

2 of 1977

No. 11 of 1976

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

(Defendant)
Appellant

- and -

IZNAN BIN OSMAN

(Plaintiff)
Respondent

RECORD OF PROCEEDINGS

STEPHENSON HARWOOD & TATHAM,
Saddlers' Hall, Gutter Lane,
Cheapside, London EC2V 6BS.

Appellant's Solicitors

Philip Conway Thomas Co.
61 Catherine Place
~~WILSON FREEMAN,~~
~~6/8 Westminster Palace Gardens,~~
London ~~SW1P 1RL.~~ SW1E 6HB.

Respondent's Solicitors

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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

(Defendant)
Appellants

- and -

IZNAN BIN OSMAN

(Plaintiff)
Respondent

RECORD OF PROCEEDINGS

No. 1

RE-AMENDED STATEMENT OF CLAIM

In the High
Court of
Malaysia

RE-AMENDED STATEMENT OF CLAIM

No. 1

Re-Amended
Statement of
Claim
27th April
1971

1. The Plaintiff is and was at all material times a detective police constable. ~~The First Defendant is the Chief Officer, Perak, Ipoh Commandant, Federal Police Depot, Kuala Lumpur, the agent or servant of the Second Defendant, the Royal Police and the said Royal Malaysia Police is the agent or servant of third Defendant, the Government of Malaysia.~~

10

2. By a letter of appointment signed by the ~~Chief Police Officer, Perak Commandant, Federal Police Depot, Kuala Lumpur,~~ dated the 1st June, 1961 and made between the Plaintiff and the ~~First Defendant Chief Police Officer, Perak Commandant, Federal Police Depot, Kuala Lumpur,~~ the Plaintiff entered into a contract of

In the High
Court of
Malaysia

—
No. 1

Re-Amended
Statement of
Claim
27th April
1971
(continued)

service with the ~~First-Defendant Chief Police Officer, Perak~~ **Commandant, Federal Police Depot, Kuala Lumpur**, as a detective police constable in the Royal Malaysia Police and the ~~First-Defendant Chief Police Officer, Perak~~ **Commandant, Federal Police Depot, Kuala Lumpur** has agreed to pay and was paying to the Plaintiff in consideration of such service at the time of dismissal (a) the monthly salary of \$142/- per month with annual increment of \$7.50 and (b) cost of living allowance \$48/- excluding ~~Detective and~~ Language allowance.

10

3. The said contract of service was specially subject to the rules of the Government General Order the rules of the Police Ordinance, 1952.

4. One of the terms of the said agreement was that in case of breach of discipline the Plaintiff's service shall be determined in accordance to the General Order and First Schedule of the Police Ordinance, 1952.

20

5. In accordance to the terms of the said agreement, the Plaintiff entered into employment with the ~~First-Defendant Chief Police Officer Perak~~ **Commandant, Federal Police Depot, Kuala Lumpur**, as aforesaid on 1st day of June, 1961.

6. The ~~First-Defendant Chief Police Officer, Perak~~ on or about the 11th November, 1967 wrongfully dismissed the Plaintiff without sufficient cause on a charge of breach of discipline and by wrongful application of the rules contained in Government General Order and First Schedule of the Police Ordinance, 1952.

30

7. Alternatively in breach of the said agreement, the ~~First-Defendant Chief Police Officer, Perak~~, wrongfully determined the Plaintiff's service on the weight of the conviction of the Traffic Court and without a departmental Court of Enquiry.

8. By the reason of the ~~First-Defendant's Chief Police Officer's Perak~~ said repudiation/ (sic) or breach of the Contract wrongful determination of the Plaintiff's employment, the Plaintiff has suffered loss and damage.

40

9. Alternatively, by reason of the ~~First~~

~~Defendant's~~ Chief Police Officer's Perak wrongful act of dismissal the Defendants are is liable in Tort and the Plaintiff claims to be reinstated in service.

In the High
Court of
Malaysia

No. 1

Re-Amended
Statement of
Claim
27th April
1971
(continued)

10 10. The dismissal was arbitrary and the Plaintiff was not given a reasonable opportunity to defend himself as to the charge brought against him before the proper dismissing Authority. Further-
more the Plaintiff was not given a reasonable opportunity to defend himself before the said authority as to the nature of punishment to be awarded against him, and thereby natural justice was denied to him at all stages leading to his dismissal. The Plaintiff further states that the dismissal was not done in good faith.

PARTICULARS

20 (a) On or about the 22nd April, 1967, the ~~First Defendant~~ Chief Police Officer, Perak, by letter informed the Plaintiff that the Plaintiff's service was suspended under General Order Cap. D43 being convicted in the Traffic Court. Another letter dated 7th September, 1967 informed the Plaintiff that his dismissal was contemplated because of criminal charges i.e. under Section 92(ii) and 74(ii) Road Traffic Ordinance 49/58. Further to this letter a final letter of dismissal dated 11th November, 1967 was served on the Plaintiff by the ~~First Defendant~~ Chief Police Officer, Perak for the aforesaid reasons and his dismissal was made by the ~~First Defendant~~ Chief Police Officer Perak in accordance to the power vested in him by virtue of the First Schedule of the Police Ordinance 1952.

40 (b) The Plaintiff was wrongfully dismissed for reasons that the dismissing authority has not substantiated that the charges were criminal and the Plaintiff's conviction was based on criminal charges, the ~~First Defendant~~ Chief Police Officer, Perak, has therefore wrongfully applied Cap. D 43 of the General Order.

(c) Furthermore, the ~~First Defendant~~ Chief Police Officer, Perak, wrongfully exercised his power vested in First Schedule Police Ordinance, 1952 without instituting a Departmental Court of Inquiry and the Plaintiff's right of defence was denied contrary to principles of Law, equity and

In the High
Court of
Malaysia

natural justice and therefore the dismissal of the
Plaintiff was wrong in law and equity.

PARTICULARS OF SPECIAL DAMAGES

No. 1
Re-Amended
Statement of
Claim
27th April
1971
(continued)

~~Salary and Cost of Living Allowance to date of
filing the action ... \$3230.00~~

~~Wherefore the Plaintiff claims:-~~

~~(a) the sum of \$3230.00 being special
damages.~~

~~(b) for re-instatement as Detective Police
Constable in the Royal Malaysian
Police, and~~

10

~~(c) Such further and other relief as the
Court may grant.~~

Salary of \$190/- (inclusive COLA and annual
increment of \$7.50) per month from the date of
dismissal i.e. 11th day of November, 1967,
\$6,410/- and still continuing.

Wherefore the Plaintiff claims:-

(a) A declaration that the Plaintiff's
dismissal from the Royal Malaysia Police,
purported to be effective by the Chief
Police Officer, Perak on 19th day of
April, 1967 was void and inoperative and
of no effect and that the Plaintiff is
still a member of the Royal Malaysia
Police.

20

(b) An Order that an account be taken of the
salary and emoluments due to the Plaintiff
from the date of such wrongful dismissal
to date of re-instatement as referred
herein before.

30

(c) That such further or other order may be
made in the premises as the justice of
the case may require.

(d) Costs.

~~Dated this 21st day of August, 1968.~~

Dated this 27th day of April, 1971.

M/S.G.T. Rajan & Co. SOLICITORS FOR PLAINTIFF

Delivered this 21st day of August, 1968.

Re-delivered this day of 197 .

40

DEFENCE

In the High
Court of
Malaysia

—
No. 2

Defence
22nd November
1968

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO. 506 OF 1968

BETWEEN

Iznan bin Othman,
No. 31A, Jalan Che Tak,
Ipoh.

Plaintiff

And

10 Government of Malaysia

Defendant

STATEMENT OF DEFENCE

1. With regard to paragraph 1 of the Amended Statement of Claim, the Defendant denies that the Plaintiff is a detective police constable.

20 2. With regard to paragraphs 2, 3, 4 and 5 of the Amended Statement of Claim, the Defendant states that the Plaintiff was appointed a regular police constable in the Royal Federation of Malaya Police Force on 3rd June, 1961 and was paid salaries and allowances in accordance with the Schemes of Service for Rank and File. The Plaintiff's appointment was governed by the Police Ordinance, 1952, the Police Regulations, 1952, General Orders and Commissioner's Standing Orders.

3. The Defendant denies paragraph 6 of the Amended Statement of Claim and avers that the Plaintiff's dismissal from the Police Force was proper and in accordance with law and procedure.

30 4. The Defendant denies paragraph 7 of the Amended Statement of Claim and avers that the Plaintiff's service was not wrongfully determined but that the dismissal of the Plaintiff was right and proper.

5. The Defendant avers that the charges on which the Plaintiff was convicted were criminal charges within the meaning of Cap. D40 (General Orders).

In the High Court of Malaysia

No. 2

Defence
22nd November 1968
(continued)

6. Save as hereinbefore expressly admitted, the Defendant denies each and every allegation of fact contained in the Amended Statement of Claim as if the same were set forth herein and specifically traversed.

7. The Defendant prays that the Plaintiff's suit be dismissed with costs.

Dated this 22nd day of November, 1968.

Sd. Ajaib Singh,
Senior Federal Counsel,
for and on behalf of the Defendant
whose address for service is c/o
Attorney-General's Chambers,
Kuala Lumpur.

10

To:

Messrs. Yeap & Yeap,
Solicitors for the Plaintiff,
Labrooy House,
Post Office Road,
Ipoh.

20

No. 3

Notes of Evidence

No. 3

NOTES OF EVIDENCE

THIS 7th day of March, 1972

IN THE HIGH COURT IN MALAYA AT IPOH
CIVIL SUIT NO. 506 of 1968

Iznan bin Osman Plaintiff

v.

The Government of Malaysia Defendant

Mr. G.T. Rajan for the Plaintiff

Encik Abdul Razak bin Dato Abu Samah, Senior
Federal Counsel for the Defendant

30

Mr. Rajan puts in the Agreed Bundle - marked A.

No. 4

PLAINTIFF'S EVIDENCEIn the High
Court of
MalaysiaP.W.l, Iznan bin Osman, affirmed states in Malay.

No. 4

I am the Plaintiff.

Plaintiff's
Evidence
Iznan bin
Osman
Examination

I reside at No. 2033 Jln. Tebrau, J.B. I was appointed as a police constable on 1.6.1961 (See A42).

10 I dismissed on 19.4.67.(See A5). I was then drawing \$190/- p.m. inclusive of cost of living allowance. I was entitled to an increment of \$7.50 per annum. I was then a detective in the Special Branch.

On 7.9.67, the Chief Police Officer wrote to me the letter A2 stating the charges against me. The charges related to Road Traffic offences. I was convicted in the Traffic Court on those charges. It was a Summons Case.

I produce the documents A1, A2, A3, A4, A5, A6, A7, A9, A11, A12, A13, A14, A15, A16 and A42.

20 I received A2 by despatch.

I received A6 at the Police HQ. I was asked to go there to get that letter. I was dismissed by the C.P.O. according to A5. I was not dismissed by the Police Service Commission. I was never given any opportunity to appear before the Police Service Commission.

Shown para. 3 of A5.

30 I appealed to the Commissioner of Police. (See A7) I was not told to appeal to the Police Service Commission.

XX.d

By CourtCross
Examination

When I wrote in A9 "bekerja semula" I meant I should get back the job and be reinstated to the same job. "Bekerja semula" and "bekerja balek" mean the same thing.

In the High Court of Malaysia

I received A14. I took it to mean "reinstatement" not "rejoining". The translation A13 is not correct according to my understanding.

N.S.

No. 4

Plaintiff's Evidence
Iznan bin Osman
Cross-Examination
(continued)

No. 5

Dato Mohd Pilus bin Yusoh
Examination

No. 5

P.W.2, Dato Mohd Pilus bin Yusoh, C.P.O., Perak affirmed states :

I sent A2 on 7.9.67.

(See para 1 of A2)

(See para 3 of A2)

10

In A4, the Plaintiff appealed that he should not be dismissed and should continue to remain in service.

I sent A6 to the Plaintiff.

In deciding to dismiss the Plaintiff, I acted under Sec. 45 of the Police Ordinance 1952 read with Reg. 2(a)(64) of the Police Regulations 1952.

I believe that after 1957, it is only the Police Service Commission that can dismiss the rank and file.

20

The only representation he was allowed to make to me is A4 (=A3).

