

JUDGMENT
26
1973

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No.11 of 1972

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

BETWEEN :

THE GOVERNMENT OF THE FEDERATION
OF MALAYSIA

Appellant

- and -

CALISTER LIONEL

Respondent

RECORD OF PROCEEDINGS

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
28 MAY 1974
25 RUSSELL SQUARE
LONDON W.C.1

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Saddlers' Hall,
Gutter Lane,
Cheapside,
London, EC2V 6BS

Solicitors for the Appellant

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Solicitors for the Respondent

(i)

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1.

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.11 of 1972

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

THE GOVERNMENT OF THE FEDERATION
OF MALAYSIA Appellant

- and -

CALISTER LIONEL Respondent

RECORD OF PROCEEDINGS

10

No. 1

In the High
Court in
Malaya

NOTICE IN LIEU OF SERVICE

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

No. 1

CIVIL SUIT NO. 41 of 1966.

Notice in
Lieu of
Service

BETWEEN: Calister Lionel Plaintiff

12th March
1966.

-- and --

The Government of The
Federation of Malaysia Defendant

To:

20

The Government of the Federation
of Malaysia.

TAKE NOTICE that Calister Lionel of No.18-A,
Jalan Dato' Dalam, Johore Bahru has commenced a
suit against you, The Government of the
Federation of Malaysia in our High Court in the
above State by writ of the Court, dated the 12th
day of March, 1966, which writ is indorsed as
follows :-

"The Plaintiff's claim is for:-

In the High Court in Malaya

No. 1

Notice in Lieu of Service

12th March 1966.

(continued)

- 1. A Declaration that his dismissal from the Police Clerical Service as a Temporary Clerk/Interpreter purported to be effected by one T.B. Voice, the Ketua Pegawai Police, Johore on the 1st day of June, 1962, was void, inoperative and of no effect, and that he is still a member of the said Police Clerical Service.
- 2. An order that the Defendant do pay to the said Plaintiff all arrears of pay, allowances and other emoluments due and owing to him as a Temporary Clerk/Interpreter in the said Police Clerical Service from the date of the said purported dismissal. 10
- 3. An account of what is due to the Plaintiff from the Defendant in respect of his salary and all other emoluments found to be due to him as a Temporary Clerk/Interpreter in the Police Clerical Service and an Order for payment by the Defendant to the Plaintiff of any sum upon taking such account. 20
- 4. Further or other relief
- 5. Costs

and you are required within twelve (12) days after the receipt of this notice to defend the said suit by causing an appearance to be entered for you to the said suit; and, in default of your so doing, the said Calister Lionel may proceed therein and Judgment may be given in your absence. 30

You may appear to the said writ by entering an appearance personally or by your advocate and Solicitor at the Registry of the High Court at Johore Bahru.

By Order of the Court.

(Sgd. Illegible,
Asst. Registrar,
High Court in Malaya,
Johore Bahru.

The 12th day of March, 1966.

3.

This Notice was taken by Messrs. Rodrigo & Tock of No. 63D, Telok Ayer Street, 4th Floor, Room No.3, Singapore, whose address for service is at the office of Messrs. Thakurtha & Co, Advocates & Solicitors of Room No.201, Second Floor, O.C.B.C. Building, Jalan Ibrahim, Johore Bahru.

In the High Court in Malaya

No. 1

Notice in Lieu of Service

12th March 1966.

(continued)

No. 2

WRIT OF SUMMONS

No. 2

Writ of Summons

12th March 1966.

10 IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 41 of 1966

BETWEEN:

CALISTER LIONEL

Plaintiff

- and -

THE GOVERNMENT OF THE
FEDERATION OF MALAYSIA

Defendant

20 THE HONOURABLE DATO SYED SHEH BARAKBAH, P.M.M.,
D.P.M.K., P.S.B. CHIEF JUSTICE OF MALAYA IN THE
NAME AND ON BEHALF OF HIS MAJESTY THE YANG DI-
PERTUAN AGONG.

To:

The Government of the
Federation of Malaysia.

WE COMMAND you, that within twelve (12) 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 Calister Lionel of No. 18-A, Jalan Dato' Dalam, Johore Bahru.

30 AND TAKE NOTICE that in default of your so doing

In the High Court in Malaya

No. 2

Writ of Summons

12th March 1966.

(continued)

the Plaintiff may proceed therein and Judgment may be given in your absence.

WITNESS MR. V.R.T. RANGAM, Assistant Registrar of the High Court in Malaya at Johore Bahru this 12th day of March, 1966.

Sgd. RODRIGO & TOCK

Solicitors for the Plaintiff

Sgd. Illegible Assistant Registrar, High Court in Malaya, Johore Bahru.

10

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) may appear hereto by entering an appearance (or appearances) either personally or by Solicitor at the Registry of the High Court at Johore Bahru.

A Defendant appearing personally may, if he desires enter his appearance by post, and the appropriate form may be obtained by sending a Postal Order for \$3.00 with an addressed envelope to the Registrar of the High Court at Johore Bahru.

20

The Plaintiff's Claim is for :-

1. A Declaration that his dismissal from the Police Clerical Service as a Temporary Clerk/Interpreter purported to be effected by one T.B. Voice, the Ketua Pegawai Polis, Johore on the 1st day of June, 1962, was void, inoperative and of no effect, and that he is still a member of the said Police Clerical Service.

30

2. An Order that the Defendant do pay to the said Plaintiff all arrears of pay, allowances and other emoluments due and owing to him as a Temporary Clerk/Interpreter in the said Police Clerical Service from the date of the said purported dismissal.

40

3. An account of what is due to the Plaintiff

5.

from the Defendant in respect of his salary and all other emoluments found to be due to him as a Temporary Clerk/Interpreter in the Police Clerical Service and an Order for payment by the Defendant to the Plaintiff of any sum upon taking such Account.

4. Further or other relief

5. Costs

In the High Court in Malaya

No. 2

Writ of Summons

12th March 1966.

(continued)

Sgd: RODRIGO & TOCK
SOLICITORS FOR THE PLAINTIFF.

10

This Writ was issued by Messrs. Rodrigo & Tock of No.63-D, Telok Ayer Street, 4th Floor, Room No.3, Singapore, whose address for Service is at the Office of Messrs. Thakurtha & Co, Advocate & Solicitors, of Room 201, Second Floor, O.C.B.C. Building, Jalan Ibrahim, Johore Bahru, Solicitors for the said Plaintiff, who resides at No.18-A, Jalan Dato' Dalam, Johore Bahru.

20

This Writ was served by me at
on the Defendant
on the _____ day of _____ 1966, at
the hour of _____

Indorsed this _____ day of March, 1966.

Signed

Address

No. 3

STATEMENT OF CLAIM

IN THE HIGH COURT MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 41 of 1966

No. 3

Statement of Claim

12th March 1966

30

BETWEEN:

Calister Lionel Plaintiff

- and -

The Government of the
Federation of Malaysia Defendant

In the High
Court in
Malaya

No. 3

Statement
of Claim

12th March
1966.

(continued)

STATEMENT OF CLAIM

1. On the 1st day of October, 1953 the Plaintiff was appointed as a Temporary Police Clerk/Interpreter in the Police Clerical Service and was attached to the Kelantan Police Contingent until the 16th November, 1958.
2. On the 18th of November, 1958 the Plaintiff was transferred to Contingent Police Headquarters, Johore Bahru.
3. The Plaintiff was subject to the provisions of the General Orders and to all rules and regulations issued by Public Services Commission at all times during the Plaintiff's appointment. 10
4. On the 30th of April, 1962 disciplinary action under G.O. Cap.D.32 was taken against the Plaintiff for alleged acts of indiscipline by the Chief Police Officer, Johore Bahru.
5. On the 29th of May 1962 the Chief Police Officer terminated the services of the Plaintiff with effect from the 1st June, 1962. 20

PARTICULARS OF OFFENCES AGAINST
DISCIPLINE WITH WHICH THE
PLAINTIFF WAS CHARGED

- (a) You have conducted yourself in such a manner as to bring the public Service into disrepute in that you :-
 - (i) Failed to observe Office hours laid down in accordance with G.O.1 Cap. H of the General Orders;
 - (ii) were in the habit of spending your office hours in the Police Canteen, Kulai, without the permission of your immediate superior officer; 30
 - (iii) entertained and gossiped with your friends in your office during office hours;
 - (iv) On 8th January, 1962, typed out a letter for a friend of yours using Government stationery and office

7.

typewriter during office hours; and

(b) that you were insubordinate to your immediate superior officer on two occasions, namely :-

(i) that on 20.1.62 when you were directed by the superior officer to bring up all files, records and agreement sheets of police personnel for his checking by 22.2.62 you purposely failed to do so; and

10 (ii) that on 6th March, 1962 when your superior officer served you a written warning, with regard to your conduct as a public servant, you refused to accept the letter and used abusive and insulting language on your superior officer.

20 6. The Chief Police Officer, Johore, T.B. Voice by a letter to the Plaintiff dated the 30th of April, 1962 informed the Plaintiff that disciplinary action such as may lead to the Plaintiff's dismissal was being taken against the Plaintiff under the provisions of G.O.Cap.D 32. The letter listed the aforesaid acts of indiscipline and required the Plaintiff to exculpate himself in writing within 14 days of the receipt of the letter.

7. The Plaintiff on the 8th of May, 1962 addressed a written exculpation to the said Chief Police Officer, Johore, dated the 8th of May, 1962.

30 8. The said Chief Police Officer, Johore, by a letter to the Plaintiff dated the 29th of May, 1962 informed him that he, the said Chief Police Officer, Johore, had decided to terminate the Plaintiff's service as a Temporary Clerk/Interpreter in the Police Clerical Service with effect from the 1st of June, 1962 on payment to the Plaintiff of one month's salary plus cost of living allowance in lieu of notice.

