Appellants) and Thomson, L.P. (who referred to the Respondents as relying 'on their ordinary contractual rights') failed to appreciate that the rights of the Appellants and the Respondents inter se were defined by the Rules.

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16. It was conceded by the Respondents in the Federal Court both that Mr. Roper was acting in a quasi-judicial capacity in holding the enquiry of the 25th May, 1957, and that in conducting that enquiry he failed to observe the rules of natural justice. The Appellants respectfully submit that Wee, C.J. was right in holding that the position thus created was not cured by the

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proceedings on the appeal to the Establishments Committee. It was the right of the Appellants that the President or Deputy President of the City Council, who alone had the power to dismiss them, should decide whether to dismiss them or not after considering the report of an enquiry conducted in accordance with the rules of natural justice. Of that right the Appellants have been deprived. The position is not mended by the proceedings on the appeal, for the Appellants were entitled to a fairly conducted enquiry as well as a fair hearing on appeal.

17. The Appellants respectfully submit that they worked for the Respondents under a statutory scheme of employment. Their purported dismissal violated the provisions of that statutory scheme. Therefore it was a nullity, and the Appellants are still employed by the Respondents. If, on the other hand, the dismissals were effective, then the Appellants, in their respectful submission, were dismissed wrongfully.

18. The Appellants respectfully submit that the order of the Federal Court of Malaysia was wrong and ought to be reversed, and this appeal ought to be allowed, for the following (among other)

R E A S O N S

1. BECAUSE the employment of the Appellants by the Respondents was governed by the Rules Relating to Daily Rated Labour:

2. BECAUSE the Respondents were not entitled to dismiss the Appellants otherwise than in accordance with those Rules:

3. BECAUSE the Respondents purported to dismiss the Appellants without complying with those Rules:

4. BECAUSE the Respondents' admitted failure to allow to the Appellants an enquiry conducted in accordance with the requirements of natural justice was not cured by the subsequent proceedings on appeal.

J.G. LE QUESNE

PETER LANGDON-DAVIES

~~F. MAURICE DRAKE~~

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C A S E

FOR THE APPELLANTS

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