There was a delegation of powers by the Police Service Commission to the Commissioner of Police and certain other designated officers. It was in 1963 that this delegation of powers was effected. I produce a copy of the authority delegating such powers under Art. 140(6)(b) of the Constitution. Marked Pl.

30

Shown A5, para 2, the "incident" referred to therein relates to the conviction of the Plaintiff. He was convicted in a summons case. I acted not under the delegation of authority from the Police Force Commission but by virtue of the Police Ordinance 1952. It is difficult for me today to say whether when writing A5, I had in mind that there was delegated to me the authority under Pl.

In the High
Court of
Malaysia

No. 5

Plaintiff's
Evidence
Dato Mohd
Pilus bin
Yusoh
Examination
(continued)

XX

10 I was acting under Standing Order Part A205 of the Commissioner's Standing Orders.

Cross-
Examination

Copy of the Standing Orders marked D2.

A2 was sent strictly in accordance with D2.

The provisions of D2 are basically the same as those of the General Orders Cap.D para 40. (See P.U.290/68). There is no right of appeal under the Standing Orders or the General Orders other than to the dismissing authority itself.

20 The Plaintiff made a representation in A3. I considered A3 and dismissed him by A5.

Shown A5, para 3, I say that in view of what I have said, this paragraph was redundant as there was no right of appeal.

Reg. 15 (2) of the Police Regulations applies only if the offence is against discipline.

I made my decision to dismiss the Plaintiff under D2.

In A1 I was acting under General Orders Cap D 43.

30 I could dismiss the Plaintiff under D2 because of the conviction.

By virtue of the composition of the letter A1, I say that I was acting under D2. I need not have considered any action under Sec. 45 of the Police Ordinance.

I produce the document (photostat copy)

In the High
Court of
Malaysia

delegating the authority of the Police Force
Commission to me. Marked D3.

—
No. 5

Plaintiff's
Evidence
Dato Mohd
Pilus bin
Yusoh
Cross-
Examination
(continued)

Re-Examina-
tion

Re-Exam

I could have dismissed the Plaintiff even
without any power having been delegated to me by
the Police Force Commission by virtue of C.S.O.
Part A205 (D2) - Secs. 7 - 9 of D2. D2 was made
on 15.9.61.

A1 was not written by me but by my predecessor.

A5 was sent by me. There is no mention of
A1 and A2. The Plaintiff could not, by reading
A5, have known that I was acting under the
Standing Orders.

10

The Plaintiff could be dismissed under the
now repealed Cap D43.

N.S.

Note: New Cap D came into force on 18.7.68.

N.S.

Reg.15 (2) of the Police Regulations was
not observed. There was no orderly room
procedure, nor any charge. There were no
regular proceedings against him and therefore
he was not heard. There was no board. The
decision to dismiss the Plaintiff was on my own
individual decision.

20

N.S.

By Abdul Razak (through Court)

There was no hearing of the Plaintiff in

person but only letter to and from him.

An opportunity was given to the Plaintiff to make representations. (See A2 - para 3).

I can't remember if I called for a copy of the criminal proceedings against the Plaintiff as under D2.

N.S.

1.50 p.m. Adj. to 9.00 a.m. tomorrow.

N.S.

In the High Court of Malaysia

No. 5

Plaintiff's Evidence
Dato Mohd Pilus bin Yusoh
Re-Examination
(continued)

10 (sic) 8th September, 1973

Case for the Plaintiff

No. 6

DEFENDANT'S EVIDENCE

D.W.1 Abdul Rahim bin Mohd Noor, A.S.P.(Service)

Federal Police H.Q., K.L., affirmed states:

D3 is the delegation of authority given by the Police Force Commission.

XX

20 Eight members constitute the Police Force Commission on 9.4.62, the date of issue of D3. D3, however, is signed only by 6 members.

N.S.

No. 6

Defendant's Evidence
Abdul Rahim bin Mohd Noor
Examination

Cross-Examination

No. 7

PROCEEDINGS

Mr. Rajan

Says he understood that P1 and D3 were going

No. 7

Proceedings
8th March
1972

In the High Court of Malaysia

to be formally proved by production of the originals by the Defendant.

N.S.

No. 7

Enche Abdul Razak asks for an adjournment.

Proceedings
8th March
1972
(continued)

N.S.

P1 and D3 to be formally proved.

Suit adjourned to a date to be fixed by the S.A.R.

Costs in the cause.

N.S.

10

No. 8

Abdul Rahim bin Mohd Noor

No. 8

ABDUL RAHIM BIN MOHD NOOR

20th September, 1972

D.W.L., Abdul Rahim bin Mohd Noor, A.S.P. (Service) affirmed states.

No. 9

Proceedings
20th September
1972

No. 9

PROCEEDINGS

Note Mr. Rajan now says that he does not wish to insist on formal proof of Documents P1 and D3 and that they should be treated as duly proved and produced.

20

N.S.

XX

Cross-
Examination

Nil

Re-Exam

Nill

N.S.

D.W.l. is released.

Case for the Defendant

N.S.

No. 9

Proceedings
20th September
1972
(continued)

Enche Abdul Razak

Art. 144

Art. 144(6) - allows delegation

10

Art 135(2)

Art.132 (2A) - "during the pleasure
of"

Refers to P1

" In accordance with" mean the delegation is to
the persons designated in the Police Ordinance and
the functions delegated have to be exercised in
the manner prescribed in the Police Ordinance.

Sec. 82 of Police Ord. 1952.

D2 is the Standing Orders.

20

Art. 135(2) was complied with by following the
procedure laid down in D2. He was given an
opportunity to make a written representation.

Wade: Administrative Law (3rd Ed.) p.211

The requirements of natural justice were
complied with.

(1920) 3 K.B. 334

(1935) Ch. 452

(1967) 1 A.C. 551

What is a criminal offence?

30

Stroud (3rd Ed.) Vol.1 p.683 "Crime"

In the High Court of Malaysia
No. 9 Proceedings
20th September 1972
(continued)

Stroud, Vol. 3, p.1965 "Offence"

(1953) 1 A.E.R. 474 at 475

(1921) 3 K.B. 327 (331)

N.S.

A5 was quite in order. Even if it was irregular, the irregularity was only as to form and not the substance.

Wade: p. 211 already referred to

Wade: p.68

(I tell the Sr.Fed. Counsel that I shall hear him on certain points he wishes to deal with at this stage only if the Plaintiff's counsel raises them in his submissions).

10

Plaintiff dismissed by letter A5 (dated 11.11.67) but his dismissal was with effect from 19.4.67.

Police Act 1967 came into force on 29.8.67.

N.S.

12.55 p.m. Adj. to 8.30 a.m. tomorrow.

N.S.

20

21st September 1972

21st September, 1972

Encik Abdul Razak

(i) See def. of subsidiary legislation in Act 23/67.

See Sec. 2 of the Interpretation Act - C.P.O. was thus authorised to make his order retrospective.

(ii) Cap D - General Orders - order 43.

Date of dismissal must therefore be deemed to commence from the date of conviction.

30

Date of dismissal cannot but be the date of conviction.

(iii) Order 38 - General Orders - Cap D.

O.38 (1)(ii) - these are express words
"and the dismissal shall take effect from the
date upon which"

It is intended to be of general application.

Even if the express provisions in O.38 (1)
(ii) were not there the dismissal has to take
effect from the date of suspension.

Sec. 30 (1)(b) of Act 23/67.

10 Rajan

Sec. 98 of Police Act 1967

Rules, orders and regulations made under the
1952 Ordinance remain valid and in force but the
Police Ordinance 1952 remained repealed.

D2 - P.W.2 said he acted under the Standing
Orders.

para 9 of D2

First Schedule to the Police Ordinance was
totally repealed by the 1967 Police Act.

20 First Schedule was not "rules, regulations or
order."

Cl.9 although a part of Standing Orders is not
valid under the 1967 Act in so far as it is incon-
sistent with the 1967 Act.

N.S.

I ask Mr. Rajan where is the inconsistency.

He says that all Standing Orders made under the
1952 Ordinance came to an end on the coming into
force of the 1967 Act.

30 An offence under Sec.92(1) and 74(2) of the
R.T.O. is not criminal.

N.S.

Sec. 92 (1)

An offence may be penal in consequence and yet

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not a crime.

Sec. 74(2) - also not a criminal offence.

1949 M.L.J. 262 (264)

Paley on Summary Convictions (6th Ed.) p.116.

Craies (5th Ed.) p.499

(1885) 14 Q.B. 667 - (687)

Summons cases are not criminal cases.

Date of dismissal is 11.11.67.

The act of dismissing took place on 11.11.67.
At that time the 1967 Act alone was operative.

10

Art.135 (2) of the Constitution.

Police Regs. 1952 Reg. 8 (1)

Suspension is not dismissal.

Dismissal cannot be with retrospective effect.

A5 is not defective but a nullity.

When the 1st Schedule was repealed, punishment also disappears.

Para 2 of the A5 refers to the 1st Schedule and not the Standing Orders.

20

No mention in A5 that C.P.O. was dismissing the Plaintiff by virtue of the delegation of powers.

Fed. Ct. Civil Appeal No.3/71

Calister Lionel v. Govt. of Malaysia.

Note:

Encik Abdul Razak says the Govt. has appealed to the P.C. and further arguments should be adjourned, if this case is relied upon - until the decision of the P.C.

30

N.S.

I tell the parties that arguments should continue but I may not give my decision for some months so that I may be guided by the P.C., but should the appeal be not heard or decided for 4 or 5 months, it is my duty to decide and pronounce judgment irrespective of the fact that the appeal is still pending before the P.C.

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N.S.

It is already 1.15 p.m.

10

Adj. to a date to be fixed by the S.A.R.

N.S.

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Mr. Rajan

On 1.3.66 Dato Mohd. Salleh bin Ismail was appointed the I.G.P. (See Gazette Notification No. 876, Gazette dated 10.3.66).

20

In D3 it is Dato Fenner, the then Commissioner of Police who had delegated the authority. There is no delegation by the then I.G.P. Delegation by Fenner had come to an end.

Constitution - 11th Schd.

Public officer - Sec.42.

Tan Sri Salleh could have been the member of the Police Force Commission in 1967 under Art.140 (3)(b).

Refers to 11th Sch. - Sec.33C - That does not cover or cure the defect.

Art. 144(6) - Dismissal by the C.P.O. was not under the direction and control of the Commission.

30

Police Act came into force on 29.8.67.

Dismissal Notice is dated 11.11.67.

Sec. 30 (1) (d) of the Interpretation Act.

Dismissal could not have been with retrospective effect.

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Reg.8(1) of Police Regulations

The effective date of punishment should have been from 11.11.67.

P.W.2 was acting under Reg.15(2) (See A5).

Delegation (D3) under Art.140(6)(b) is defective.

Art.135(2) - personal hearing should have been given.

A2 (para 3) - only a written representation was allowed to the Plaintiff. 10

de Smith (2nd Ed.) p.188.

There was no opportunity afforded to the Plaintiff to be heard in person.

A2 was written by the C.P.O. who himself was going to be the Judge. He could not be both the complainant and Judge. Denial of principles of natural justice.

Encik Abdul Razak

Sec.41 Interpretation & General Clauses Act 1948. 20

The 1967 Interpretation Act came into force on 18.5.67.

I tell Encik Razak that A2 was written on 7.9.67. On that day the 1967 Act (23/67) applied.

He says the relevant date is 19.4.67.

Says the delegation was still valid.

Sec. 30(1) of the 1967 Act (23/67). That Fenner was no longer a member in 1967 is irrelevant. A delegation had already been validly made in D3 - Sec. 41 of Act 7/48. 30

Under Art. 140(1), the Police Force Commission is responsible for disciplinary control.

Sec. 22 of the Police Ordinance 1952.

The P.F.C. have the power under Art.140(6) (b) to delegate the power to dismiss. This power can be validly delegated to a subordinate.

In the High Court of Malaysia No. 9

Whether the C.P.O. had knowledge of the delegation of powers to him by the P.F.C. is irrelevant so long as he was clothed with the authority.

Proceedings 8th September 1973 (continued)

There is no difference between Art.140 (6)(b) and Art. 144(6).

10 Re absence of oral hearing.

Wade: p.211.

(1915) A.C. 120 (134)

(1960) M.P. 273 (277 - pr.5)

N.S.