40 9. The Plaintiff appealed to the Public Service Commission, Kuala Lumpur against the decision of the said Chief Police Officer, Johore, on the 10th of June 1962, which said Appeal was dismissed.

10. In the premises the said purported dismissal was void, inoperative and of no effect.

In the High
Court in
Malaya

No. 3

Statement
of Claim

12th March
1966

(continued)

In the High
Court in
Malaya

No. 3

Statement
of Claim

12th March
1966

(continued)

PARTICULARS

(a) The said purported dismissal was effected after the said Chief Police Officer, Johore had found that the Plaintiff had failed to exculpate himself which said dismissal is contrary to Clause (1) of Article 144 or Clause (6) of the same Article of the Constitution of the Federation of Malaya.

(b) The said purported dismissal was effected by an authority subordinate to that which at the time of the dismissal had power to appoint a Temporary Clerk/Interpreter in the police Clerical Service contrary to Clause 1 of Article 135 of the Constitution of the Federation of Malaya.

10

11. In the further premises since 1st of June, 1962 the Plaintiff has been deprived of the pay allowances and other emoluments to which he was entitled as a Temporary Clerk/Interpreter in the Police Clerical Service.

20

12. And the Plaintiff Claims :-

1. A Declaration that his dismissal as a Temporary Clerk/Interpreter from the Police Clerical Service purported to be effected by one T.B.Voice Chief Police Officer, Johore on the 1st of June, 1962 was void, inoperative and of no effect and that he is still a member of the said Police Clerical Service.

2. An Order that the Defendant do pay to the said Plaintiff all arrears of pay, allowances and other emoluments due and owing to him as a Clerk/Interpreter in the Police Clerical Service from the date of the said purported dismissal

30

3. An Account of what is due to the Plaintiff from the Defendant in respect of his salary and all other emoluments found to be due to him as a Temporary Clerk/Interpreter in the Police Clerical Service and an Order for payment by the Defendant to the Plaintiff of any sum upon taking such Account.

4. Such further and other relief as the Honourable Court may deem just

40

5. Costs.

Dated at Johore Bahru this 12th day of March, 1966.

RODRIGO & TOCK
SOLICITORS FOR THE PLAINTIFF

To:-

The Government of the Federation of Malaysia.

In the High Court in Malaya

No. 3

Statement of Claim

12th March 1966

(continued)

No. 4

DEFENCE

No. 4

Defence

7th May 1966

10

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 41 of 1966

BETWEEN:

Calister Lionel

Plaintiff

- and -

The Government of the Federation of Malaysia

Defendant

D E F E N C E

20

1. Paragraph 1 of the Statement of Claim is admitted. The defendant states that one of the terms of his employment as a Temporary Clerk is that his services is terminable by one month's notice of on (sic) payment of one month's salary in lieu of notice on either side.

2. Paragraph 2 of the Statement of Claim is denied.

3. Paragraph 3 of the Statement of Claim is admitted.

30

4. Paragraph 4 and 5 of the Statement of Claim are admitted. The defendant states that the services of the Plaintiff were terminated in accordance with the terms of his employment.

In the High Court in Malaya

No. 4

Defence

7th May 1966

(continued)

5. Paragraphs 6, 7, 8 and 9 of the Statement of Claim are admitted.

6. Paragraphs 10 and 11 of the Statement of Claim are denied. The defendant reiterates that the Services of the Plaintiff were terminated in accordance with the terms of his employment.

7. The defendant states that the acts complained of were acts done by the Chief Police Officer, Johore in execution of his public duty, and the action was not commenced before the expiration of twelve months from the date on which the alleged acts complained of accrued of and the Plaintiff's alleged cause of action is barred by the Public Authorities Protection Ordinance 1948 Sec. 2. 10

8. The Defendant prays that the Plaintiff's Claim be dismissed with costs.

Dated this 7th day of May, 1966.

Sgd: A.W. Au
(Au Ah Wah)

Senior Federal Counsel,
Solicitor for the Defendant.

20

To:

Messrs. Rodrigo & Tock,
Advocates & Solicitors,
c/o Room 201, O.C.B.C. Bldg.,
2nd Floor, Jalan Ibrahim,
Johore Bahru.

No. 5

Reply to the Defence.

14th May 1966

No. 5

REPLY TO THE DEFENCE

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

30

CIVIL SUIT NO. 41 of 1966

BETWEEN:

Calister Lionel

Plaintiff

- and -

The Government of the
Federation of Malaysia

Defendant

11.

R E P L Y

In the High
Court in
Malaya

No. 5

Reply to the
Defence.

14th May
1966.

(continued)

1. The Plaintiff joins issue on the whole of the Defence.

2. In answer to paragraph 7 of the Defence, the Plaintiff denies that the acts complained of were acts done by the Chief Police Officer, Johore, in the execution of his duties. Even if the acts complained of were acts done by the Chief Police Officer, Johore (which is denied) the Plaintiff denies that his cause of action was barred by the Public Authorities Protection Ordinance, 1948 Section 2.

10

3. Alternatively the Plaintiff denies that the Public Authorities Protection Ordinance 1948 is applicable in this action.

Dated and delivered this 14th day of May, 1968.(sic)

Sgd: Rodrigo & Tock
Solicitors for the Plaintiff.

To:

20

The Government of Malaysia,
c/o The Attorney-General's Chambers,
Kuala Lumpur.

No. 6

NOTES OF ARGUMENTS

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 41 of 1966

BETWEEN:

Calister Lionel

Plaintiff

- and -

30

The Government of
Malaysia

Defendant

No. 6

Notes of
Arguments

13th August
1969.

In the High
Court in
Malaya:

No. 6

Notes of
Arguments

13th August
1969.

(continued)

12.

Before me in Open Court

This 13th day of August 1969

Sgd. Syed Othman bin Ali
Judge, Malaya.

Civil Suit No. 41 of 1966

Calister Lionel v. Government of Malaysia

Wong Kim Fatt (P.K. Nathan with him) for
Plaintiff

Che Mohamed Noor for defendant.

Wong Kim Fatt: The issues to be determined are 10

1. Whether Public Authorities Ordinance apply,
2. whether dismissal or termination proper.

It is admitted that plaintiff was a temporary clerk employed by virtue of an agreement dated 28th September, 1953 - produced and marked Exhibit 1. Defendant now admits paragraph 2 in view of letter of transfer - Exhibit 2.

Letter termination of service - Exhibit 3.

Parties agree to rely upon submission as the agreed facts. 20

Che Mohamed Noor addresses Court: Refers to 2(a) Public Authorities Protection Ordinance, 1948. Termination of service - Exhibit 3. Action taken on 12th March, 1966. Chief Police Officer was acting in execution of his public duty. Under Exhibit 1 he was the person who acted on behalf of the Government. Offer of appointment was signed by the Chief Police Officer, Kelantan at the time. 30

Paragraph 3(4) Exhibit 1. Engagement terminable at one month's notice. Chief Police Officer, Senior Assistant Commissioner of Police, action on behalf of Commissioner of Police by virtue of the letter - marked Exhibit 4. Letter was issued in accordance with Police Ordinance, 1952 s.6(2) Gazette Notification appointing Voice

as Assistant Commissioner of Police will be located.

In the High
Court in
Malaya

See Regulation 36 D. General Orders.

No. 6

Since Chief Police Officer acting in execution of public duty - action is statute barred.

Notes of
Arguments

13th August
1969.

(continued)

10

Wong Kim Fatt: I shall address Court on limitation. Ordinance is designed to protect persons in execution of public duty but not the Government itself. In this case action is not taken against the Chief Police Officer but against the Government itself. Section 2 contemplates action of fortious nature or in respect of public duty.

The action merely seeks a declaration that he was entitled to a legal right with the necessary consequential relief.

Public Authorities Ordinance, 1948 does not apply.

20

Section 38 of Government Proceedings Ordinance, 1956 - "proceedings" defined in section 2. Action falls within either general definition or exception. This is not proceeding contemplated under section 2 of Government Proceedings Ordinance, Volume 11 Halsbury's Laws of England 3rd edition page 12, section 23 Crown Proceedings Act, 1947.

O.25 R.5 Rules of the Supreme Court.

30

de Smith Judicial Review of Administrative Action (1st edition) page 372 Dyson's case. (1915) 2 K.B. 536 Guaranty Trust Co. of New York v. Hannay & Co. Henson v. Radcliffe Urban District Council (1922) 2 Ch. 490.

Nathan: I shall only deal with second point. Whether the Chief Police Officer had power to dismiss plaintiff.

40

Disciplinary action was taken against plaintiff. After action although the Chief Police Officer used termination, he in effect meant dismissal. Having regard to circumstances of the case plaintiff was dismissed in view of the context of letter in Exhibit 3. Letter all time in the first person. No mention of

In the High
Court in
Malaya

No. 6

Notes of
Arguments

13th August
1969.

(continued)

delegation of authority. Letter in Exhibit 4 also indication of punishment - rather than a direct request of termination of service.

Paragraph 3 of Statement of Claim. Plaintiff subject to General Orders - admitted. In view of this, the context of termination arose from a disciplinary proceeding. This proceeding was not in accordance with General Orders 31 - proviso page 20 Cap. D List A 'Commissioner of Police'. The list contains the officers to whom the Public Services Commission has delegated its power. Commissioner of Police cannot delegate power which was delegated to him by the Public Services Commission. The very act of conducting disciplinary action null and void, contrary to General Orders. 10

The text of termination as at 1st June, 1962 was whether the Chief Police Officer himself had power to appoint. He had no power to appoint at that time. Article 135 of the Federal Constitution Clause (1). 20

I also submit that the Chief Police Officer under agreement had no power to terminate services. It should have been done by the Public Services Commission.

General Orders 36 is only concerned with pure termination of services and not to termination with the effect of dismissal. If the disciplinary action had been taken by proper disciplinary authority then we would agree that plaintiff would have no case. 30

As to Exhibit 1 (agreement) question to be determined whether General Order over-rides provision of agreement.

