

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

THE GOVERNMENT OF MALAYSIA

Appellant

- and -

IZNAN BIN OSMAN

Respondent

C A S E FOR THE APPELLANT

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1. This is an appeal from the judgment of the Federal Court of Malaysia (Suffian L.P. Lee Hun Hoe C.J. Borneo, Wan Hamzah J) dismissing an appeal by the Appellant against an order made by Sharma J. on 12th September 1973 granting a declaration in favour of the Respondent that his dismissal from the Royal Malaysian Police Force was null and void and that he continued to be a member of the Force and was entitled to all the arrears of his salary as from the date of his purported dismissal on 19th April 1967.

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2. The facts are not in dispute. On 1st June 1961 the Respondent was appointed a Police Constable by the Commandant, Federal Police, Kuala Lumpur. The Respondent owned a car index No. PA 4487. On 19th April 1967 the Respondent was charged and convicted before the Magistrates' Court, Ipoh, with permitting his car to be used on 12th March 1966 as a private taxi without being covered by a policy of insurance under Section 92(ii) and 74(ii) respectively of the Road Traffic Ordinance, 1958. He was fined a total of \$1,000. On 22nd April 1967, three days after his conviction, the Chief Police Officer, Perak, wrote and informed him that he was suspended from duty without pay from the date of his conviction. After his appeal against conviction had been dismissed by the High Court the Chief Police Officer wrote to him on 7th September 1967 informing him that his dismissal from the Police Force was contemplated because of his conviction and advising him that he could make representations in writing

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within 14 days from receipt of the letter. On 19th September 1967 the Respondent submitted his written representations giving his explanations. Finally, by letter dated 11th November 1967 the Chief Police Officer notified the Respondent that after considering all the facts he had decided to dismiss him from the Police Force with effect from the date of his conviction in accordance with the powers conferred on him pursuant to the First Schedule of the Police Ordinance, 1952. The Respondent was advised that he could appeal to the Commissioner of Police regarding his dismissal under Section 15(2) of the Police Regulations, 1952, which he did but his appeal was rejected and the dismissal confirmed. In consequence the Respondent sued the Appellant for a declaration that his dismissal was void and inoperative and that he remained a member of the Police Force.

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3. The issues which arise upon this appeal are as follows :

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- (i) whether the Chief Police Officer Perak had power to dismiss the Respondent pursuant to the Delegation made by the Police Force Commission under Article 140(6)(b) of the Federal Constitution dated 9th April 1962, or otherwise;
- (ii) whether the said Delegation of 9th April 1962 constituted a delegation of the power of the Police Force Commission both to appoint and dismiss members of the Police Force other than gazetted officers or merely to dismiss such officers; and if the latter whether such dismissal was void as contravening Article 135(1) of the Constitution;
- (iii) whether the said Delegation had been superseded by the Instrument of Delegation dated 16th September 1963;
- (iv) whether the purported dismissal of the Respondent was valid pursuant to the said Delegation of 9th April 1962 or otherwise.

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4. The statutory provisions and Commissioners Standing Orders and Instruments of Delegation which have been considered to be relevant in the Court below are as follows :-

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CONSTITUTION

CHAPTER X

Art. 132(1) For the purposes of this Constitution,

the public services are -

- (a) the armed forces;
- (b) the judicial and legal service;
- (c) the general public service of the Federation;
- (d) the Police Force;

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

Art. 140(1) There shall be a Police Force Commission whose jurisdiction shall extend to all persons who are members of the Police Force and which subject to the provisions of any existing law, shall be responsible for the appointment, confirmation, enplacement on the permanent or pensionable establishment, promotion, transfer and exercise of disciplinary control over members of the Police Force.

20 (6) The Police Force Commission may provide for all or any of the following matters :

.....

- (b) the duties and responsibilities of the several members of the Commission including the delegation to any member of the Commission or the Police Force, or Board of Officers of such Force, of its powers or duties.

30 Art. 144(1) Subject to the provisions of any existing law and the provisions of this Constitution it shall be the duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends.

40 (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.