Rajan

Reg. 33 of G.O.

N.S.

Adj. to 12/9 at 9.00 a.m. for delivery of judgment.

20 12th SEPTEMBER, 1973

12th September 1973

I read out the judgment.

N.S.

Order

It is declared that the dismissal of the Plaintiff from service was null and void, inoperative and of no effect and that he still continues to be a member of the Royal Malaysian Police and that he is entitled to all the arrears of salary from the date of his purported dismissal.

30

Defendant to pay the Plaintiff all such arrears of salary.

In the High Court of Malaysia

Defendant to pay the costs of the suit.

N.S.

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Sd. Secretary to Judge
High Court, Malaya
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JUDGMENT

IN THE HIGH COURT IN MALAYA AT IPOH

CIVIL SUIT NO. 506 of 1968

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Between

Izman bin Osman

Plaintiff

And

The Government of Malaysia

Defendant

JUDGMENT

The Plaintiff was appointed as a police constable on 1.6.1961 by the Commandant of the Federal Police Depot initially for a period of three years. He, however, remained in the Police Force as a regular police constable up to 19.4.1967. He was then dismissed by the Chief Police Officer, Perak. This order of dismissal was conveyed to him in a letter written by the Chief Police Officer. This letter although written on 11.11.1967 purported to make the dismissal retrospective and effective as from 19.4.1967. Paragraph 2 of this letter (A5) states "..... I have decided to dismiss you from the Police Service with effect from 19.4.1967 in accordance with the powers conferred on me as per the 1st Schedule to the Police Ordinance 1952." (underlining is mine.)

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The facts leading to the dismissal of the Plaintiff were that he was the registered owner of a car bearing registration No. PA 4487. He was charged in the Magistrate's Court, Ipoh under sections 92 (ii) and 74 (ii) of the Road Traffic Ordinance 1958 in that he had on 12.3.1966 permitted his car to be used as a public service vehicle without having a licence authorising such user and without having obtained a policy of insurance against third party risks. He was convicted on 19.4.1967 on both the charges and fined \$1,000/-. He appealed against that conviction but the appeal was also dismissed on 4.8.1967. Consequent upon his conviction the then Chief Police Officer, Perak wrote to the Plaintiff on 22.4.1967 (i.e. 3 days after his conviction) that he was being suspended from duty without pay "under General Orders Cap.D 43 with effect from 19.4.1967."

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Regulation 43 under Chapter D of the General Orders (repealed by P.U. 290/68) dealt with suspension of an officer against whom proceedings under Regulation 40 of Chapter D of the Regulations were contemplated. Regulation 40 required the Disciplinary Authority to either go through and consider the evidence against the officer who was convicted on a criminal charge or to consider the report from the Legal Department in respect of those criminal proceedings and thereafter to form an opinion whether the officer concerned should be dismissed or dealt with in some other manner. If action was taken under Regulation 40, it was not necessary to observe the procedure prescribed under Regulations 37 to 39.

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On 7.9.1967, the Chief Police Officer, Perak (PW.2) wrote to the Plaintiff that the dismissal of the Plaintiff was "contemplated" because of the convictions on the two charges under the Road Traffic Ordinance and that if he wished to make any representations he should do so in writing addressed to him within 14 days of the receipt of the letter by the Plaintiff. The Plaintiff sent in a letter but P.W.2 decided to dismiss him. A5 was the letter of dismissal. In this letter P.W.2 advised the Plaintiff that he could appeal to the Commissioner of Police under Regulation 15(2) of the Police Regulations 1952, if he so desired. An appeal was made by the Plaintiff in writing. At first it was considered as an application for re-employment but the letter A15 from the

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Inspector-General of Police makes it clear that the Plaintiff's letters were treated as an appeal against the decision of P.W.2. The Plaintiff was notified in A15 that the decision of dismissal was final.

The Plaintiff has filed this suit for a declaration that his dismissal was void and inoperative and of no effect and that he is still and continues to be a member of the Royal Malaysian Police and as such is entitled to all the salary and emoluments which he would have but for his wrongful dismissal been entitled to.

10

The Defendant denies that the dismissal of the Plaintiff was wrongful and asserts that his dismissal was in accordance with law and procedure.

The facts of this case are very brief and simple. It is, however, the law which does not appear to be so easy or straightforward. The Plaintiff was a member of the Police Force and as such the conditions of his service were regulated not only by the Police Ordinance 1952 (which remained in force until it was repealed by the Police Act 1967) but also by the provisions of the Constitution. (See Article 132(2) of the Constitution). Under Article 132(2A) he held office during the pleasure of the Yang di-Pertuan Agong. The power to dismiss at pleasure is however limited by the very opening words of Article 132(2A). The English doctrine of tenure of service solely at the pleasure of the Crown thus does not prevail here. The effect of Article 135 is to change the pleasure of Article 132(2A) into a statutory pleasure and the tenure of service into a statutory tenure. Article 135(1) provides that the Plaintiff could not have been dismissed by any authority unless that authority also possessed the power to employ a person equal in rank to the rank possessed by the Plaintiff at the time of his dismissal. Article 135(2) further ensures that if the Plaintiff was dismissed without being given a reasonable opportunity to be heard such dismissal could be of no effect and would thus be inoperative. The provisions of Article 135(2) are superimposed on the provisions of Article 135(1). If either of the provisions of Article 135 is not observed the order of dismissal is unavailing and of no effect.

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A police constable could be appointed under Section 9(8) of the 1952 Ordinance by the Commissioner. Part VII of the Police Ordinance 1952 dealt with Discipline. Section 45 (1) of that Ordinance is important and it will be best to reproduce it. In so far as it is relevant it reads :-

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10 " Any constable who is found guilty by an officer authorised in that behalf, of any offence against discipline, shall, subject to Police Regulations, be liable to such punishment as is set out in the First Schedule to this Ordinance. "

Regulation 4 of the Police Regulations 1952 is to the same effect.

20 A constable in order to be punished under Section 45 (1) is to be found guilty of an offence against discipline and this finding arrived at has to be "by an officer appointed in that behalf" and by no other authority.

30 The Commissioner could under Section 45 (2) authorise a gazetted police officer to exercise the jurisdiction and powers of finding the constable guilty of an offence against discipline. The constable could not be punished except in conformity with the provisions of the Police Regulations. Under Schedule 1 of the Ordinance, a Commanding Officer could dismiss a constable but only after Section 45(1) of the Ordinance had been duly complied with. A Chief Police Officer is included in the definition of a Commanding Officer in the 1952 Ordinance.

40 31st of August 1957 was the Merdeka and the supreme law of the country as from that date could only be the Constitution. Article 140(1) of the Constitution deals with the jurisdiction of the Police Force Commission and its jurisdiction expressly extends to all members of the Police Force and it is the Police Force Commission which from the date of the commencement of the Constitution is responsible, inter alia, for the appointment of an disciplinary control over all members of the Police Force. Again under Article 144(1) it is the Police Force Commission which has the duty to appoint and to exercise disciplinary control over members of the Police Force. (See

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B. Surinder Singh Kanda v. The Government of the Federation of Malaya (1962) M.L.J.169.
The Police Force Commission can delegate any of its functions under Article 144(6) "but still it is its own duty and its own power that it delegates." Article 144(6) further makes it mandatory that the board or officer to whom the Police Force Commission delegates its functions should exercise those delegated functions "under the direction and control of the Commission."

10

As already stated Article 135(2) confers upon a member of the public services a constitutional protection that he shall not be dismissed or reduced in rank without being given a reasonable opportunity of being heard. Dealing with the question of reasonable opportunity to be heard Lord Denning while delivering the judgment of the Privy Council in B. Surinder Singh Kanda v. The Government of Malaya (1962) M.L.J. 169 said :-

" The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: Nemo iudex in causa sua: and Audi alteram partem. They have recently been put in the two words Impartiality and Fairness. But they are separate concepts and are governed by separate considerations. In the present case Inspector Kanda complained of a breach of the second. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.

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If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn, L.C. in Board of Education v. Rice (1911) A.C.179,182, 27 T.L.R. 378 down to the

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decision of their Lordships' Board
 in Ceylon University v. Fernando
 (1960) W. L. R. 223; (1960)
 1 All E.R. 631 P.C. It follows, of
 course, that the judge or whoever has
 to adjudicate must not hear evidence or
 receive representations from one side
 behind the back of the other. The
 Court will not enquire whether the
 evidence or representations did work
 to his prejudice. Sufficient that
 they might do so. The Court will not
 go into likelihood of prejudice. The
 risk of it is enough. No one who has
 lost a case will believe he has been
 fairly treated if the other side has had
 access to the Judges without his knowing.
 Instances which were cited to their
 Lordships were Re Gregson (1894) 70 L.T.
 106, Rex v. Bodmin Justices (1947) K.B.
 321, (1947) 1 All E.R. 109 and Goold v.
Evans (1951) 2 T.L.R. 1189, to which might
 be added Rex v. Architects Registration
Tribunal (1945) 2 All E.R. 131; 61 T.L.R.
 445, and many others.

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Article 135 of our Constitution is in pari
 materia with Article 311 of the Indian Constitution.
 The words "reasonable opportunity of being heard"
 appear in Article 311 (2) of the Constitution of
 India. There are, however, certain provisos to
 Clause (2) of Article 311 of the Indian Constitution
 which if they apply completely take away the force
 Article 311 (2) of that Constitution. The first
 proviso deals with an employee of the government
 whose conduct leads to his conviction on a criminal
 charge. No disciplinary proceedings need be held
 against him under the Indian Constitution. The
 rule that there must be conformity with the
 principles of natural justice does not apply to the
 case of such an employee there. He becomes liable
 on conviction to be dismissed without any further
 proceeding or hearing. There is no proviso to
Article 135 (2) of our Constitution with the result
that here the constitutional guarantee of having a
reasonable opportunity of being heard before
dismissed or reduced in rank remains in tact and
undisturbed for the benefit of all members of the
services referred to in paragraphs (b) to (h) of
Article 132 of the Constitution.

The law governing the relationship between an

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employee and an employer normally applies equally to the case of an employee whose employer happens to be the government. There are added safeguards provided under the Constitution for members of the various services. When an order of dismissal passed against a public servant is challenged by him in the High Court it is for the High Court to consider whether the constitutional requirements of Article 135 (1) and (2) have been satisfied or not. In such a case it cannot be contended that the infirmities on which the public servant relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bona fide but that does not mean that the discretionary orders passed by him are final and conclusive. The enquiry officer is required to observe rules of natural justice. The reasonable opportunity envisaged in Article 135 (2) includes :-

- (a) an opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based; 10
- (b) an opportunity to defend himself by refuting the evidence proposed to be considered against him and if necessary (depending on the circumstances) to cross-examine the witnesses produced against him and leading evidence in support of his defence; and 30
- (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him. 40

In my view the letter A2 notified the Plaintiff of all the facts and evidence which P.W.2 was going to take into consideration. He was given an opportunity to make any representations to P.W.2 which he wished to. The Plaintiff had heard all the evidence in the Magistrate's Court. He had then cross-examined all the prosecution witnesses. He had also appeared as his own witness. He was convicted and had appealed against his conviction. This appeal was dismissed. In his representation (A3) to P.W.2 he did not deny the truth of the evidence

produced against him in the Magistrate's Court. In fact in A3 he was asking to be re-employed in the Police Force. In the circumstances in my opinion there was no denial to the Plaintiff of a reasonable opportunity to be heard. An enquiry officer is not bound by the strict rules of the law of evidence. In the absence of any expressed desire on the part of the Plaintiff to take part in the proceedings and to reopen the case all over again before P.W.2, it was quite competent for P.W.2 to proceed on the material which was already before him and of which the Plaintiff was fully aware. (See The King v. Tribunal of Appeal under the Housing Act, 1919 (1920) 3 K.B. 334.