Section 6 (2) of the Police Ordinance, 1952 applies only to acts under that Ordinance and to officers employed under the Ordinance and not to officers who come under the purview of the Public Services Commission.

Article 135 Surinder Singh Kanda v. Government of the Federation of Malaya (1962) M.J. 169. Dismissal by the Commissioner of Police. Dismissal of plaintiff null and void. 40

Mohamed Noor replies: Agrees that section 2 of Public Authorities Ordinance applies only to persons but see section 6 (1) Government Proceedings Ordinance, 1956 and also section 38 Government Proceedings Ordinance, 1956. It must be construed that Government is protected.

In the High Court in Malaya

No. 6

Notes of Arguments

13th August 1969.

(continued)

Plaintiff's service was terminated. He was not dismissed. Haji Ariffin v. Government of Pahang (1969) 1 MLJ 6.

10 By Court: T.B. Voice Senior Assistant Commissioner 2nd June, 1958 Gazette Notification No.796/59. Jefferies Assistant Commissioner of Police.

Section 6 of Police Ordinance - all officers referred to are uniformed officers.

C . A . V .

Certified True Copy.

Sgd:

Secretary to the Judge.

1st Feb. 71.

20

No. 7

JUDGMENT OF SYED OTHMAN J.

IN THE HIGH COURT IN MALAYA AT JOHORE BAHRU

CIVIL SUIT NO. 41 of 1966

BETWEEN:

Calister Lionel

Plaintiff

- and -

The Government of Malaysia Defendant

JUDGMENT OF SYED OTHMAN, J.

30

The Plaintiff seeks a declaration in substance that his dismissal from the Police Clerical Service as

No. 7

Judgment of Syed Othman J.

19th January 1971

In the High
Court in
Malaya

No. 7

Judgment of
Syed Othman J.
19th January
1971.

(continued)

a temporary Clerk-Interpreter by the Ketua Pegawai Police, Johore on the first day of June, 1962, was of no effect, and that he is still a member of the said Police Clerical Service, and other consequential orders.

The undisputed facts are these. On 1st October, 1953 the Plaintiff was appointed as a temporary clerk-interpreter in the Police clerical service and was attached to Kelantan Police Contingent. In 1968 he was transferred to Contingent Police Headquarters, Johore Bahru. He was subject to the provisions of the General Orders and to all rules and regulations issued by the Public Services Commission at all times during his appointment. On 30th April, 1962, disciplinary action under regulation 32 of the General Orders Chapter 'D' (which I shall refer to as G.O.D.) was taken against him by the Chief Police Officer, Johore for acts of indiscipline. Such disciplinary action, the Plaintiff was informed, might lead to his dismissal. The letter listed acts of indiscipline and required the Plaintiff to exculpate himself in writing within 14 days of the receipt of the letter. The Plaintiff on the 8th May, 1962, addressed a written exculpation to the Chief Police Officer. The Chief Police Officer then on 29th May, 1962 sent to him the following letter :

"With reference to my letter to you (SR) PE/3596 dated 30th April, 1962, and to your reply thereto dated 8th May, 1962, I have to inform you that, after careful consideration of your representations, I have decided that you have failed to exculpate yourself.

2. I have, therefore, decided to terminate your services as a Temporary Clerk with effect from 1st June, 1962, on payment to you of one month's salary plus cost of living allowance in lieu of notice".

Sgd:

T.B.VOICE,
Ketua Pegawai Police,
Johore, Johore Bahru.

The Plaintiff appealed to the Public Services Commission, Kuala Lumpur against the decision of

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the Chief Police Officer on the 10th June, 1962.
The appeal was dismissed.

In the High
Court in
Malaya

No. 7

Judgment of
Syed Othman J.

19th January
1971.

(continued)

The defence, as a preliminary point, has submitted that as the acts complained of were done by the Chief Police Officer Johore in execution of his public duty, and the action was not commenced before the expiration of twelve months from the date on which the alleged acts complained of occurred, it was barred by section 2 of the Public Authorities Protection Ordinance, 1948.

10

I do not think that I should deal with this point, as the statement of claim contains an allegation to the effect that what was done by the Chief Police Officer was outside the scope of his authority. For the purpose of this action I need only determine whether the action of the Chief Police Officer was a termination of service or a dismissal and, if it was a dismissal, whether he had the authority.

20

The main point in dispute is the letter of the Chief Police Officer in which he says that he had decided to terminate the services of the Plaintiff. For the Plaintiff it is argued that despite the term that was used, it was an act of dismissal as it was done in consequence of disciplinary proceedings. For the defence it is contended that it was a termination of service in accordance with the terms of employment notwithstanding the fact that the Chief Police Officer had expressed in the letter that he was not satisfied with the explanation of the Plaintiff.

30

The offer of appointment made to the Plaintiff by the Chief Police Officer, Kelantan contains the following paragraph which is relevant for the purpose of this action:

"3. Appointment would be subject to the following conditions :

4th - That your engagement will be terminated at one month's notice, or on payment of one month's salary in lieu of notice on either side, provided that, if your services are dispensed with on ground of unfitness certified by a medical board, no notice shall be required;"

40

In the High
Court in
Malaya

No. 7

Judgment of
Syed Othman J.
19th January
1971

(continued)

The plaintiff accepted the offer of appointment.

The letter initiating proceedings against him charged him with offences against discipline. They fell under two headings: first, conduct bringing the public service into disrepute which contained four offences; and secondly, insubordination to his immediate superior on two occasions specified in the charge.

On the wording of the Chief Police Officer's letter of 29th May, 1962, I am satisfied that the decision was a termination and not a dismissal. If it was a dismissal in accordance with G.O.D.32 the Plaintiff would not have been entitled to anything. Here he was given one month's salary plus cost of living allowance, a clear indication of termination in accordance with paragraph 4 of his conditions of appointment. Under this condition there is nothing to prevent his services from being terminated whether or not he had misconducted himself. The Plaintiff could have been properly dismissed and should have been dismissed since he failed to exculpate himself. The decision taken by the Chief Police Officer was probably to save him from the ignominy of a dismissal. 10 20

If I am wrong here and assuming that the termination should be taken as a dismissal, the question to be determined is whether the Chief Police Officer had the power to dismiss.

It is argued that the Chief Police Officer had no power to dismiss under the conditions of the appointment as the letter was written by the Chief Police Officer acting at his own instance and not by virtue of any delegation of power. Reference is made to G.O.D. 31 which reads :- 30

"31. In these Regulations the "Disciplinary Authority" means in relation to any officer the Commission whose jurisdiction extends to the service of which such officer is a member in accordance with the provision of part X of the Constitution. 40

Provided that where such Commission in pursuance of clause (6) of Article 144 of the constitution has delegated the exercise

of disciplinary control in respect of any grade of service to an officer or board of officers any reference to the Disciplinary Authority shall in relation to an officer within that grade of service be construed as referring to the officer or board of officers to whom such function has been delegated."

In the High
Court in
Malaya

—
No. 7

Judgment of
Syed Othman J.

19th January
1971.

(continued)

10 On the face of it, the above provision does not appear to relate to appendix GOD31. But List A in the appendix bears the heading Regulation 31, i.e. G.O.D. 31. It is said for the plaintiff that the list bears the name of Federal Officers to whom the Public Services Commission has delegated its power under clause (6) of Article 144 of the Constitution. (The Commissioner of Police is in the list, but not the Chief Police Officer, Johore) I have some doubt if this was so, as a delegation of power under
20 clause (6) of Article 144 is a matter for the Public Services Commission and not to be prescribed under the General Orders. It seems to me that this provision is a vesting of the procedure from pre-Merdeka era. I believe the procedure has now been changed by some new regulations.

As to G.O.D.31 I must confess I am unable to ascertain what is intended by the operative part as the sentence does not appear to be complete. But the proviso gives me some light. Its effect is that the Commission has in pursuance of Clause (6) of
30 Article 144 of the Constitution delegated the exercise of disciplinary control to an officer or board of officers, Clause (6) of Article 144 of the Constitution reads :-

"144. (6) 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 Clause (1) in respect of any grade of service, and that officer or board shall
40 exercise those functions under the direction and the control of the Commission."

By section 28 (1) of the Interpretation and General Clauses Ordinance, 1948, which is applicable to the Constitution (see the Eleventh Schedule to the Constitution) where a written law confers a power or imposes a duty, then, unless the contrary intention

In the High Court in Malaya

No. 7

Judgment of Syed Othman J.

19th January 1971.

(continued)

appears, the power may be exercised and the duty shall be performed from time to time as occasion requires. The Public Services Commission has power under Clause (6) to delegate its duty under clause (1) which includes the exercise of disciplinary control over members of the service to which its jurisdiction extends. That power may therefore be delegated to any officer at any time. Even if it can be said that the list in appendix GOD 31 bears the name of officers to whom the Public Services Commission has delegated its power, that list cannot be taken as exhaustive or derogating the powers of the Public Services Commission to delegate its power to other officers. In this case, it is a fact that the appeal of the Plaintiff to the Public Services Commission against the decision of the Chief Police Officer was dismissed. On this very fact, the only inference to be drawn is that the Public Services Commission must have delegated to the Chief Police Officer its power to exercise disciplinary control in respect of the grade of service to which the plaintiff belonged. I do not think it is necessary that the Chief Police Officer should have indicated in his letter that he was acting by virtue of a delegation of power. The dismissal of the appeal by the Public Services Commission indicates that it was exercising direction and control over the Chief Police Officer in performing the functions which had been delegated to him, within the terms of Clause (6) of Article 144 of the Constitution. That in dealing with the Plaintiff, the Chief Police Officer had been under its control and direction through the usual channel of Police Headquarters, is clearly indicated in the letter P4 addressed to him by the Senior Assistant Commissioner at Kuala Lumpur, and which related to a discussion with an officer of the Public Services Commission who dealt with disciplinary matters.