Commissioners Standing Order "A" Department

pp.106/107

(Printed in the Record)

Delegation dated 9th April 1962

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(Printed in the Record)

Delegation dated 16th September 1963

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5. Sharma J. held that the dismissal of the Respondent was invalid for the following reasons :

- (a) that the Delegation of 9th April 1962 was incompetent having been signed by only six out of eight members of the Police Force Commission; 10
- (b) that the Chief Police Officer was unable to exercise such delegated power, if any, since he was at the time unconscious of being invested with such power;
- (c) that the Commissioners Standing Orders were ultra vires Cap D Reg. 28 of the General Orders;
- (d) that the Police Force Commission had retained sole power to appoint a Police constable of the rank of the Respondent and thereby by reason of Article 135(1) of the Constitution the Police Force Commission alone had power to dismiss such an officer. 20

The Learned Judge nevertheless held that had such dismissal been valid it would have operated retrospectively from the date of the Respondent's suspension and that the Respondent had not been denied a reasonable opportunity of being heard contrary to Article 135(2) of the Constitution. 30

7. Upon appeal by the Appellant to the Federal Court of Malaysia, Suffian L.P., concurring in this respect with the judgment delivered by Lee Hun Hoe C.J. Borneo, confined himself to holding that the appeal should be dismissed on the single ground that the Appellant had established only that the Police Force Commission had delegated to the Chief Police Officer the power to dismiss and not the power to appoint and therefore the purported dismissal of the Respondent must be invalid as contravening Article 135(1) of the Constitution. Lee Hun Hoe C.J. Borneo also held that the Chief Police Officer had no power to dismiss in any 40

event because he held that the Delegation of 9th April 1962 had been superseded by the Delegation of 16th September 1963 which gave power to Boards and no power to any individual officer. But both Suffian L.P. and Lee Hun Hoe C.J. over-ruled the Learned Judge at first instance on the grounds set out at paragraph 5(a), (b) and (c) above, having admitted evidence on the composition of the Police Force Commission in relation to ground (a) above.

10 7. The Appellant first submits that the Delegation of 9th April 1962 remained effective notwithstanding the later Instrument of Delegation of 16th September 1963 and that the latter did not supersede or invalidate it. The former Delegation is general in its terms but relates only to members of the Police Force other than gazetted police officers and delegates power to both individual officers and Boards in accordance with the existing Rules, Regulations and Standing Orders. The latter
20 Delegation by Part (6) thereof relates to all officers including gazetted officers and deals specifically with the powers and functions of the No. 1 Board in respect of matters specified in Part B. The two Delegations are therefore not repugnant in material respects.

30 8. The Appellant submits that pursuant to the said delegation the Chief Police Officer validly dismissed the Respondent for reasons falling within the ambit of Commissioners Standing Orders 7 to 9 having validly suspended the offer in the meantime under Standing Order 12.

40 9. The Appellant further submits that the Delegation of 9th April 1962 was sufficiently wide to delegate to the Chief Police Officer the power both to appoint and to dismiss members of the Force other than gazetted officers. Further such powers having been delegated pursuant to Article 140(6)(b) of the Constitution are thereby exercised "under the direction and the control of the Commission" and therefore in dismissing the Respondent the Chief Police Officer was merely exercising the power of the Police Force Commission so that, even if conflict with Article 135(1) of the Constitution would otherwise arise which the Appellant submits it does not, no such conflict arises in any event.

10. The Appellant submit that the judgments of the Federal Court and the High Court should be reversed and the claim of the Respondent dismissed for the following, among other

50 REASONS

(1) BECAUSE the Police Force Commission had power

to delegate its authority to dismiss the Respondent to the Chief Police Officer

(2) BECAUSE the Delegation of 9th April 1962 remained valid and effective at the time of the Respondent's dismissal

(3) BECAUSE in exercising such power, validly delegated pursuant to Article 140(6)(b) of the Constitution and in accordance with Standing Orders, the Chief Police Officer validly dismissed the Respondent

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(4) BECAUSE the judgments of the Federal Court and the Court of first instance are wrong.

NICHOLAS LYELL

1 1 OF 1976

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BETWEEN:
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- and -
IZNAN BIN OSMAN Respondent

C A S E FOR THE APPELLANT

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