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There, however, remains the question whether P.W.2 in dismissing the Plaintiff had acted properly and not in violation of Article 135(1). The only competent authority to dismiss the Plaintiff was the Police Force Commission. That this is so is evident from a plain reading of Article G 140(1) of the Constitution. Article 140(6)(b) however authorises "the several members of the Commission" to delegate its "duties and responsibilities" to either a member of the Commission or a member of the police force or a board of police officers. The duties, powers and responsibilities could thus validly be delegated by the Commission to the Chief Police Officer, Perak. One or more members of the Commission could delegate their respective powers and duties to, say for instance, the Chief Police Officer. The Police Force Commission could, in respect of the matters expressly stated in clauses (a) to (e) of Article 140(6) of the Constitution, regulate its procedure in such a manner as it thought fit. On 9.4.1962 by an instrument marked Exhibit D3 in this Court, the Police Force Commission purported to delegate its "functions" under Article 140(1) of the Constitution. Article 140(1) of the Constitution refers not only to the "jurisdiction" i.e. the sphere within which the Police Force Commission is competent to act but also to its responsibilities. The "functions" of the various services commissions are defined in Article 144(1). The concept of jurisdiction is distinct from the concept of power or function. It is illustrated, for instance, in the Courts of Judicature Act 1964 where Sections 23 and 24 deal with the jurisdiction

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of the High Court and Section 25 with the powers in the exercise of that jurisdiction. By jurisdiction is meant the authority which a tribunal, Court, body or commission has to take cognizance of in respect of matters presented to it in a formal way for its decision. A Court may have jurisdiction to entertain a suit or appeal and yet it may have no power to pass a particular order in that suit or appeal. (See Lachmi Narain Marwari and Others v. Balmakund Marwari and Another 51 I.A.321. Article 140(1) confers jurisdiction and powers on the Police Force Commission. Article 144(1) and (2) also defines the functions and powers of the Commission.

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According to D.W.1, the number of members constituting the Police Force Commission when Exhibit D3 was issued was eight. Exhibit D3 is, however, signed by only six out of those eight members. It was urged that if it were a delegation of the powers and duties of the Commission under Article 140(6)(b) it should have been a delegation of powers and duties either by all the members of the Commission or some evidence should have been produced that under Article 140(6)(a) the Commission had already prescribed its own procedure and the delegation by six only of the members was valid or sufficient for the purposes of Article 140(6)(b). The Police Force Commission is authorised to "provide for" the matters referred to in sub-clauses (a) to (e) of Article 140 (6). The words "provide for" appearing in Article 140 (6), in my view, mean "prescribe procedure for or lay down the manner in which" the matters referred to in clauses (a) to (c) of that sub-clause are to be dealt with by the Police Force Commission. One provides for one's old age. A country provides for its defence. It amounts to taking measures to meet a possible event. It is something done to meet a situation which might arise or which has arisen. The words imply a measure of foresight to meet a future situation or a situation which has already arisen. Exhibit D3 was issued on the 9th day of April 1962. The Plaintiff was not convicted until the 19th of April 1967. The procedure prescribed under Exhibit D3 was consequently laid down to meet the future requirements and duties of the Commission. Article 140 (6)(b) refers to "the duties and responsibilities of the several members of the Commission." The

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10 argument is that the delegation in order to be
valid should have been by all the eight
members. The duty to exercise disciplinary
control over members of the police force rests
with the Commission and not with some of its
members only unless there is a proper delegation
of its functions to one or more of the members
of the Commission. (See Article 140(1) and (6)
and Article 144(1).) It was submitted that may
be the Commission acted by a majority. If it
were so some evidence should have been produced
by the Defendant that under Article 140 (6)(a),
the Commission had resolved that in so far as
delegation of its duties and responsibilities
was concerned such delegation by six of its
members was to be as effective and binding as
a delegation by all its members. The simple
answer to that argument of the Plaintiff is
20 to be found in Section 41 of the Interpretation
and General Clauses Ordinance 1948. The word
"delegation" does not imply a total giving up of
authority or power. It only means conferment
of authority to do things which otherwise the
Commission itself would have to do. (See Huth
v. Clarke (1890) 25 Q.B.D. 391(395) and Gordon,
Dadds & Co., v. Morris (1945) 2 All E.R.616 (621)
30 The members of the Commission by delegating
their powers to the Chief Police Officer did not
denude themselves of the powers enjoined upon
them under the Constitution. Exhibit D3 does
not on the face of it profess to be a delegation
of functions under Article 144(6) of the
Constitution and no attempt has been made to
prove what was the procedure prescribed by the
Commission under Article 140(6).

40 It is not necessary for me, in the circum-
stances of this case, to go into the question
whether Exhibit D3 issued in 1962 still remained
binding and operative on these members of the
Police Force Commission in 1967 who were not its
members in 1962. There is no evidence before me
to show who the members of the Commission were at
the relevant time in 1967. The delegation
(Exhibit D3) was valid in 1962. Section 30(1)
of the Interpretation Act 1967 kept the validity
of Exhibit D3 alive and operative irrespective of
any changes in the constitution of the Police Force
Commission.

The Plaintiff having been found guilty of

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offences under Sections 74(ii) and 92(ii) of the Road Traffic Ordinance 1958 it is apparent that his conduct in operating a pirate taxi while employed as a detective police constable was an act subversive of discipline. The term "discipline" denotes the order which is meant to be maintained among a certain class of persons, e.g. school children, or members of the police or armed forces. If it transpires in a service such as the police force that the policeman himself turns a thief the very foundation and object of the establishment of the police force is overthrown and ruined. As a detective police constable the Plaintiff was required to detect crime, not to become a criminal himself. It appears rather incongruous that persons who are themselves in the habit of committing offences should be allowed to remain in the Police Force when one of the obvious objects of their employment is to apprehend and bring to book all those who commit an offence. There are rules which govern the conduct of police officers and other public servants. Those rules are aimed at maintaining discipline and efficiency in the public services. Apart from those rules an employee can be dismissed even in the private sector under one or more of the following conditions :-

- (a) if his act or conduct is prejudicial or likely to be prejudicial to the interests or the reputation of the matter; 30
- (b) if his act or conduct is inconsistent or incompatible with the due or peaceful discharge of his duty to his employer;
- (c) if he makes it unsafe for the employer to retain him in service;
- (d) if his act or conduct is so grossly immoral that all reasonable men will say that the employee cannot be trusted; 40
- (e) if his act or conduct is such that the master cannot rely on the faithfulness of the employee.

If a member of the Police Force is found

drunk and behaving in a disorderly manner or is found gambling in a public place and is subsequently charged and convicted he is not fit to be kept in the force and should have nothing to complain if he is dismissed provided the provisions of Part X of the Constitution are duly observed. Police Regulations or the General Orders may provide for the dismissal of a public servant on conviction for an offence. The question whether such a conviction was only in respect of a technical offence or a serious offence or it involved no moral turpitude is not a question for the Court. The facts might constitute a hard case but that does not justify the Court to add words to a statute or rules made thereunder. I am not suggesting that the Plaintiff was not a knave or a wrong-doer. The Plaintiff in this case has certain rights guaranteed to him under the Constitution. In the case of B. Surinder Singh Kanda v. The Government of the Federation of Malaya (1962) M.L.J.169, Bigby J. who originally tried the suit is said to have found in the Report of the Board of Inquiry that Inspector Kanda was "an unscrupulous scoundrel who had suborned witnesses, both police and civil, to commit perjury" yet the Privy Council thought it the duty of the Court to safeguard and preserve intact the rights guaranteed to him under the Constitution. I have consequently, for the purpose of this suit, to be guided by no other considerations except the due observance by the Defendant of the provisions of our Constitution.

The Courts keep the State within the limits of its statutory powers. When the State dismisses an employee in violation of the mandatory procedural requirements or on grounds which are not sanctioned or supported by statute the Courts may exercise jurisdiction to declare the act of dismissal to be a nullity. Such an implication in the case of public employment is thus distinguishable from and in contrast with the incidents of service in private employment i.e. in pure cases of master and servant. (See Vine v. National Dock Labour Board, (1956) 3 All E.R.939, Barber v. Manchester Hospital Board, (1958) 1 All E.R.322, Ridge v. Baldwin, (1964) A.C. 41, Malloch v. Aberdeen Corp., (1971) 2 All E.R. 1278 and McClelland v. Northern Ireland General Health Services Board (1957) 1 W.L.R. 594.

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Clauses 1 and 2 of Article 135 and Clause 2 of Article 132 of the Constitution provide constitutional limitations upon the right of the Yang di-Pertuan Agong to dismiss members of the various services at his will. These provisions of the Constitution are designed to confer security of tenure upon public servants. The argument that a government servant can neither recover arrears of pay nor damage on the ground that conferment of the benefit of pay for service rendered to the Crown is a matter of bounty and grace for the Crown, that it is not a matter of right of the public servant and that the Crown can never be made liable for damages in tort cannot in view of the provisions of the Constitution hold good. The prerogative right of the Crown to dismiss its servants at will is exercisable only subject to the limitations contained in the Constitution. It thus follows that if any of those limitations are contravened the aggrieved public servant gets a right to maintain an action against the Crown for appropriate relief. The conditions of service are regulated by Federal law or the State law. (See Article 132(2) of the Constitution.) The rule of English law that a civil servant cannot maintain a suit against the State or against the Crown for recovery of arrears of salary therefore does not prevail here in view of the specific provisions of our Constitution. (Compare Ridge v. Baldwin (1964) A.C. 41) 10

The order of suspension made against a government servant lapses on the order of dismissal being made. The order of dismissal then takes its place. When the Court declares the order of dismissal illegal, neither the order of suspension nor the order of dismissal remain operative. The contention that if the order of dismissal is legal it cannot be made retrospective as from the date of suspension can have no substance because if a government servant is suspended pending an inquiry into certain charges and if at the end of such inquiry an order of dismissal is made this order replaces the order of suspension. The order of suspension is no doubt replaced but by virtue of the operation of General Orders the government servant does not remain entitled to any salary as from the date of suspension. Ordinarily under Cap D43 of the General Orders (now repealed by P.U. 290 of 1968) an officer convicted on a criminal charge can be suspended and under regulation 35 of the same Cap. D of the General Orders the disciplinary authority 30 40 50

can dismiss him. The dismissal consequently dates back to the Order of suspension. Regulations 29 to 49, however, did not apply to the Plaintiff. (See Regulation 28 of Cap. D). In the circumstances it was only Regulation 8 of the Police Regulations 1952 which was applicable and the dismissal of the Plaintiff could only be as from 11.11.1967. Order 12 of the Standing Orders (Exhibit D2) therefore seems ultra vires Regulation 28 of Cap. D of the General Orders.

In the High
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No. 10

Judgment
12th September
1973
(continued)

The opening words of Article 132(2) are "Except as otherwise expressly provided by the Constitution" The conditions of service of a person in the category of the Plaintiff are regulated firstly by the Constitution, then by the Police Ordinance or Act, and the Rules, Regulations and Standing Orders made under the said legislation and lastly by the General Orders issued under the authority of the Yang di-Pertuan Agong in accordance with Article 132 (2) of the Constitution. As far as the question of dismissal of the Plaintiff is concerned it is a matter for which the Police Force Commission has been expressly made responsible under the provisions of Article 140(1) and 144(1) of the Constitution. The use of the expression of "exercise of disciplinary control" in the said articles make it clear. Control is useless if it is not accompanied by disciplinary powers. Punishment for offences against discipline was prescribed under Section 45 of the Police Ordinance 1952 and Regulation 2 of the Police Regulations 1952 enumerates the various offences designated as offences against dismissal. The conduct of the Plaintiff in plying a pirate taxi could well fall under Regulations 2 (61) and (65) of the Police Regulations 1952. Section 74 of the Police Act 1967 similarly deals with the Regulations made by the Yang di-Pertuan Agong under Article 132(2) of the Constitution or those Regulations which are made under Section 96 of the Act. The issue of Standing Orders is provided for in Section 97 of the 1967 Act. As from the date of the coming into force of the Constitution the power of dismissal of a police officer fell within the exclusive purview of the Police Force Commission. The Police Force Commission under Article 144(6) is authorised to delegate its functions to say the Chief Police Officer but those functions have still to be exercised by the Chief Police Officer "under the direction and control of the Commission." In this