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On the foregoing grounds, I do not consider that the plaintiff has made out a case for the exercise of my discretion to make the declaration and other orders which he seeks. The application is dismissed with costs.

Sgd: (SYED OTHMAN BIN ALI)
Judge
High Court, Malaya.

Delivered at Johore Behru
on the 19th day of January, 1971.

For the Plaintiff: Wong Kim Fatt and P.K.Nathan
(Solicitors)

For the Defendant: Mohd Noor Bin Ahmad,
Federal Counsel.

In the High
Court in
Malaya

No. 7

Judgment of
Syed Othman J.

19th January
1971.

(continued)

No. 8

NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 3 of 1971.

BETWEEN:

CALISTER LIONEL

Appellant

- and -

GOVERNMENT OF THE
FEDERATION OF MALAYSIA

Respondent

In the Matter of Civil Suit No. 41 of 1966 in the
High Court in Malaya at Johore Bahru.

Between:-

CALISTER LIONEL

Plaintiff

- and -

THE GOVERNMENT OF THE
FEDERATION OF MALAYSIA

Defendant

NOTICE OF APPEAL

TAKE NOTICE that the abovenamed CALISTER LIONEL

In the Federal
Court of
Malaysia

No. 8

Notice of
Appeal

19th January
1971.

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20

In the
Federal Court
of Malaysia

No. 8

Notice of
Appeal

19th January
1971.

(continued)

being dissatisfied with the decision of The Honourable Mr. Justice Dato Syed Othman Bin Ali, given in the High Court at Johore Bahru on the 19th day of January, 1971 appeals to the Federal Court against the whole of the said decision.

Dated this 19th day of January, 1971.

Sgd: NATHAN & YANG
SOLICITORS FOR THE APPELLANT

To:-

The Registrar,
The Federal Court, Kuala Lumpur.

10

The Senior Assistant Registrar,
The High Court in Malaya at
Johore Bahru.

The Federal Counsel,
Jabatan Peguam Negara,
Kuala Lumpur.

No. 9

Memorandum
of Appeal

28th February
1971.

No. 9

MEMORANDUM OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA

20

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. 3 of 1971

BETWEEN:

CALISTER LIONEL Appellant

- and -

GOVERNMENT OF THE FEDERATION
OF MALAYSIA Respondent

(In the matter of Civil Suit No. 41 of 1966 in the High Court in Malaya at Johore Bahru.)

BETWEEN:

CALISTER LIONEL

Plaintiff

- and -

THE GOVERNMENT OF THE
FEDERATION OF MALAYSIADefendant).MEMORANDUM OF APPEALIn the
Federal Court
of Malaysia

No. 9

Memorandum
of Appeal28th February
1971.

(continued)

1. The learned Judge erred in law and in fact in holding that the Appellant's services with the Respondent were properly terminated.
- 10 2. The learned Judge erred in law and in fact in holding that the Chief Police Officer, Johore, had the authority to terminate the services of the Appellant.
3. The learned Judge erred in law and in fact in holding that the power to terminate the services of the Appellant had been delegated to the Chief Police Officer, Johore, by the Public Services Commission.
- 20 4. The learned Judge erred in law in coming to the conclusion that the Appellant's services were terminated rather than dismissed.
5. The learned Judge erred in law and in fact in basing his decision on the letter of the Appellant's first appointment dated the 28th day of September, 1953, when he found as an undisputable and agreed fact that the Appellant was subject to the provisions of the General Orders and all rules and regulations issued by the Public Services Commission at all material times during the Appellant's appointment.
- 30 6. The learned Judge erred in law in not holding that the General Orders issued on the 1st day of July, 1958 under the authority of His Majesty The Yang Di-Pertuan Agong in accordance with Article 132 (2) of the Constitution of the Federation of Malaya supersedes the letter of appointment dated the 28th day of September, 1953.
7. The learned Judge erred in law in inferring that there was delegation of power from the Public Services Commission to the Chief Police Officer, Johore.

In the
Federal Court
of Malaysia

No. 9

Memorandum
of Appeal
28th February
1971.

(continued)

8. The Chief Police Officer, Johore, had no power whatsoever to conduct disciplinary procedure against the Appellant or to terminate or dismiss the services of the Appellant.

9. The learned Judge erred in law in forming the belief that the procedure of delegation of power had been changed by some new regulations without any reference thereto.

10. The learned Judge erred in law and in fact in coming to the conclusion that the list of "Disciplinary Authority" given in Appendix "DI" (Regulation 31) of the General Orders Chapter 'D' cannot be taken as exhaustive or derogating the power of the Public Services Commission. 10

11. The learned Judge should not have at any time given relevance and consideration to the discussion made between Mr.A.B.Jefferies, Deputy Superintendent of Police, of Federal Police Headquarters, Kuala Lumpur, and an Officer of the Public Services Commission who dealt with disciplinary matters.

12. The decision of the learned Judge cannot be supported by law and evidence. 20

Dated this 28th day of February, 1971.

Sgd: NATHAN & YANG

Solicitors for the Appellant.

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

To:
The Senior Assistant Registrar,
The High Court in Malaya at
Johore Bahru. 30

To:
The Federal Counsel,
Jabatan Peguam Negera,
Kuala Lumpur.

The address for the service of the Appellant is care of Messrs. Nathan & Yang, Advocates &

Solicitors of Room No. 16-C, Third Floor, Tan Chan Cheng Building, Jalan Station, Johore Bahru.

In the Federal Court of Malaysia

No. 9

Memorandum of Appeal

28th February 1971.

(continued)

No. 10

NOTES OF ARGUMENT RECORDED BY H.T. ONG, CHIEF JUSTICE, HIGH COURT IN MALAYA.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT JOHORE BAHRU

(Appellate Jurisdiction)

10 Federal Court Civil Appeal No.3 of 1971.

Between:

Calister Lionel Appellant

- and -

Government of the Federation of Malaya (In the matter of Johor Bahru High Court Civil Suit No.41 of 1968) (sic) Respondent

Between:

Calister Lionel Plaintiff

20 - and -

Government of the Federation of Malaya Defendant .

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

In the
Federal Court
of Malaysia

NOTES OF ARGUMENT RECORDED BY ONG, C.J.

22nd May, 1971.

No. 10

P.K. Nathan for appellant.

Notes of
Argument -
H.T.Ong, C.J.

Ajaib Singh for respondent.

22nd May
1971.

Nathan: undisputed facts -

(continued)

Plaintiff temporary clerk since 1.10.53 -
police clerk interpreter - facts set out in
judgment at p.20.

Plaintiff subject to G.O. and all rules and
regulations of P.S.C.

10

i.e. he is member of public service under
Article 132(1) - no distinction between temporary
and permanent officer.

Article 139(1) extends to "all persons".

Section 29 of Interpretation & General
Clauses Ord. 1948 is applied by virtue of
Article 160(1).

Issue is whether C.P.O. had authority to dis-
miss or terminate services of appellant.

Submit only P.S.C. could do so.

20

As to powers of C.P.O. (Johor) he was the
officer who conducted disciplinary proceedings
against appellant i.e. held inquiry - under
G.O.D. 31 - c.f. appendix "D.1" - (p.35 of record).

Only Commissioner of Police named.

Respondent has onus of showing extension to
cover other officers such as the C.P.O. - they
have failed to do so.

Ergo: if C.P.O. had no authority even to
conduct inquiry, how could he have terminated
appellant's services?.

30

Can C.P.O. terminate services of his clerk?

Nathan (contd.)

The judge tried to distinguish between 'termination' and 'dismissal' - in either case - or whatever the interpretation C.P.O. has no power.

In Haji Araffin (1969) 1 M.L.J. p.6 no charges were preferred and no disciplinary inquiry held against him - here charges were made and he tried to exculpate himself - whether or not a stigma follows - see p.28 which shows C.P.O. didn't know his G.O. and sought advice.

p.29 the letter conveying decision.

C.P.O. was prosecutor, juror and judge.

Charges on pp.9 - 10.

Dismissal under guise of termination.

Judgment at p.22F.

See p.14G in (1969) 1 M.L.J. & of C.P.O.'s letter of 29.5.62.

See Wrongful Dismissal (5th Ed. 1969) Vol.1 by Chakravarti @ p.405.

Submit it is clear that in fact he was dismissed and his services wrongfully terminated.

Under 'D.1' of G.O.D.31 - the text sets out Disciplinary Authorities.

No evidence of delegation on the record.

Delegation of Powers Ord. 1956 - s:3.

Ratnavale (1963) 29 M.L.J.393,395B.

Article 144 Clause (6) - delegation.

Submit Gazette Notification is necessary.

P.22K of judgment - has C.P.O. power to dismiss?

Submit in absence of anything better, the list in Appendix D.1 is exhaustive unless contrary is shown.

In the
Federal Court
of Malaysia

No. 10

Notes of
Argument -
H.T.Ong, C.J.

22nd May
1971.

(continued)

10

20

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In the
Federal Court
of Malaysia

No. 10

Notes of
Argument -
H.T.Ong C.J.

22nd May
1971.

(continued)

Submit appellant had made out his case and was
entitled to judgment.

Ajaib: was there a termination or dismissal? Submit
it was a termination in accordance with contract
of employment.

(see p.27 clause 4).

Concede there is no evidence of delegation.

C.A.V.

Kuala Lumpur.

9th July, 1971.

P.K. Nathan for appellant.

10

A. Razak for respondent.

I read judgment - appeal allowed with costs.

Gill & Ali agree.

Sgd. H.T. Ong.

TRUE COPY.

(TNEH LIANG PENG)
Secretary to Chief Justice,
High Court,
Malaya. 28.9.71.

No.11

Notes of
Argument -
Gill, J.

22nd May
1971.

No. 11

20

NOTES OF ARGUMENT RECORDED BY GILL, JUDGE,
FEDERAL COURT MALAYSIA.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT JOHOR
BAHRU (Appellate Jurisdiction).

FEDERAL COURT CIVIL APPEAL NO. 3 of 1971.

Between:

Calister Lionel

Appellant

- and -

Government of the
Federation of Malaya

Respondent

30

In the
Federal Court
of Malaysia

No. 11

Notes of
Argument -
Gill, J.

22nd May
1971.

(continued)

against appellant under G.O.D.31. Refer to Appendix 'D.1', wherein the 'Commissioner of Police' appears in the list of Disciplinary authority. For respondent to show that authority was delegated to other officer. This they have failed to show.

The C.P.O. had no authority to dismiss or terminate the services of the appellant. Can C.P.O. terminate services of a clerk?

Judge has tried to distinguish between 'dismissal' or 'termination of service'. In either case the C.P.O. had no authority. 10

Distinction. Refer to Haji Ariffin v. Government of Pahang, (1969) 1 M.L.J.6. No charges preferred against Haji Ariffin, and no disciplinary proceedings were held against him. In this case charges were preferred against the appellant. Whether the dismissal created a stigma against appellant. Refer to page 28 of record, and page 29. C.P.O. was prosecutor as well as judge. The appellant was charged and punished. Charges set out at page 9. The respondent cannot now say, we have only terminated your services. 20

Refer to page 22 of record, para. at line F.

On distinction between dismissal and termination, refer to Haji Ariffin v. Government of Pahang, (1969) 1 M.L.J.14. Did not the matter of the C.P.O. show that there was some sort of inquiry? Refer to Wrongful Dismissals by Chakravarti, (5th edition) Vol.1 p.405. 30

Even if there were no disciplinary proceedings, who was the proper authority to terminate the services of the appellant? In fact the appellant was wrongly dismissed or his services were wrongly terminated. No evidence of delegation to C.P.O. Refer to section 3 of Delegation of Powers Ordinance, 1956. Refer to M. Ratnavale v. The Government of the Federation of Malaya, (1963) 29 M.L.J.393. Refer to Article 144(6) of Constitution. Submit Gazette notification if necessary. Refer again to Ratnavale's case. 40

Refer to page 22 of record on my final ground of appeal. Read para beginning at line J3. In the absence of any other list, we have to accept the list at Appendix D1 as exhaustive. Either a power exists or does not exist. There is no question of inferences.

The appellant had made out a case. This appeal should be allowed.

Ajaib Singh:

10

The evidence clearly shows that the services of the appellant were terminated in accordance with his contract of employment, which appears at page 27.

Letter of termination at page 29. Vast difference between Indian cases and this case. Motive behind the termination not relevant.

20

I concede that the C.P.O. had no power to dismiss, but I say that he had the power to terminate the services of the appellant. I have nothing more to say.

C.A.V.

G.S. Gill.

Kuala Lumpur.

9th July, 1971.

Coram: Ong C.J., Gill F.J. and Ali F.J.

Enche P.K. Nathan for appellant.

Enche Razak for respondent.

30

C.J. delivers his written judgment. I agree. Ali F.J. agreed. Appeal allowed. Judgment for the appellant as prayed with costs here and in the Court below. Deposit to be refunded to him.

S.S. Gill.

Certified true copy.

(Sgd) Secretary to Judge.
28.9.71.

In the
Federal Court
of Malaysia

No.11

Notes of
Argument -
Gill, J.

22nd May
1971.

(continued)

In the
Federal Court
of Malaysia

No. 12

NOTES OF ARGUMENT RECORDED BY ALI, JUDGE
FEDERAL COURT, MALAYSIA

No.12

Notes of
Argument -
Ali, F.J.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
JOHOR BAHRU (Appellate Jurisdiction)

22nd May
1971.

FEDERAL COURT CIVIL APPEAL NO. 3 of 1971

Between:

Calister Lionel Appellant

- and -

Government of the Federation Respondent

10

(In the matter of Johor Bahru High Court Civil
Suit No. 41 of 1968 (sic))

Between

Calister Lionel Plaintiff

Government of the Federation
of Malaya Defendant).

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

20

NOTES RECORDED BY ALI, F.J.

22nd May , 1971.

P.K.Nathan for appellant.

Ajaib Singh for respondent.

Nathan: addresses. Plaintiff engaged as a
temporary Clerk/Interpreter on 1st October 1953
in police clerical service. Facts as set out in
judgment. No dispute on facts.

Submits plaintiff subject to provisions of
G.O. and regulations issued by P.S.C. Appellant
a member of public service under Article 132(1)

30

and by virtue of Article 139(1).

Section 29 of Interpretation and General Clauses Ordinance 1948 applies to Constitution by virtue of Article 160 of the Constitution. This section provides the power to appoint includes power to dismiss.

Issue: whether C.P.O. had the authority to dismiss or terminate the services of the appellant.

10 Refers to powers of C.P.O. He conducted disciplinary proceedings against appellant. This was against G.O. 31 of Chapter D.

Refers to appendix "D.1" - on page 35 of record. Respondent has onus of showing delegation to C.P.O. Note: Only Commissioner has powers.

Submits if C.P.O. has no authority to take disciplinary proceedings, how can he have power to terminate the service. Submits he has no powers. Whether termination or dismissal the C.P.O. has no authority.

20 Refers to Haji Ariffin v. Government of Pahang (1969) 1 M.L.J. p.6. In that case there was no charge preferred against Haji Ariffin. No disciplinary enquiry held against him. In the instant case there was disciplinary enquiry. Decision bound on finding of enquiry.

Query: Whether as a result of termination of service there was a stigma.

30 Refers to letter on page 28 of record. Also on page 29. C.P.O. clearly acting in all capacities.

In effect appellant was dismissed.

Refers again to Haji Ariffin's case p. 14G.

Refers to Wrongful Dismissal by Chakravarti, 5th Edn. 1969, Vol. 1, page 405.

No evidence of delegation.

Article 144 (6).

In the
Federal Court
of Malaysia

No.12

Notes of
Argument -
Ali, F.J.

22nd May
1971.

(continued)

In the
Federal Court
of Malaysia

No.12

Notes of
Argument -
Ali, F.J.

22nd May
1971.

(continued)

Refers to M. Ratnavale v. The Government
of the Federation of Malaya (1963) 29 M.L.J. 393.

Ajaib Singh: Submits on evidence service of
appellant was terminated. He was not dismissed.
C.P.O. can terminate. He has the power to
terminate.

I have nothing more to say.

Judgment reserved.

Ali.

Kuala Lumpur

9th July, 1971.

10

Coram: Ong C.J., Gill F.J., and Ali, F.J.

P.K. Nathan for appellant.

Razak for respondent.

C.J. reads out his judgment. Appeal
allowed with costs.

Nathan asks for interest to be considered.
Not approved.

Ali.

Certified true copy.

Sgd: Illegible

Secretary to Judge.

20

In the
Federal Court
of Malaysia

No.13

Judgment of
Ong, C.J.

9th July
1971.

(continued)

the Public Service, to be employed in any part of the Federation of Malaya. In 1953 he was transferred to Contingent Police Headquarters in Johor Bahru. On April 30, 1962 disciplinary action under regulation 32 of General Orders, Chapter D, was taken against him by the Chief Police Officer, Johor, for acts of alleged indiscipline. He was informed of the charges by letter which required him to exculpate himself within 14 days. His explanations were not accepted by the Chief Police Officer who on May 29, 1962 conveyed his decision to the appellant in these terms :-

10

"With reference to my letter to you (SR)PF/3596 dated 30th April, 1962, and to your reply thereto dated 8th May, 1962, I have to inform you that, after careful consideration of your representations, I have decided that you have failed to exculpate yourself.

20

2. I have, therefore, decided to terminate your services as a Temporary Clerk with effect from 1st June, 1962, on payment to you of one month's salary plus cost of living allowance in lieu of notice".

On June 10, 1962 the appellant wrote to the Public Services Commission appealing for reconsideration of his case with a view to reinstatement. His appeal was dismissed. On March 12, 1966 he commenced action, seeking a declaration that his purported dismissal by the Chief Police Officer on June 1, 1962 was void, inoperative and of no effect and that he continued to be a member of the police clerical service, entitled to all emoluments accrued since the date of his dismissal.

30

The appellant's case was that, as a member of the public service, his purported dismissal by the Chief Police Officer, an authority subordinate in rank to the Public Services Commission, was contrary to clause (1) of Article 135 of the Constitution. The Government in its defence admitted that the appellant was a member of the police clerical service, but pleaded that one of the terms of his employment was that his services

40

were terminable by one month's notice, or on payment of one month's salary in lieu of notice, and his services were merely terminated in accordance therewith.

In the
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No.13

Judgment of
Ong, C.J.

9th July
1971.

(continued)

10 The learned trial judge was of opinion that,
by reason of the letter of the Chief Police
Officer having expressly stated that the
appellant's services were terminated and also the
payment to him of one month's salary plus cost of
living allowance, the Chief Police Officer's
decision was taken probably to save him from the
ignominy of a dismissal and in accordance with the
conditions of his appointment which he had agreed
to on accepting such appointment. With respect
I think it only right to say that the wording of
the Chief Police Officer's letter should not be
the deciding factor. Calling a spade a pickaxe
does not alter the character of that agricultural
implement. Even in the same letter it was stated
20 that the decision taken was because the appellant
had failed to exculpate himself.

Assuming, however, that the appellant had
been dismissed, the judge went on to consider
whether the Chief Police Officer was exercising
powers delegated to him by the Public Services
Commission by virtue of the provisions of clause (6)
of Article 144 of the Constitution which reads :-

30 "(6) 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 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 In taking the affirmative view the judge was
of opinion that the appeal made to the Public Services
Commission indicated that the Public Services
Commission "was exercising direction and control over
the Chief Police Officer in performing the functions
which had been delegated to him, within the terms
of clause (6) of Article 144 of the Constitution".
Again, with respect, I must voice my dissent.
Having the power to delegate does not necessarily
imply that, in any particular case, the Public

In the
Federal Court
of Malaysia

No.13

Judgment of
Ong, C.J.