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Judgment
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(continued)

particular case the direction by the Commission to the Chief Police Officer as evidenced by Exhibit D3 (granting that it was a delegation under Article 144(6)) was clear and unmistakable. He was to exercise the functions as prescribed and "specified in the Police Ordinance 1952, and in the rules, regulations and standing orders made or purporting to have been made thereunder." He was not required to act under Cap. D of the General Orders but Section 22 of the Police Ordinance 1952 itself made the General Orders applicable to the delegation under Exhibit D3. He was required under Article 144(6) of the Constitution to act under the direction and control of the Commission alone in so far as the question of Plaintiff's dismissal from service was concerned. The Chief Police Officer (P.W.2) in fact was truly and unreservedly candid and frank when he said that in dismissing the Plaintiff (see 45)(sic) he was acting under Section 45 of the Police Ordinance 1952 and Regulation 2(a)(64) of the Police Regulations 1952 and that he was not acting under the delegation of authority from the Police Force Commission but only in exercise of his powers under the Police Ordinance 1952. It was only under pressurised and somewhat suggestive cross-examination that he said that in writing A1 he was acting under Order 43 of Cap. D of the General Orders. A1 in fact was written not by him but by his predecessor. Exhibit D2 reproduces a part of the Standing Orders relevant to this suit and which were issued under Section 82 of the Police Ordinance. P.W. 2 was certainly authorised by the Commission to act in accordance with the Standing Orders. Standing Orders 7, 9 and 12 reproduced in Exhibit D2 are important. The action taken by P.W.2 against the Plaintiff seems thus fully covered by the provisions contained in Exhibit D2 and Exhibit D3 and apparently looks unchallengeable so far as due observance of the provisions of the Police Ordinance 1952 and the rules, regulations and standing orders made thereunder is concerned. When one exercises a power delegated to him by another there has to be a conscious awareness not only of the existence of that power but also of the fact that the power is being exercised on behalf and for the person who has delegated that power. It should not happen merely by chance or coincidence that the person purporting to act on behalf of himself alone under a particular law or authority is in fact at that time also invested with the power or authority

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from another under another law and thus becomes competent to act although in reality while acting he is not aware that he is clothed with that authority and is competent only to act under it and by virtue of it alone. The question is was P.W.2. at the time of taking action, alive to the power under which alone he could be competent to act. I am satisfied that P.W.2 when dismissing the Plaintiff did so purely on his own and by virtue of the provisions of the Police Ordinance 1952 without any knowledge or consciousness of the requirements of the Constitution, the rights of the Plaintiff thereunder, or any delegation to him of the functions of the Police Force Commission. The Plaintiff had a right to know that the purported order of dismissal was by or on behalf of the only authority competent under the Constitution to dismiss him. Also direction and control by the Police Force Commission over the order of dismissal by P.W.2 should have continued.

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(continued)

Another important question arises in this case and that is whether the Police Force Commission can validly delegate its powers of dismissal under Article 144 (6) and Article 140(6)(b) of the Constitution in spite of the provisions of Article 135(1). The power of dismissal belongs to the master. It cannot be delegated. The matter came up for consideration before their Lordships of the Privy Council in the case of Rangachari v. The Secretary of State (1936/37) 64 I.A. 4053 and it was held that the power could not be delegated. Their Lordships observed :

" There is, however, another point raised, and in the Courts below decided adversely to the plaintiff, which has given their Lordships considerable anxiety. Sect. 96B contains the following proviso: "But no person in that service (the Civil Service of the Crown) may be dismissed by any authority subordinate to that by which he was appointed." The purported dismissal of the appellant on February 28, 1928, emanated from an official lower in rank than the Inspector-General who appointed the appellant to his office. The Courts below held that the power of dismissal

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(continued)

was in fact delegated, and was lawfully delegated, to the person who purported to exercise it. Counsel for the respondent candidly expressed a doubt as to the possibility of maintaining this view, and indeed it is manifest that if power to delegate this power could be taken under rules it would wipe out a proviso and destroy a protection contained not in rules but in the section itself. Their Lordships are clearly of opinion that the dismissal purporting to be thus ordered in February was by reason of its origin bad and inoperative. "

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Article 135(1) does not speak of the dismissing authority but it only says that no public servant shall be dismissed or reduced in rank by any authority subordinate to that by which he was appointed, which means that by virtue of Article 135(1) the appointing authority gets the power of dismissal. The jurisdiction and the power of appointment are conferred by Articles 140(1) and 144(1). That power by itself implies the power of dismissal or taking disciplinary proceedings.

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Delegation is always upon an inferior person. During the British rules even the Judges in the Colonies held office at the pleasure of the Crown. (See Terrel v. Secretary of State for the Colonies. (1953) 2 Q.B. 482.) Under the Constitution the government servants held office during the pleasure of the Yang di-Pertuan Agong. The pleasure recognised by Article 132(2A) is, however, restricted by Article 135.

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Section 29 of the Interpretation and General Clauses Ordinance 1948 is made expressly applicable to the interpretation of the Constitution by virtue of Article 160(1). Section 29 of the Interpretation and General Clauses Ordinance 1948 (now Section 47 of the Interpretation and General Clauses Act 1967) is a codification of the well understood rule that the power to terminate flows naturally and as a necessary sequence from the power to create. It is a necessary adjunct of the power of appointment and is exercised as an incident to or consequence of that power. Article 135(1) makes it mandatory that as far as dismissal or reduction in rank of a government servant is concerned it cannot validly be done by an authority which is subordinate to the authority which could have

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made the appointment at the time of the dismissal. Article 140 (6)(b) and 144 (6) afford to the Commission a means of convenience in its work, to ease its burden as it were. Article 135, however, secures to the servant concerned a constitutional guarantee that he shall not be dismissed by any subordinate authority. It thus appears that there is capacity for some conflict between the provisions of Article 144(6) and the provisions of Article 135 (1) should the Commission decide to delegate its powers of dismissal to some other person or authority. The conflict thus becomes a conflict between the conveniences of the Commission and the constitutional rights guaranteed to the public servant. In the event of such a conflict I think it is the duty of the Court to keep preserved the constitutional guarantees enshrined in the Constitution for the benefit of the government servant and the security of his tenure. The conflict between the provisions of the two Articles can, however, be reconciled if it is held the Commission has no power to delegate its functions in so far as they relate to the dismissal or reduction in rank of the public servant and I do so held. (sic)

Having held that the Police Force Commission had no valid powers to delegate its authority to the Chief Police Officer in so far as such delegation related to the dismissal or reduction in rank of police personnel and having found that in dismissing the Plaintiff P.W.2 was in fact not acting under any delegation of authority by the Police Force Commission, there will be a declaration in favour of the Plaintiff that his dismissal from service was null and void, inoperative and of no effect and that he still continues to be a member of the Royal Malaysian Police Force and that he is entitled to all the arrears of salary as from the date of his purported dismissal, i.e. 19.4.1967. There will also be an order that the Defendant do pay the costs of this suit to the Plaintiff.

Dated this 12th day of September, 1973.

(N. SHARMA) Judge, High Court, IPOH.

G.T. Rajan, Esq. of Messrs. G.T. Rajan & Co. for the Plaintiff.

Encik Abdul Razak bin Datuk Abu Samah, Senior Federal Counsel for the Defendant.

In the High Court of Malaysia

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Judgment
12th September
1973
(continued)

In the High
Court of
Malaysia

No. 11

ORDER

—
No. 11

Order
12th September
1973

IN THE HIGH COURT IN MALAYA AT IPOH
CIVIL SUIT NO. 506 OF 1968

Between :

Iznan bin Osman

Plaintiff

And

The Government of Malaysia

Defendant

BEFORE THE HONOURABLE MR. JUSTICE N. SHARMA
THIS 12th DAY OF SEPTEMBER, 1973 IN OPEN COURT

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UPON THIS SUIT coming on for hearing before the Honourable Mr. Justice N. Sharma on the 7th and 8th days of March, 1972 in the presence of Mr. G.T. Rajan of Counsel for the Plaintiff and Encik Abdul Razak bin Dato Abu Samah, Senior Federal Counsel appearing for and on behalf of the Defendant IT WAS ORDERED that this suit do stand adjourned for continued hearing AND UPON THIS SUIT coming up for continued hearing on 20th and 21st days of September, 1972 in the presence of Mr. G.T. Rajan of Counsel for the Plaintiff and Encik Abdul Razak bin Dato Abu Samah, Senior Federal Counsel appearing for and on behalf of the Defendant IT WAS ORDERED that this suit do stand adjourned for submissions AND UPON THIS SUIT coming up for submissions on the 2nd day of May, 1973 in the presence of Mr. G.T. Rajan of Counsel for the Plaintiff and Encik Abdul Razak bin Dato Abu Samah, Senior Federal Counsel appearing for and on behalf of the Defendant IT WAS FURTHER ORDERED that this suit do stand adjourned for final submissions AND UPON THIS SUIT coming up for final submissions on 8th day of September, 1973 in the presence of Mr. G.T. Rajan of Counsel for the Plaintiff and Encik Abdul Razak bin Dato Abu Samah Senior Federal Counsel appearing for and on behalf of the Defendant IT WAS ORDERED that this suit be adjourned for delivery of Judgment AND UPON THIS SUIT coming up for Judgment on this day in the presence of Mr. G.T. Rajan of Counsel for the Plaintiff and Encik Abdul Razak bin Dato Abu Samah, Senior Federal Counsel appearing for and on behalf of the Defendant IT IS ORDERED that Judgment be and is hereby entered in favour of the Plaintiff AND IT IS FURTHER ORDERED and declared that the Plaintiff's dismissal from service was null and void, inoperative and of no effect and that he still continues to be a member of the Royal Malaysian Police Force AND IT IS

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FURTHER ORDERED that the Plaintiff is entitled to all the arrears of salary as from the date of his purported dismissal i.e. 19th April, 1967 AND IT IS LASTLY ORDERED that the Defendant do also pay the COSTS of this Suit to the Plaintiff.

GIVEN under my hand and seal of the Court this 12th day of September, 1973.

Senior Assistant Registrar, High Court,
IPOH.

In the High
Court of
Malaysia

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No. 11

Order
12th September
1973

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No. 12

NOTICE OF APPEAL

IN THE FEDERAL COURT OF MALAYSIA
(APPELLATE JURISDICTION)

Federal Court Civil Appeal No. of 1973
Between
The Government of Malaysia Appellants
And
Iznan bin Osman Respondent

In the Federal
Court of
Malaysia

—
No. 12

Notice of
Appeal
28th September
1973

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In the Matter of Civil Suit No.506 of 1968
IN THE HIGH COURT IN MALAYA AT IPOH

Between
Iznan bin Osman Plaintiff
And
The Government of Malaysia Defendants

TAKE NOTICE that the Government of Malaysia, the Appellants above named being dissatisfied with the decision of the Honourable Mr. Justice N.Sharma delivered at Ipoh on 12th September, 1973, appeal to the Federal Court, Malaysia, against the whole of the said decision.

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Dated this 28th day of September, 1973.

Sd. Abdul Razak b. Datuk Abu Samah
Senior Federal Counsel for and on behalf
of the Appellants

To: (1) The Chief Registrar, Federal Court of
Malaysia, Kuala Lumpur.
(2) The Senior Assistant Registrar, High Court,
Ipoh.
(3) Messrs. G.T. Rajan & Co., 14 Jalan Station,
Klang, Selangor.
(Solicitors for the Respondent)

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Appellants' address for service is c/o Attorney,
General's Chambers, Kuala Lumpur.

MEMORANDUM OF APPEAL

In the
Federal
Court of
Malaysia

IN THE FEDERAL COURT OF MALAYSIA

No.13

(APPELLATE JURISDICTION)

Memorandum
of Appeal
10th March
1973

Federal Court Civil Appeal No.114 of 1973

Between

The Government of Malaysia Appellants

And

Iznan bin Osman Respondent

In the Matter of Civil Suit No. 506 of 1968 10

IN THE HIGH COURT IN MALAYA AT IPOH

Between

Iznan bin Osman Plaintiff

And

The Government of Malaysia Defendants

The Government of Malaysia, Appellants above-named appeal to the Federal Court of Malaysia against the whole of the decision of the Honourable Mr. Justice N. Sharma given at Ipoh on the 12th day of September, 1973 on the following grounds: 20

- (1) The learned trial Judge erred in holding that the plaintiff could not be proceeded with except in conformity with the provisions of the Police Regulations.
- (2) The learned trial Judge erred in holding that the instrument of delegation to the Chief Police Officer was defective.
- (3) The learned trial Judge erred in maintaining that Regulations 29 - 49 of Cap. D. of the General Orders did not apply to the plaintiff. 30

- (4) The learned trial Judge erred in holding that the Commissioner's Standing Order, exhibit D12, was ultra vires Regulation 28 of Cap.D of the General Orders.
- (5) The learned trial Judge erred in holding that the Chief Police Officer in dismissing the Plaintiff was in fact not acting under any delegation of authority by the Police Force Commission.
- 10 (6) The learned trial Judge erred in holding that the Police Force Commission had no valid power to delegate its authority to dismiss the plaintiff to the Chief Police Officer.