9th July
1971.

(continued)

Services Commission must have delegated its powers to the person professing to exercise such powers. Whether or not the Chief Police Officer was exercising powers delegated to him by the Public Services Commission was a question of fact. It was not pleaded in the defence, much less proved.

Article 139(1) of the Constitution provides for "a Public Services Commission whose jurisdiction shall, subject to Article 144 extend to all persons who are members of the services mentioned in paragraphs (c) and (f) of clause (1) of Article 132...". The appellant was undoubtedly a member of the general public service of the Federation, under paragraph (c).

10

Clause (1) of Article 135 reads :-

"(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."

20

Article 160(1) applies the Interpretation and General Clauses Ordinance 1948 to the interpretation of the Constitution. Section 29 of the Ordinance states that "where a written law confers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to dismiss...". At the date of the appellant's dismissal the authority which could have appointed him was the Public Services Commission, which, therefore, was the authority having power to dismiss - not the Chief Police Officer who was subordinate to the Public Services Commission. Not having been delegated the power of dismissal generally or in this particular case, the Chief Police Officer's act was clearly contrary to the Constitution and therefore void: see S.S. Kanda v. Government of the Federation of Malaya (1)

30

40

That the appellant, when accepting appointment

(1) (1962) M.L.J.169, 171-2.

in 1953, had expressly agreed to accept one month's notice of termination of his services, is no more an answer to his claim than it was to Inspector Kanda. A public servant is guaranteed security of tenure of his office under Part X of the Constitution, which is the supreme law: see Article 4. Just as it is impossible to contract out of the provisions of rent control legislation, a fortiori must the terms of the appellant's appointment (including regulation 36 of General Orders, Chapter D) be invalid where it is inconsistent with the Constitution.

10

In the
Federal Court
of Malaysia

No.13

Judgment of
Ong, C.J.

9th July,
1971.

(continued)

The appeal is accordingly allowed and there will be judgment for the appellant as prayed, with costs here and in the court below. His deposit is to be refunded to him.

Gill and Ali, FJJ concurred.

Kuala Lumpur,
9th July, 1971.

Sgd. H.T. Ong.
Chief Justice,
High Court in Malaya.

20

- - - - -

P.K. Nathan Esq., of M/S Nathan & Yang for
appellant.

Ajaib Singh Esq., Senior Federal Counsel for
respondent.

Counsel for the Appellant and Inche Abdul Razak, Senior Federal Counsel for the Respondent, IT IS ORDERED that this appeal be and is hereby allowed and that Judgment is entered for the Appellant as follows :

In the
Federal Court
of Malaysia

No.14

Order of
Federal Court

9th July,
1971.

(continued)

- 10 (i) That the dismissal of the Appellant as a Temporary Clerk/Interpreter from the Police Clerical Service purported to be effected by one T.B. Voice, Chief Police Officer, Johore, on the 1st day of June, 1962 was void, inoperative and of no effect and that he is still a member of the said Police Clerical Service.
- (ii) That the Respondent to pay to the said Appellant all arrears of pay, allowances and other emoluments due and owing to him as a Clerk/Interpreter in the Police Service from the date of the said purported dismissal.
- 20 (iii) That an Account of what is due to the Appellant from the Respondent in respect of his salary and all other emoluments found to be due to him as a Temporary Clerk/Interpreter in the Police Clerical Service and an Order for payment by the Respondent to the Appellant of any sum upon taking such Account.

30 AND IT IS ORDERED that the Respondent do pay to the Appellant the Costs of this Appeal and the Costs in the High Court and IT IS LASTLY ORDERED that the sum of \$500/- deposited in the High Court at Johor Bahru as security for costs of this Appeal be refunded to the Appellant.

GIVEN under my hand and seal of the Court
this 9th day of July, 1971.

Sgd: SHEIKH ABDUL RAHMAN,

CHIEF REGISTRAR,

FEDERAL COURT, MALAYSIA.

In the
Federal Court
of Malaysia

No. 15

NOTICE OF MOTION BY RESPONDENT

No.15

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH

Notice of
Motion

(Appellate Jurisdiction).

11th August
1971

Federal Court Civil Appeal No.3 of 1971.

Between

Calister Lionel Appellant

- and -

The Government of the
Federation of Malaysia Respondent 10

(In the matter of Johor Bahru High Court Civil
Suit No. 41 of 1966

Between

Calister Lionel Plaintiff

- and -

The Government of the
Federation of Malaysia Defendant).

NOTICE OF MOTION.

TAKE NOTICE that the Court will be moved
on Monday the 6th of September 1971 at 9.30 20
o'clock in the forenoon or as soon thereafter as
counsel can be heard by Enche Abdul Razak bin Dato
Abu Samah, Senior Federal Counsel, for the above-
named Respondent for an order :-

(a) that conditional leave be granted to the
Respondent to appeal to His Majesty the
Yang di-Pertuan Agong against the decision
of this Honourable Court given on the 9th
day of July, 1971; and

(b) that the costs of incidental to this 30
application be costs in the cause

Dated this 11th day of August, 1971.

Sgd: Abdul Razak bin Dato Abu Samah
Senior Federal Counsel
for and on behalf of the
Respondent above-named.

In the
Federal Court
of Malaysia

No.15

Notice of
Motion

11th August
1971.

(continued)

Dated at Kuala Lumpur this 13th day of August 1971.

SEAL

Sgd.

Chief Registrar,
Federal Court,
Kuala Lumpur.

10

To:

Messrs. Nathan & Yang,
Room No.16 (3rd Floor),
Tan Chan Cheng Building,
Jalan Station,
JOHORE BAHRU (Solicitors for the Appellant)

This application will be supported by the
Affidavit of Enche Abdul Razak bin Dato Abu Samah
affirmed on the 12th day of August, 1971. This
application was taken out by the Senior Federal
Counsel for and on behalf of the Respondent whose
address for service is c/o Attorney-General's
Chambers, Kuala Lumpur.

20

Filed this 12th day of August, 1971.

Sgd: Sheikh Abdul Rahman bin Sheikh A. Bakar

Chief Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

In the
Federal Court
of Malaysia

No. 16

AFFIDAVIT OF ABDUL RAZAK BIN DATO ABU SAMAH

No.16

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT JOHOR BAHRU

Affidavit of
Abdul Razak
bin Dato Abu
Samah

(Appellate Jurisdiction).

Between

12th August
1971

Calister Lionel

Appellant

- and -

The Government of the
Federation of Malaysia

Respondent

(In the matter of Johor Bahru High Court
Civil Suit No. 41 of 1966

10

Between

Calister Lionel

Plaintiff

- and -

The Government of the
Federation of Malaysia

Defendant).

A F F I D A V I T

I, Abdul Razak bin Dato Abu Samah, of full
age, residing at 908, Folly Barat, Kuala Lumpur,
do solemnly affirm and state as follows :

20

1. I am Senior Federal Counsel, Attorney-
General's Chambers, Kuala Lumpur, and am authorised
to act in this matter.

2. On the 9th day of July, 1971, this Honourable
Court delivered Judgment and allowed the appeal by
the appellant with costs in this Honourable Court
and the Court below.

3. I am desirous of appealing to His Majesty
the Yang di-Pertuan Agong against the said Judgment
of this Honourable Court as I am advised that this
is a fit and proper case to appeal.

30

4. The said Judgment is a final order in a civil

matter where the matter in dispute in the appeal amounts to the value of five thousand dollars.

In the
Federal Court
of Malaysia

No.16

Affidavit of
Abdul Razak
bin Dato Abu
Samah

12th August
1971.

(continued)

10

5. I am willing to undertake as a condition for leave to appeal to enter into good and sufficient security, to the satisfaction of this Court, in such sum as this Court may duly prescribe and to conform to any other conditions that may be imposed, under rule 7 of the Federal Court (Appeals from Federal Court) (Transitional) Rules 1963.

I pray that this Honourable Court will be pleased to grant me leave to appeal to His Majesty the Yang di-Pertuan Agong.

Affirmed by the above-named)
Abdul Razak bin Dato Abu Samah) Sgd. Abdul Razak
at Kuala Lumpur this 12th day) bin Dato A.
of August, 1971 at 11.30 a.m.) Samah

Before me,

20

Sgd. Low Jau Kiu,
Pesuruhjaya Sumpah
Mahkamah Tinggi, Kuala Lumpur.

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

Filed this 12th day of August, 1971.

Sgd. Sheikh Abd. Rahman bin Sheikh A.Bakar

30

Chief Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

support of the Motion AND UPON HEARING Counsel as aforesaid IT IS ORDERED that conditional leave be and is hereby granted to the Respondent herein to appeal to His Majesty the Yang di-Pertuan Agong from the Order of the Federal Court of Malaysia dated the 9th of July, 1971 upon the following conditions :-

In the
Federal Court
of Malaysia

No.17

Order Granting
Conditional
Leave to
Appeal to His
Majesty the
Yang di-
Pertuan Agong

7th September
1971

(continued)

- 10 (a) That the Respondent do within three (3) months from the date hereof enter into good and sufficient security to the satisfaction of the Chief Registrar, Federal Court, Malaysia in the sum of five thousand dollars (\$5,000/-) for the due prosecution of the appeal and the payment of all such costs as may become payable to the Appellant abovenamed in the event of the Respondent abovenamed not obtaining the order
- 20 granting the Respondent final leave to appeal or of the appeal being dismissed for non-prosecution, or of His Majesty the Yang di-Pertuan Agong ordering the Respondent abovenamed to pay the Appellant costs of the appeals as the case may be; and
- 30 (b) That the Respondent do within the said period of three (3) months from the date hereof take the necessary steps for the purposes of procuring the preparation of the record and for the despatch thereof to England;

AND IT IS FINALLY ORDERED that the costs of and incidental to the application be costs in the cause.

Given under my hand and the seal of the Court this 7th day of September, 1971.

Sgd. Sheikh Abdul Rahman,
Chief Registrar,
Federal Court,
Malaysia.

In the
Federal Court
of Malaysia

No. 18

No.18

Order Granting
Final Leave to
Appeal to His
Majesty the
Yang di-
Pertuan Agong

10th January
1972.

ORDER GRANTING FINAL LEAVE TO APPEAL TO
HIS MAJESTY THE YANG DI-PERTUAN AGONG

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT
KUALA LUMPUR

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 3 of 1971

Between

Calister Lionel

Appellant

- and -

The Government of the
Federation of Malaysia

Respondent

(In the matter of Civil Suit No. 41 of 1966 in the
High Court in Malaya at Johor Bahru

Between

Calister Lionel

Plaintiff

- and -

The Government of the
Federation of Malaysia

Defendant)

BEFORE: ONG, ACTING LORD PRESIDENT, FEDERAL COURT
MALAYSIA:
GILL, JUDGE, FEDERAL COURT, MALAYSIA:
ALI, JUDGE, FEDERAL COURT, MALAYSIA.

10

20

IN OPEN COURT

This 10th day of January 1972.

O R D E R

UPON MOTION made unto this Court this day by
Enche Abdul Razak bin Dato' Abu Samah, Senior Federal
Counsel for the above-named Respondent in the
presence of Mr. Albert Lian of Counsel for the
Appellant above-named AND UPON READING the Notice of
Motion dated the 10th day of December, 1971 and the

30

Affidavit of Abdul Razak bin Dato' Abu Samah affirmed on the 1st day of December, 1971 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 AND IT IS ORDERED that the costs of this application be costs in the cause.

In the Federal Court of Malaysia

No.18

Order Granting Final Leave to Appeal to His Majesty the Yang di-Pertuan Agong

10th January 1972.

(continued)

10 GIVEN under my hand and the seal of the Court this 10th day of January, 1972.

Sgd: Sheikh Abdul Rahman

SEAL

Chief Registrar,
Federal Court,
Malaysia.

EXHIBITS

Exhibits

ANNEXURE A

Annexure A
Letter of
First
Appointment

GOVERNMENT OF THE FEDERATION OF MALAYA

LETTER OF CONSIDERATION FOR APPOINTMENT LOCALLY

28th September
1953.

MR.....

20 I have the honour to inform you that you are being considered for appointment as a Temporary Clerk on a salary of \$126/- per month.

2. You would be eligible, in addition, for such allowances as may be in force from time to time in accordance with Circulars issued by the Federal Secretariat.

3. Appointment would be subject to the following conditions:

30 1st That you pass a satisfactory medical examination;

2nd That you produce a certificate of your birth or, if this be unprocurable, satisfactory evidence in writing as to your age and place of birth;

Exhibits
Annexure A
Letter of
First
Appointment
28th September
1953.
(continued)

- 3rd That you sign the Statutory Declaration overleaf, and that you will be liable to instant dismissal without notice if any statement contained therein is untrue;
- 4th That your engagement will be terminable at one month's notice, or on payment of one month's salary in lieu of notice on either side, provided that, if your services are dispensed with on the ground of unfitness certified by a medical board, no notice shall be required; 10
- 5th That you serve on probation for a period of 6 months;
- 6th That you will be liable, so long as you remain in the Public Service, to be employed in any part of the Federation of Malaya;
- 7th That you furnish such security as may from time to time be required of you by the Head of your Department;
- 8th That in so far as they are relevant to the duties of your appointment and to your employment as a Public Servant, you will, throughout such employment, comply with the provisions of the General Orders applicable to your employment within the Federation of Malaya. 20
4. Should you be prepared to accept the appointment on these conditions, I am to request that you will sign the form of acceptance and Statutory below and return this paper to me. 30

5. I am also to request that you will sign and return to me the attached notice calling attention to F.M.S.G.O.23 which will be deemed to be applicable throughout your employment as a Public Servant in the Federation of Malaya.

I have the honour to be,
Sir,

Your Obedient Servant,
B.C.Lionel, Sgd:xxxxxxxxxxxxxHead of Department.
Manek Urai, Kuala Krai. 40

To: The Chief Police Officer, Kelantan.

I should be prepared to accept appointment on the conditions above stated.

Exhibits

Annexure B
Letter A.B.
Jeffries to
Chief Police
Officer.

27th April
1962

(continued)

until further information is received from you
about the outcome of this case.

Sgd: xxxxxx(A.B.JAFFERIES) DSP,
for Senior Assistant Commissioner 'A',
for Commissioner of Police,
Kuala Lumpur.

Annexure C
Letter of
Dismissal

29th May
1962

ANNEXURE C

LETTER OF DISMISSAL

(SR)PF/3596

PEJABAT KETUA PEGAWAI POLIS,
POLIS DI-RAJA PERSEKUTUAN,
JOHORE.

10

29th May, 1962.

Mr. B.C. Lionel, Temporary Clerk,
Kulai Police District Headquarters,
K U L A I .

ufs. O.S.P.C., JOHORE BAHRU.

With reference to my letter to you (SR)
PF/3596 dated 30th April, 1962, and to your reply
thereto dated 8th May, 1962, I have to inform
you that, after careful consideration of your
representations, I have decided that you have
failed to exculpate yourself.

20

2. I have, therefore, decided to terminate
your services as a Temporary Clerk with effect
from 1st June, 1962, on payment to you of one
month's salary plus cost of living allowance
in lieu of notice.

Sgd: xxxxxxxxxxxx
(T.B. Voice)
Ketua Pegawai Polis,
Johore.

30

ANNEXURE DPLAINTIFF'S APPEAL TO THE PUBLIC SERVICES
COMMISSIONExhibits

Annexure D
 Plaintiff's
 Appeal to
 Public Services
 Commission
 10th June 1962

B.C. Lionel
 House No.1, Lorong 5,
 Jalan Yahya Awal,
 Johore Bahru.

10th June, 1962.

10 The Secretary,
 Public Services Commission,
 Federation of Malaya,
 KUALA LUMPUR.

Sir,

I have the honour to enclose herewith copies
 of the following :-

- (a) Memo. (SR)PF/3596 addressed to me and
 originated by the Chief Police Officer,
 Johore, through the O.S.P.C., Johore Bahru.
- (b) My humble reply to (A) above.
- 20 (c) Memo (SR)PF/3596 from Chief Police Officer,
 Johore to me u.f.s., O.S.P.C. Johore Bahru.

pertaining to my termination of service as a
 Temporary Clerk for your kind and sympathetic
 consideration with a view to my being reinstated
 into the service.

2. At the outset, I feel it is my bounden duty
 to disclose that I was appointed as a Temporary
 Clerk on 1.10.1953 and have completed a span of
 8 years 7 months throughout in the Police Department.
 30 I am a Federal Citizen and have a wife and 6
 children, 4 of them are attending school.

3. In my letter of 8.6.62, I have in general
 terms refuted the charges preferred against me.
 Due to the state of my mind it was not possible to
 answer these charges with more greater emphasis.

4. With reference to para (i)(a) of CPO's letter
 dated 30.4.62, you will note readily that the

Exhibits
Annexure D
Plaintiff's
Appeal to
Public Services
Commission
10th June 1962
(continued)

charges levied are generalised. No specific charges were named for the simple reason that it could not be done.

5. In addition to what I have stated in my letter of 8.5.62 I wish to add the following:-

- (a) Ref. para 1(a)(i) of CPO's letter. I wish to add that at no time was it brought to my attention either verbally or in writing that G.O.1 Cap.H was not observed
- (b) Ref. para 1(a)(ii). To the best of my knowledge I have been to the Canteen premises on not more than two occasions, each time actuated by the fact that I was deprived of my flask of tea due to my wife's illness. I would add on a salary of \$270/- with a wife and 6 children to support I just cannot afford to spend any money in the Canteen. 10
- (c) Ref. para 1(a)(iii). Any person entering the Office of the O.C.P.D. for whatever purposes has to pass my desk for the simple reason that my desk is so placed. What more natural than for people or persons coming to the office asking me for to direct them to the person required. This, I submit cannot be construed to mean that I entertain and gossiped with my friends. 20
- (d) Ref. para 1(a)(iv). This is an incorrect statement because I did no such time.
- (e) In regard to the charges in para 1(b), I would point out that in each case the dates quoted were incorrect. 30
- (f) Para. 1(b)(i), the charge would imply that I was given not less than 48 hours by the OCPD to get the files. In actual fact this was not so. On my own initiative I requested in writing to all sections on 24.2.62 to return all files to me. The OCPD to whom this request went first minuted back to say that all files should be ready for his inspection on 25.2.62. More than 2,250 files were involved and these were ready for the OCPD's inspection by 9.00 am on 25.2.62. The OCPD, however, was not in the office for the whole day. 40

6. All also that I have to say are contained in my letter of 8th May, 62 except that you will note that it is one set of circumstances, the charges are general and not specific and that where they are specific, the alleged incidents occurred many months ago.

Exhibits
Annexure D
Plaintiff's
Appeal to
Public Services
Commission
10th June 1962
(continued)

10

7. I trust that my appeal will receive careful consideration and that, if necessary, you will appoint one or more impartial persons to enquire into the matter.

8. Three copies of this letter are enclosed. This appeal is being addressed to you direct as I believe this to be the correct procedure since my services have been terminated.

Thanking you.

I have the honour to be,
Sir,
Your Obedient Servant.

Sgd. B.C. Lionel

20

ANNEXURE E

REPLIES FROM PUBLIC SERVICES COMMISSION

PSC.D/81/79(12) PUBLIC SERVICES COMMISSION,
Young Road,
Kuala Lumpur.

E
Annexure E
Replies from
Public
Services
Commission

S U L I T

7th September, 1962

Tuan,

I am directed to refer to your petition dated 10th June, 1962 and to say that the Commission has rejected your appeal for reinstatement in the Service.