In the
Federal
Court of
Malaysia

No.13
Memorandum
of Appeal
10th March
1973.
(Continued)

Dated this 10th day of November, 1973.

Senior Federal Counsel,
for and on behalf of the
Appellants.

To:

20 The Senior Assistant Registrar,
High Court, Malaya,
Ipoh.

And to:

Messrs. G.T. Rajan & Co.,
14 Jalan Station,
Kelang.
(Solicitors for the Respondent)

The Chief Registrar,
Federal Court, Malaysia,
Kuala Lumpur.

30 The address for service on the Appellants
is c/o Attorney-General's Chambers, Kuala
Lumpur.

In the
Federal
Court of
Malaysia

No.14

NOTES OF ARGUMENT OF SUFFIAN, L.P.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 114 of 1973

(Ipoh High Court Civil Suit No. 506 of 1968)

Between

The Government of Malaysia Appellant/Defendant

And

Iznan bin Osman

Respondent/Plaintiff

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Coram: Suffian, L.P.,
Lee Hun Hoe, C.J.Borneo:
Wan Hamzah, J.

Wed. 1st August, 1974.

Talib bin Othman (Lim Beng Choon with him) for
appellant.

Rajan for respondent.

Talib

I apply for further evidence to be adduced.

Lau Foo Sun (1970) 2 MLJ 70. We satisfy the
3 conditions given there. 20

As regards condition 1

Plaintiff did not plead that the Police Force
Commission had 8 members and that therefore the
delegation was therefore invalid. Question of
invalidity of delegation never pleaded by plaintiff.
So we were taken by surprise. If it had been
pleaded, we would have made enquiries and pleaded
accordingly.

P.22. This matter only came out in cross-exam.
of DW 1 by plaintiff. 30

No.14
Notes of
Argument
of Suffian,
L.P.
1st August
1974.
(Continued)

As regards condition 2

This question influenced judge's decision,
p.53.

As regards condition 3

No question of credibility arises.

Wrong (1970) 2 MLJ 287 - a manifest
injustice cannot be allowed to go uncorrected.

Rajan addresses

I strongly object to this application.

10 Defendants should have been diligent but they
were not. This objection was never raised. It was
handled by very experienced counsel, now a judge.

This issue came before the judge. Evidence
first came out on p.22. Adjourned to 20.9.72, p.23.
To 21.9.74, p.25.

My statement of claim, p.13, para 10, makes
clear this issue was to be brought. Defendants
should have asked us for particulars.

20 (1965) 2 MLJ 56. Headnote. We are respondents
brought to court.

Several adjournments - defendants could have
asked for amendments.

Ruling: application granted.

DW 1 Tengku Hj. Ismail bin T. Mohamed affirmed, states
in English:

To Talib

30 I am under Secretary A in Ministry of Home
Affairs. The Police Force Commission Secretariat is
a section under my division and it is served by an
assistant secretary in my division.

According to records in my Ministry, the Police
Force Commission on 9.4.62 had 6 members - 3 ex-
officio and 3 appointed by H.M. the Agung - namely

(1) Minister of Internal Security, the late Tun Dr.
Ismail;

In the
Federal
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Malaysia

No.14
Notes of
Argument
of Suffian,
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(Continued)

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, No.14
Notes of
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1974.
(Continued)

- (2) the Commissioner of Police, Datuk Fenner -
ex-officio;
- (3) the Secretary to the Ministry, Datuk Nik
Daud - ex-officio;
- (4) G.R. Howitt, Deputy Chairman of P.S.C.;
- (5) Azmi bin Mohd., J.;
- (6) a retired Police Officer, Encik Mohd. Din
bin Modh. Shariff.

The last 3 members were appointed under
article 140(3) Constitution.

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XD Rajan

A.Rahim bin Mohd. Noor, DW1 at trial, was a
Police Officer at Police HQ., not at the Ministry.
He was a staff officer in the Personnel Division
at Police HQ.

The file dealing with the appointment of
members of the Police Force Commission was kept at
Police HQ. Until 30.12.71 when it was transferred
to the Ministry. Before that the Police would
have access to all the records of the Police Force
Commission.

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FD1

I produce the original letter of appointment
of the members (handed over to Rajan). (Marked as
exhibit FD.)

There is no document to show appointment of
ex-officio members.

P.1 at p.103 is the last delegation given to
Police Force Commission. According to the record,
the delegation was not gazetted.

There were only 6 members of Police Force
Commission according to the letter.

30

(Che Talib says CSO, D2 and D3 never gazetted.)

To Talib

No other appointments to Police Force
Commission made that year.

Court announces: we find that on date in question there were six members (not 8) of the Police Force Commission as given in exhibit FDI.

In the
Federal
Court of
Malaysia

Talib addresses on merit on appeal:

Facts on pp.31-3.

P.53 C and D. Judge held -

- (1) Police Force Commission cannot delegate power to dismiss to C.P.O.;
- (2) C.P.O. in dismissing was acting on his own.

No.14
Notes of
Argument
of Suffian,
I.P.
1st August
1974.
(Continued)

10 I submit judge was wrong.

I abandon ground 3.

Ground 1

C.P.O. first suspended plaintiff. Next he dismissed plaintiff retrospectively.

P.20.

CPO acted in exercise of his power - his action valid in law.

P.46-7.

P.47D.

20 Police Regulations 1952, regulation 8 has no application - it applies only to disciplinary offence - here plaintiff convicted of criminal charge.

C.P.O. acted under Commissioner's Standing Order 12, p. 105.

Order of suspension replaces order of dismissal - so judge held and I agree.

Plaintiff a Police Constable and subject to Police Ordinance 1952.

30 S. 22, Police Ordinance, makes plaintiff subject to G.Os.

Submit both G.O. and C.S.O. apply to Plaintiff.

In the
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No.14
Notes of
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(Continued)

Defendant dismissed plaintiff under C.S.O.

(1974) 1 MLJ 138, F.C. Najjar Singh.

Dismissal takes effect from date of suspension.

Ground 4

1956 G.Os. applicable.

Judge wrong in holding C.S.O. 12 ultra vires
Cap D, regulation 8.

G.Os. have effect of law.

Suffian, p. 105.

C.S.O. 12 made under s. 82, Police Ordinance,
though administrative order, it has effect of law.
Even if not, it is part of plaintiff's condition of
service. So it is in order for defendant to act
under C.S.O.

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Cap D was made under FMA - so has effect of
law.

C.S.O. 12 and Cap D made under different laws.
So you cannot say C.S.O. 12 ultra vires Cap D. At
most, they were inconsistent.

C.S.O. 12 not ultra vires G.O.8, Cap D, nor
ultra vires the Constitution.

20

Ground 6

Judge held police Force Commission cannot
delegate. Submit he was wrong.

Police Force Commission can delegate under the
Constitution - Suffian p. 108 - our article 140(6)
(b).

Indian Constitution, article 34, is different
from our article 140.

Judge held article 140(6)(b) conflicts with
art. 135 (1). Submit no conflict at all - art.
140(6)(b) allows P.F.C. to delegate - when delegatee
dismisses, he merely exercises power of delegator.

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(1959) 2 AER 102, 107, H & I.

Ground 2

Judge held at p.41 delegation to P.F.C. was bad. Submit he was wrong.

S.41, Interpretation Ordinance, does not apply to Constitution - see its 11th schedule.

Delegation need not necessarily be signed by all members of P.F.C. - can be signed by Secretary or by Chief Clerk. I plead for ruling on this by Federal Court.

10 D3 was good in law.

Ground 5

Submit C.P.O. was using power as delegatee when he dismissed plaintiff.

1952 Police Ordinance had been repealed at time of plaintiff's dismissal. So Ordinance not applicable then, but C.S.O. 9, P.105 & G.O. still applicable to plaintiff - see proviso to s.98, Police Act 1967. Plaintiff was dismissed under C.S.O. and therefore dismissal valid.

20 P.50D - submit judge did not adequately consider PW2's evidence. P. 19E.

P. 20B.

P.21B.

C.P.O. not sure of his power - but it is certain that he was aware he had power at material time to dismiss plaintiff.

Here no denial of right of being heard - so judge found p. 35D.

30 Clear that C.P.O. dismissed plaintiff in exercise of power delegated to him.

So long as he has power, the fact that he was not certain makes no difference.

Sivasubramaniam (1973) 1 MLJ 157, 160, 1st col. A; (1974) 1 MLJ 38. 40, 1st col. C.

Dismissal of plaintiff was good because :-

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Federal
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Notes of
Argument
of Suffian,
L.P.
1st August
1974,
(Continued)

In the
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No.14
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of Suffian,
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(Continued)

- (1) P.F.C. competent to dismiss; to delegate to C.P.O., ~~competent~~ to dismiss;
- (2) C.S.O. 7 and 9 both formed part of plaintiff's conditions of service allowed him to be dismissed after criminal charge;
- (3) in dismissing plaintiff, C.P.O. was authorised by C.S.O.

Judge wrong as stated in my memo. of appeal.

Rajan addresses on merit of appeal.

Instrument of delegation not valid.

10

Finding that defendant dismissed plaintiff not by virtue of delegation but because of his individual power as C.P.O. (ref. p.20C2) is one of fact and cannot be disturbed by Federal Court.

P. 19, last two lines show C.P.O. not sure of what he was doing.

P.22B1 - decision to dismiss plaintiff was C.P.O.'s individual decision.

P. 63, para. 2 - C.P.O. personally dismissed plaintiff - no mention of P.F.C.

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Evidence of C.P.O. very clear.

Plaintiff had right to know who was dismissing him.

Art. 144(6) - delegatee must act under control and direction of the Commission.

Hands in written submission. Speaks to it.

Talib replies:

P.49F - This finding by judge very important, cannot be upset.

Art. 140(6) is special legislation. Art 144(6) is general legislation.

30

Plaintiff complies with art. 140(6).

C.S.O., p. 105, para. 8.

Charges here were criminal.

C.S.O. supplements G.Os - no question of conflict here.

Action against plaintiff was taken under C.S.O.

Validity of delegation - no deed for Tan Sri Salleh to resign D1. He was member of P.F.C. ex-officio.

S. 98, Police Act, 1967, proviso saves previous C.S.Os.

In the Federal Court of Malaysia

No.14
Notes of Argument of Suffian, L.P.
1st August 1974.
(Continued)

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C.A.V.

Signed (M. Suffian) 1.8.74.

Exhibit FD1

- COPY -

KEMENTERIAN KESELAMATAN DALAM
NEGERI PERSEKUTUAN TANAH
MELAYU
MINISTRY OF INTERNAL SECURITY
BROCKMAN ROAD
KUALA LUMPUR.
FEDERATION OF MALAYA.

20 No. MIS. Y.12/118/35.

22nd March, 1961.

Private Secretary to
His Majesty the Yang di-Pertuan Agong,
Istana Negara,
Kuala Lumpur.

Sir,

Police Force Commission

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I am directed to inform you that in accordance with section 22 of the Constitution (Amendment) Act, 1960, Article 140 of the Constitution will be replaced by new Article 140, which would provide for a Police Force Commission, when the section is brought into force.

In the
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—
No.14
Notes of
Argument
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Exhibit FD1
(Continued)

2. The new Article 140 of the Constitution provides that the Police Force Commission shall consist of the following members :-

- (a) the Minister for the time being charged with responsibility for the police, who shall be Chairman;
- (b) the Commissioner of Police;
- (c) the person performing the duties of the office of Secretary to the Ministry under the Minister for the time being charged with responsibility for the Police; 10
- (d) a member of the Public Services Commission, appointed by the Yang di-Pertuan Agong;
- (e) two other members, appointed by the Yang di-Pertuan Agong.