30

Says Yang menurut perintah,
Sgd: (Ahmad Zabidi Bin Mohamed)
for Secretary,
Public Services Commission.

Inche B.C. Lionel,
Temporary Clerk,
District Police Hqrs, Kulai, Johore.

ExhibitsCONFIDENTIALPUBLIC SERVICES COMMISSION,
KUALA LUMPUR.

Annexure E

Replies from
Public
Services
CommissionMr. Calister Lionel - Ex: Temporary Clerk
Police Department, Kulai, Johore.

I am directed to draw your attention to your letter ref. LPR/LCF/217/65 dated 21.10.65 in connection with the Ex-Officer above named whose appointment as a Temporary Clerk has been terminated on 1.6.1962.

2. The termination of the services of Mr. C.Lionel 10 by the Chief Police Officer, Johore vide his letter under (SR)PF/3596 dated 29th May, 1962 has been reconsidered minutely and had been approved by this commission on 30th August, 1962. This was in consequence of a letter of appeal made by Mr. C. Lionel vide his letter dated 10th June 1962. Mr. C.Lionel has also made further appeal through his counsel Messrs. Thakurtha & Co. and all had been minutely considered but were rejected.

3. The appeal received from you was based on matters which has been considered many time by this Commission, such being the case he has not followed the conditions of appeal as provided in General Orders Cap.D.52, due to this it is regretted it could not be entertained.

20

I am, Yours Obediently.

Messrs. Rodrigo & Tock.

Annexure F

General
Orders
Chapter AANNEXURE FGENERAL ORDERS CHAPTER ACHAPTER 'A'

30

APPOINTMENTS AND PROMOTIONS

(ISSUED with effect from 1st July, 1958)

The following General Orders have been issued under the authority of the Yang di-Pertuan Agong in accordance with Article 132 (2) of the Constitution.

1. Subject to the provisions of Part X of the Constitution this chapter will be applicable to all appointments and promotions to Federal posts and Services, to posts on the Federation Establishment and to the State posts and Services to the extent that it may be adopted by the State Government, save as specified in General Order 2.

Exhibits
Annexure F
General
Orders
Chapter A
(continued)

10 2. The procedure laid down in this chapter for making appointments to posts and services within the purview of a Commission shall apply to all permanent and temporary appointments excluding only such temporary appointments of officers in Divisions III and IV and such appointments of daily-rated officers as may from time to time be delegated by a Commission under Article 144 (6) of the Constitution.

3. In this chapter:(Definitions)

20 (a) the term "appointment" includes first appointment to the public service and appointment on transfer from one scheme of service to another for which there is no provision in the scheme in which the officer is serving;

(b) the term "promotion" includes promotion within a scheme of service and promotion to another scheme for which there is provisions in the scheme in which the officer is serving;

30 (c) the term "Commission" means the Public Services Commission, the Judicial and Legal Service Commission, or the Police Service Commission as the case may be;

(d) the term "Secretary to the Commission" means the Secretary to the Public Services, the Judicial and Legal Service or the Police Service Commission, as may be appropriate, in respect of those categories of officers falling within the purview of such Commission;

40 (e) the term "Federal Officer" means an officer liable to serve only in posts borne on the Federal Establishments;

Exhibits
Annexure F
General
Orders
Chapter A
(continued)

- (f) the term "Officer on the Federation Establishment" means an officer liable to serve both the Federation Government and any State Government;
- (g) the term "Head of Department" shall be deemed to include a Secretary to a Minister or Ministry and the Principal Establishment Officer in respect of the services listed in sub-paragraph (a) of General Order 41;
- (h) the term "department" shall be deemed to include a Ministry or the Office of a Minister. 10

- - - - -

Annexure G
General
Orders
Chapter D

ANNEXURE G
GENERAL ORDERS CHAPTER D

- 31. In these Regulations the "Disciplinary Authority" means in relation to any Officer the Commission whose jurisdiction extends to the service of which such officer is a member in accordance with the provisions of Part X of the Constitution Disciplinary Authorities. 20

Provided that where such Commission in pursuance of Clause (6) of Article 144 of the Constitution has delegated the exercise of disciplinary control in respect of any grade of service to an officer or board of officers, any reference to the Disciplinary Authority shall in relation to an officer within that grade of service be construed as referring to the officer or board of officers to whom such function has been delegated. 30

Provided further that in the case of State officers, who are members of a service over which there is no Commission having jurisdiction, the Disciplinary Authority for any officer for a class specified in Column (1) below shall be the authority specified opposite such class in Column (2)

	(1)	(2)	<u>Exhibits</u>
	(i) Officers not on the Pensionable Establishment:	The State Head of Department except where otherwise provided by the officer's terms of service; provided that the State Head of Department may with the prior consent of the State Secretary delegate his authority in respect of a specified area to an officer of the department who is in Division I of the public Service.	Annexure G General Orders Chapter D (continued)
10	(a) In Division IV of the public service and all daily rated officers.		
	(b) In Division 1,11 and 111 of the public service.		
20	(ii) Pensionable Officers:		
	(a) In Divisions 111 and IV of the public Service.	The State Secretary	
	(b) In Divisions I and II of the public Service	The Ruler	
<hr/>			
	<u>ANNEXURE H</u>		Annexure H
	<u>APPENDIX D1(B) TO GENERAL ORDERS CHAPTER D.</u>		Appendix D1(B) to General Orders Chapter D
	<u>APPENDIX "D1"</u>		
30	(Regulation 31) G.O.Cap 'D'		
	<u>List of Disciplinary Authorities</u>		
	Attorney-General		
	Chief Inspector of Machinery		
	Chief Inspect of Mines		
	Chief Social Welfare Officer		

<u>Exhibits</u>	Civil Defence Commissioner	
Annexure H	Commissioner for Co-operative Development	
Appendix D1(B)	Commissioner for Labour	
to General	Commissioner for Lands	
Orders	<u>Commissioner of Police</u>	
Chapter D	Commissioner of Prisons	
(continued)	Commissioner for Road Transport	
	Comptroller of Customs	
	Comptroller-General of Income Tax	
	Comptroller of Inland Revenue	10
	Deputy Chief Secretary	
	Director of Agriculture	
	Director of Audit	
	Director of Civil Aviation	
	Director of Drainage and Irrigation	
	Director of Education	
	Director of Fisheries	
	Director of Forestry	
	Director-General of Telecommunications	
	Director of Geological Survey	20
	Director of Information Service	
	Director of Medical Service	
	Director of Public Works	
	Director of Veterinary Services	
	Federation Establishment Officer	
	Finance Officer, Federation Military Forces	
	General Manager, Malayan Railway	
	Postmaster General	
	Registrar, Supreme Court	

- - - - -

Exhibits

Annexure H
 Letter from
 Respondent to
 Chief Police
 Officer
 Johore
 8th May 1962
 (continued)

Re - para (iv)

As the OCPD was not for me, I never did dare type a letter for a member of the public with the office typewriter and stationery for I am conversant with office procedure and General Orders after having nearly 9 years service. I would not say that it was to the lack of material substantiation.

Re - para (b)(i)

Acting on my own initiative and in anticipation of the Admin inspection, I did issue a circular letter to all officers and staff in my capacity as Registry Clerk to return all files in their possession for a file audit. In this circular letter the OCPD minuted that all files should be ready on 22nd 2.62. When I had the files prepared and ready for inspection the OCPD was not in the office for the whole day i.e. on 22.2.62.

10

Re - para (b)(ii)

On the 11th March '62 and not on the 6th March 62 (please see a copy of my letter for a personal interview attached) I did politely refuse a letter containing wild allegations and accusations which were against my conscience and against justice and fair play, but I never did use abusive and insulting language. I have witnesses to prove this fact. The letter for an interview, I presume due to circumstances, has never reached you.

20

2, I honestly believe that the OCPD would prefer a Malay clerk in the office to carry out Malay translation and he had personally disclosed to me that he is not fond of Malayalees, my clan. It transpires this aspect of the problem had inconvenienced him to give me the "Green Signal" to "Pack up", Inspector T.M.Rajagopal will bear testimony to this fact. He even asked me openly to apply for a transfer, but I was reluctant because I had made repeated applications for transfer and that it would annoy the C.P.O. besides I had transferred two of my daughters to Kulai for schooling from Convent School, Johore Bahru.

30

40

3. In the spirit of good will towards all and malice towards none, I wish to inform you in

conclusion that I had booked a C.G. for loading my belongings preceeding my transfer on 28.4.62. In the meanwhile a signal 106/7 dated 28.4.62 marked "Important" originated at 2.50 pm reached Kulai at 2.52 pm whilst loading my bag and luggages on to the lorry at 6.10 pm P.C.8874 Che Ahmad came running to my house and told me that my transfer was postponed. This P.C. was then on vacation leave and somehow had gone to the signal office to see a friend. He then accidentally came across the signal and thus whilst loading my effects only did I realise that my transfer has been rescinded. I then left on my bicycle to the signal office to confirm and convenience myself of this fact. Apparently, no effort was made by anyone officially and duty bound to inform me. Manager of the Kulai Transport Company and all the Rank & Files residing on Kulai Besar Police compound will vouch for this fact.

10

20

4. Being a family man with six children I would be the last one to indulge in bravado and arrogance and being an individual with responsibilities and an irrevocable burden, I would never have acted in the manner I have been alleged to be responsible for, I have always relied on patience and tolerance, and believe that humanity and compassion would triumph in the ultimate end due to your benevolent and generous intervention.

Thanking you,

30

Sir,

I am your obedient Servant.

(Signed)

Exhibits

Annexure H
 Letter from
 Respondent to
 Chief Police
 Officer
 Johore
 8th May 1962
 (continued)

ON APPEAL
FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

THE GOVERNMENT OF THE FEDERATION
OF MALAYSIA

Appellant

- and -

CALISTER LIONEL

Respondent

RECORD OF PROCEEDINGS

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