3. It is proposed to set up the Police Force Commission at an early date and in order to reach a decision on the date on which the new Article 140 of the Constitution should come into force and on the membership of the Police Force Commission, Cabinet considered Cabinet Paper No. 133/66/61 and decided that His Majesty be advised:- 20

- (i) that section 22 of the Constitution (Amendment) Act should come into operation on the 1st April, 1961;
- (ii) that Mr. C.R. Howitt, C.M.G., Deputy Chairman of the Public Services Commission, be appointed member of the Police Force Commission under new Article 140(3)(d);
- (iii) that Mr. Justice Azmi bin Mohamed and Encik Mohd. Din bin Mohd. Shariff, J.M.N. be appointed members of the Police Force Commission under new Article 140(3)(e). 30

4. It would be appreciated if this matter could be submitted to His Majesty for His gracious approval.

I am, Sir,
Your obedient servant,
Sgd..... (F.M. Smith)
Secretary to Ministry of Internal
Security.

APPROVED.
Sgd YANG DI-PERTUAN AGONG.
23.3.1961.

NOTES OF ARGUMENT BY LEE HUN
HOE, CHIEF JUSTICE BORNEO

In the
Federal
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IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH

(APPELLATE JURISDICTION)

Federal Court Civil Appeal No. 114 of 1973

Between

The Government of Malaysia

Appellants

And

Iznan bin Osman

Respondent

No.15
Notes of
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by Lee Hun
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1st August
1974.

10 (IN THE MATTER OF CIVIL SUIT NO. 506 of 1968

IN THE HIGH COURT IN MALAYA AT IPOH

Between

Iznan bin Osman

Plaintiff

And

The Government of Malaysia

Defendants)

Coram: Suffian, L.P. Malaysia
Lee Hun Hoe, C.J. Borneo
Wan Hamzah, J.

Thursday, 1st August, 1974

20 11. a.m.

NOTES OF SUBMISSION

Encik Talib bin Osman (Encik Lim Beng Choon with him) for appellants.

Encik G.T. Rejan for respondent.

Talib. Application for further evidence by affidavit.
We made application not because we concede
but for proper disposal of appeal in the
interest of justice.

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Members actually six not eight as in
evidence.

Lau Foo Sun v. Government of Malaysia (1970)

2 M.L.J. 70 and 71. "This is an application
..... incontrovertible."
Contention we will be able to satisfy all.
Never pleaded Police Force Commission had
eight members.
Validity of delegation never pleaded.
One of the reasons learned Judge against us. 10
If we had pleaded we would have made injury.
Page 22 cross-examination of D.W.1.
"Eight members 6 members."
Therefore, Tengku Hj. Ismail becomes
necessary.
Pages 41 - 43.
This has great influence on the learned
judge.
Page 53 - regarding delegation.
No question of credibility of witness 20
involved. Submit we satisfy the test as
laid down in Lau Foo Sun's case.
Would lend to miscarriage of justice of
such evidence not given.
(1970) 2 M.L.J. p.287. "A manifest
injustice cannot remain uncorrected."

Rejan Strongly object to this application for
simple reasons should be some quantum of
diligence. Submit no diligence at all.
This objection never raised before learned 30
Judge.
Matter handled by a very competent Senior
Federal Counsel now a Judge.
This issue came before learned Judge.
See page 22 8.9.72
See page 23 20.9.72
See page 25 21.9.72
Ample opportunity to get the document.
Refer to pleading at page 13, para. 10
"proper dismissing authority." 40
They could ask for particulars.
(1965) 2 M.L.J. p.56. See Editorial Note.
Submit it is irregular at this stage.
Application frivolous and vexatious and
should be dismissed.

Suffian. Application allowed.

Talib Respondent has right to cross-examine.

Tengku Haji Ismail bin Tengku Mohamed affirmed and states -

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I am holding appointment Under Secretary A in Ministry of Home Affairs. The Police Force Commission Secretariat is a section under my Division. It is serviced by an assistant Secretary within my Division. According to record in my Division on 9.4.52 there were six members. Three ex-officio, 3 appointed by the Yang di-Pertuan Agong for the Police Force Commission.

10

Chairman: Late Tun Dr. Ismail bin Dato
Abdul Rahman

Then Commissioner of Police,
now Inspector-General of Police,
Claude Fenner

Datuk Nik Daud

C.R. Howitt who was then Deputy
Chairman of the P.S.C.

20

Mr. Justice Azmi as he was then
Encik Mohamed Din bin Mohamed
Shariff.

The last three appointments made under Article 140(3)(e) of Federal Consitution.

Xxd. Abdul Rahim bin Mohamed Noor at time of trial a police officer. Not at my Ministry. I think he was a staff officer in the Personnel Division at Police Headquarters. The file was kept by the Police. The file dealing with members of the Police Force Commission was kept in Police Headquarters until December 1971 until it was transferred to the Ministry. Before 30.12.71 police could have access. I suppose he should have access to the file. I came to know about this matter only last Saturday. There is a possibility he could have the file at the trial. I have the original appointments of the six members.

30

F.D.1. Produced letter of appointment.

No document to show appointments of ex-officio members.

40

Page 103 of Record P.1 shows last delegation.

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According to the record it was not gazetted as it was not necessary.
According to F.D.1. there were six members.
The other four not named.
Not in position to say whether Commissioner's Standing Orders gazetted or not.

Tahb. Exh. D.2 in fact not gazetted.
Exh. D.3 not gazetted.

Rexd. No other appointments made in that year.

Suffian. We find on date on question there were six members and not eight in the Police Force Commission. 10

Talib. Facts brief and simple.
Do not agree with law as found by the learned Judge.
Facts - pages 31 - 33.
Would refer to page 53-C - "Having held ...
..... null and void."
His judgment hinges on two grounds:

(1) that Police Force Commission no power to delegate; 20

(2) Chief Police Officer was not acting under delegation from Police Force Commission.

Reason for (1) on page 50-F.
Reason for (2) on page 50 C & D.
Submit he was wrong in law on these two grounds.
We are abandoning ground (3).

Grounds 1 and 4 together. 30
Relevant part of grounds of judgment page 47 - E & C.

Dismissal retrospective from date of suspension in light of Standing Orders.
Refer to page 20-E.

Cross examination.

Delegation was valid in law since Police Force Commission has delegated his powers.
Chief Police Officer was exercising power delegated to him. Therefore, action valid in law. 40

Page 47-D.

"In the circumstances11.11.67"

We maintain regulations has no application.
1952 L.N. 636.

Relevant S.O. 12 - page 105.
 Page 12 - para. 3 of statement of claim.
 S.22 of Police Ordinance, 1956.
 "Save as otherwise provided in this Ordinance
Federation."
 Both G.O. and C.S.O. applicable to plaintiff
 in this case.
 Learned Judge was, therefore, wrong.
 (1974) 1 M.L.J. 128.
 Maintain G.O. and C.S.O. read together.
 Hence dismissal from date of suspension.
 Therefore, learned Judge was wrong.

10

Ground 4

Relevant part of judgment page 47.
 1956 G.O. is the one applicable in this case.
 C.S.O. and G.O. are two sets of orders.
 Page 105 - An Introduction to the Constitution
 of Malaysia by Suffian.
 "(3) There are1948."
 Submit learned Judge was wrong to convey view
 that C.S.O. was bad.
 C.S.O. has effect of law. If not it is also
 effective for disciplinary purpose.
 Learned Judge wrong to say C.S.O. ultra vires.
 Plaintiff committed a criminal offence.
 Action not on disciplinary offence.

20

Ground 6

Police Force Commission no power to delegate
 its authority.
 Important point page 53-C.
 Learned Judge dealt at length on this.
 Page 50 - 53.
 Page 50 - F. Judge wrong.
 Constitution says can.
 See page 108 - An Introduction to the
 Constitution of Malaysia by Suffian.
 311 of Indian Constitution. This is quite
 different from our Article 140(6)(b) of our
 Constitution.
 Delegation to C.P.O. is nothing more than what
 Article 146(6)(b) has given.
 Learned Judge was wrong. He cannot go against the
 meaning of the Constitution.
 His duty to interpret law.
 Page 52 "If thisheld."
 On question of conflict need refer to one case
 only.

30

40

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 (Continued)

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Eastbourne Corporation vs. Fortes Ice Cream Parlour
(1955) Ltd. (1959) 2 All E.R. C.A. 102 & 107 "It is
clear arises." Submit learned Judge
was wrong in law.

Ground 2

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If delegation bad dismissal bad.
Maintain delegation good.
Page 42.
Submit that S.41 of Interpretation and General
Clauses Ordinance 1948 not relevant. 10
Relevant part - page 43.
Learned Judge made no specific finding.
The six members did all signed the delegation.
Would ask Court to say something about delegation.
Not necessary to have all to sign delegation for
public interest, convenience.
Submit D.3 instrument of delegation as good in law.
C.P.O. acted under such delegation.

Ground 5

Relevant part of judgment page 48-50. 20
Before Merdeka such power in Commanding Officer.
After Merdeka in Police Force Commission.
Article 140(1) of Federal Constitution.
Article 140(6)(b).
1952 Ordinance was repealed at time of
dismissal of plaintiff.
However, G.O. and C.S.O. remained in force.
Page 105 C.S.O.(9)
S.98 Police Act 1967.
Proviso important. 30
"Provided that any rules, regulations or
orders Act."
By virtue of this G.O. and C.S.O. are in force.

1 p.m. Adjourned.

2.30 p.m. Resumed.

Talib. Both G.O. and C.S.O. effective despite
repeal of 1952 Ordinance.

Page 50 - D.

Page 19 - E.

Page 20 - D. 40

How come learned Judge said witness did not
know of delegation?

Page 21 - E.

Witness was wrong to say "I could dismiss
plaintiff under D.2 because of the conviction."
He was uncertain about the right power of
dismissal.

But he was aware of delegation of power.
Had learned Judge known this he would not have
come to such conclusion. 50

Opportunity of being heard.

Cannot say he was not aware of plaintiff's
right to be heard.

Submit so long as he had power to dismiss the unawareness of such power is no ground for dismissal of action.
Sivasubramanian vs. Cheng Cheong Wah (1973) 1 M.L.J. 157 & 160. "It may be made." Lord President endorsed this statement. (1974) 1 M.L.J. 38 and 40. "In the event back."
 "With respect impounding."

In the Federal Court of Malaysia

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Notes of Argument by Lee Hun Hoe, Chief Justice Borneo. 1st August 1974 (continued)

10

- (1) Police Force Commission complete authority to dismiss plaintiff. Power delegated to C.P.O.
- (2) S.O.(7) and (9) which form part of conditions of service of plaintiff provide for dismissal of plaintiff.

Not disputed he was convicted of criminal charge. C.P.O. was doing what he was authorised by S.O. Submit (1) learned Judge wrong when he said plaintiff could not be proceeded with except in connection with regulation.

20

- (2) learned Judge was wrong in law when he said delegation was defective. This morning Federal Court found members to be six not eight.
- (3) learned Judge wrong in law that D.12 ultra vires.
- (4) Chief Police Officer not acting under delegation of power.

30

- (5) wrong that Police Force Commission no power to delegate authority Article 140 Federal Constitution.

Rejan

- (1) Instrument of delegation not valid.
- (2) Finding of facts by learned Judge that he dismissed respondent not by virtue of delegated authority but by virtue of his power as Chief Police Officer.

Purely finding of facts.

Page 20 - C.

One of facts cannot be disturbed.

40

Page 19 - F.

"I believerank."

Not sure of power.

Page 22 - B.

"The decision to dismiss the plaintiff was on my own individual decision."

Page 63 - para. 2.

Plaintiff had right to know whether Chief Police Officer or Police Force Commission was dismissing him.

50

Article 144 (6) of Federal Constitution.

"Under the direction and the control of the Commission."

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(continued)

Chief Police Officer should not act under direction and control. But, on his own decision. Have prepared a written submission for convenience of Court.

If offence not crime whole proceedings wrong.

"Orderly room procedure" not followed.

Not complied with Police Regulations, 1952.

1958 Cap. D Rule 28.

Page 22 - A.

"Regulation 15(2) of the Police Regulations was not observed." 10

Page 106 - Exh.D.3 para. C.

Article 144(5A) of Federal Constitution.

Appeal should be sent to Police Force Commission not Inspector-General of Police.

Anything against the Constitution is ultra vires.

G.O. 38(1)(ii) applies to Divisions I and II.

Plaintiff was in Division III or Division IV.

Learned Judge right dismissal not in conformity with Police Regulations. 20

De Smith - Judicial Review.

Administrative action page 212 2nd Edition.

Also page 188.

Article 135(2).

Did not say if a person is convicted this does not apply. No exception. Conflict with Constitution. Latter prevails.

Page 63. Inspector-General of Police no power. Should be Police Force Commission.

Until today remedy not used. 30

Delegation by Police Force Commission must be by all members.

Dato Fenner not holding office at that time.

Vacancy.

Dato Salleh was Inspector-General of Police.

Should not latter signed afresh.

Therefore, page 103 P.1 defective.

Police Ordinance 1952 already repealed.

Police Act, 1967 should be used.

Lionel v. Government of Malaysia (1971) 40

2 M.L.J. 173 "in taking less proved."

Goh Pit Leng v. Government Pools (Private)Ltd. (1973) 1 M.L.J. 141.

Wong Thin Yit vs. Mohamed Ali (1974) 1 M.L.J.1.

Appellate Court should not disturb finding of facts.

Talib Page 49 - F.

Specific finding - unchallengeable.

So, whole argument by the learned Judge on that part must be disregarded. 50

If finding of facts perverse, Appellate

Court can interfere.

144 5(A).

146(6). delegation of all powers including appellate power. So right that appeal goes to Inspector-General of Police.

Offence criminal or not.
Page 105 para. 8.
Charged by State or Government element of
penalty.
Submit it is criminal charge.
Police Ordinance, 1952.

Issue was :-

Is action taken because of conviction
for criminal offence or discipline.

Action taken as a result of
conviction in court.

S.O. is supplementary to Police
Ordinance, 1952.

Therefore, there cannot be conflict.

Validity of delegation.

Fact was that officer vacating office did
not invalidate the delegation.

S.98 Police Act, 1967 provision.

Interpretation Acts not applicable.

Draftsman has made provision to save a
situation like this.

10

20

Court. Cur. Adv. Vult.

(Signed) Lee Hun Hoe,
Chief Justice,
Borneo.

No.16

JUDGMENT OF SUFFIAN L.P.

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH

(APPELLATE JURISDICTION)

FEDERAL COURT CIVIL APPEAL NO. 114 of 1973

(Ipoh High Court Civil Suit No. 506 of 1968)

Between

The Government of Malaysia Appellant/Defendant

And

Iznan bin Osman Respondent/Plaintiff

30

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by Lee Hun
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1st August
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(Continued)

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Judgment
of Suffian
L.P.
8th March
1975.

In the
Federal
Court of
Malaysia

Coram: Suffian, L.P.;
Lee Hun Hoe C.J. Borneo;
Wan Hamzah, J.

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1975.
(Continued)

JUDGMENT OF SUFFIAN, L.P.

This matter has troubled me a great deal, but after anxious consideration I have decided to respectfully agree with my Lord the Chief Justice of Borneo that this appeal be dismissed with costs.

Wan Hamzah J. also agrees that this appeal be dismissed with costs.

10

The main question here is, did the Chief Police Officer, Perak, have power to dismiss the plaintiff constable?

The law, as I see it, is as follows.

The Police Force Commission are the primary authority with power to appoint and dismiss members of the Police Force, see clause (1) of article 140 of the Constitution. But under clause (6)(b) the Commission may delegate this power to a C.P.O.

20

If the Commission delegate the power to appoint and dismiss a constable to a C.P.O., the C.P.O. may appoint and dismiss.

If they delegate only the power to dismiss, not power to appoint, the C.P.O. cannot dismiss, because he is subordinate to the P.F.C., and article 135(1) says that no constable may be dismissed by an authority subordinate to the authority which, at the time of the dismissal, has power to appoint a constable.

30

On the contrary if federal law or regulations made by the Yang Dipertuan Agung under clause (5A) of article 144 empower a C.P.O. to dismiss a constable, the C.P.O. may validly dismiss him, even if the C.P.O. is not empowered to appoint a constable. The words "notwithstanding the provisions of clause (1) of article 135" in that clause are the authority for that proposition. But for these words, the C.P.O. may not validly dismiss unless he is empowered to appoint also.

40

These words appear also in clause(5A) (i)

of article 144, so that a board appointed by the Yang Dipertuan Agung under that clause may validly dismiss a member of the service who is within the jurisdiction of the P.S.C. or the Education Service Commission, though the board is regarded as subordinate to the P.S.C. or E.S.C. and has no power to appoint an officer of equal rank.

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(Continued)

10 Such being the law, what are the facts? The
defendant Government sought to prove that the P.F.C.
had delegated the power to dismiss constable to the
C.P.O. The defendant should also have sought to
prove that the P.F.C. have also delegated to the
C.P.O. power to appoint a constable. That they
did not do, and so it must be assumed that the
P.F.C. have not delegated to a C.P.O. power to
appoint a constable. In the absence of such power,
the purported dismissal of the plaintiff by the
C.P.O. is contrary to the prohibition in article
20 135(1) of the Constitution and therefore void.

In the course of his lengthy judgment the learned trial judge made many observations on the law. With respect I do not agree with him that, as the C.P.O. was not conscious of the existence of the delegation in dismissing the respondent, this affected the validity of the dismissal. With respect I agree with the learned Chief Justice, Borneo, that the important thing is, did the C.P.O. have such power under the delegation?

30 With respect I do not agree with the learned
trial judge that the delegation was invalid because
it was signed by six members of the Commission.
In fact the Commission had only six members at the
time the delegation was signed. The learned trial
judge was misled into thinking that it had eight
members, probably because he was referred to the
pocket edition of the Constitution. Counsel who
appeared before us also referred us to that
edition. Reference to the text of the Constitution
40 as it existed at the time of the delegation showed
that then the Commission had only six members.

I refrain, however, from expressing any views on other aspects of the law mentioned by the learned trial judge, not because I agree or disagree with them, but because any remarks I may make would be obiter.

Delivered in Kuala Lumpur
on 8th March, 1975.

Tan Sri Mohamed
Suffian. LORD
PRESIDENT, MALAYSIA.

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NOTES

1. Argument in Ipoh on 1st August, 1974.
2. Counsel:

For appellant - Encik Talib bin Othman (Encik Lim Peng Choon with him).

For respondent - Encik Rajan of M/s G.T.Rajan & Co., Klang.
3. Authorities cited:
 - (1) Lau Foo Sun (1970) 2 M.L.J. 70.
 - (2) Wong (1970) 2 M.L.J. 287. 10
 - (3) (1965) 2 M.L.J. 56, headnote.
 - (4) Najar Singh (1974) 1 M.L.J. 138.
 - (5) (1959) 2 A.E.R. 102, 107 H & I.
 - (6) Sivasubramaniam (1973) 1 M.L.J. 157, 160.
 - (7) (1974) 1 M.L.J. 38, 40.

Sd.
Setiausaha kepada Ketua Hakim Negara,
Mahkamah Persekutuan,
Malaysia,
Kuala Lumpur. 20

27 Mar 1975.

No.17

JUDGMENT OF LEE HUN HOE
CHIEF JUSTICE, BORNEO

In the
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 Malaysia

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH

—
 No.17

(Appellate Jurisdiction)

Federal Court Civil Appeal No. 114 of 1973

Judgment of
 Lee Hun Hoe,
 Chief
 Justice,
 Borneo
 8th March
 1975

BETWEEN

The Government of Malaysia Appellants

and

10 Iznan bin Osman Respondent

(In the matter of Civil Suit No. 506 of
 1968 in the High Court of Malaya at Ipoh

BETWEEN

Iznan bin Osman Plaintiff

and

The Government of Malaysia Defendants).

Coram: Suffian, L.P. Malaysia
 Lee Hun Hoe, C.J. Borneo.
 Wan Hamzah, J.

20 This appeal is mainly concerned with the question whether or not the dismissal of a police constable by the Chief Police Officer, Perak, was void. The pleadings were formulated in such a way that they had given me some difficulty. This is one case where it is not easy to express one's views on the pleadings with confidence. Somehow, I have managed to grope my way out of the darkness and come to the conclusion, with diffidence, that the learned Judge was right in this case.

30 Respondent was appointed a police constable on 1st June, 1961 on contract by the Commandant, Federal Police, Kuala Lumpur. He owned a car No. PA 4487. He was charged before the Magistrate's Court, Ipoh, for permitting his car to be used on 12th March, 1966 as a private taxi and without being covered by a policy of insurance under section 92(ii) and 74(ii) respectively of the Road

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Traffic Ordinance, 1958. On 19th April, 1967 he was convicted on both charges and fined \$1,000/=. Three days after his conviction the Chief Police Officer wrote and informed him that he was suspended from duty without pay from the date of his conviction. After his appeal against conviction was dismissed by the High Court the Chief Police Officer wrote him another letter 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 within 14 days on receipt of the letter. On 19th September, 1967 respondent submitted his written representations giving his explanation maintaining his innocence. Finally, by a letter dated 11th November, 1967 the Chief Police Officer notified respondent that after considering all the facts regarding the incident 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 vide the 1st Schedule to the Police Ordinance, 1952. Respondent was advised that he could appeal to the Commissioner of Police regarding the dismissal under section 15(2) of the Police Regulations, 1952 which he did but his appeal was rejected and the dismissal confirmed. Consequently, respondent sued appellant for a declaration that his dismissal was void and inoperative and that he was still a member of the police force. Appellant denied that the dismissal was wrongful and maintained that it was in accordance with law and procedure. The late Sharma, J. gave judgment in favour of respondent and appellant appealed to this Court.

10

20

30

It is true that respondent stated the various grounds in which the alleged dismissal was wrongful but had not specifically challenged the competency or authority of the Chief Police Officer in dismissing him. However, going through the pleadings, my impression is that they are sufficiently wide to put the appellant on the alert to show that the Chief Police Officer had in fact authority and was competent to dismiss respondent. This accounts for the fact that the appellant sought to show that power was delegated to the Chief Police Officer by the instrument of delegation (see page 103 of the Appeal Record and marked Exh.D3 in the High Court.) This instrument was signed by six members of the Police Force Commission delegating their powers under Article 140(6)(b) in the following terms:-

40

50

"FEDERAL CONSTITUTIONDelegation under Article 140(6) (b)

In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions under Article 140(1) in respect of members of the Police Force, other than Gazetted police officer, to the Commissioner of Police and to other police officers or boards of police officers so as to be exercised as specified in the Police Ordinance, 1952, and in the rules, regulations and standing orders made or purporting to have been made thereunder.

Dated this 9th day of April, 1962."

I consider that once the question of wrongful dismissal was put in issue, appellant would have to show that the Chief Police Officer was acting within his authority and had the power to dismiss respondent. By paragraph 3 of the defence, appellant averred that the respondent's dismissal from the police force was proper and in accordance with law and procedure. To my mind, law would include the Constitution. The reason is that under the Constitution the Police Force Commission normally has the exclusive power of appointment and dismissal. (See Articles 140 and 144 of the Constitution.) The Commission may, of course, delegate its various functions to any of its members, the Commissioner of Police, other police officers or boards of police officers.

Respondent alleged that the dismissal was not only wrongful but void and inoperative. If appellant was not certain on any point arising out of the pleadings he was entitled to ask for further and better particulars, but he did not do so. I do not think appellant was in any way taken by surprise judging by the manner the defence was conducted. How the appellant was going to show that the Chief Police Officer had the power of dismissal was simply a matter that must be left in his hands. Appellant tried to do this by relying on the instrument of delegation (Exh.D3) made in 1962.

Prior to 31st August, 1957 the Commissioner of Police had the power to appoint a police officer under section 9(3) of the Police Ordinance, 1952. However, after Merdeka, with the promulgation of the Federal Constitution the various public services

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came under the jurisdiction of various commissions. A Police Service Commission was set up with jurisdiction and responsibility over all members of the police force. I may add that when Article 140 was amended by Act 10 of 1960 with effect from 1st April, 1961 the Police Service Commission was replaced by the Police Force Commission. Article 140(1) of the Constitution provides that:-

"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, emplacement on the permanent or pensionable establishment, promotion, transfer and exercise of disciplinary control over members of the police force."

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It was never in dispute that as a police constable, the respondent's terms and conditions of service were governed by the Police Ordinance, 1952 (until it was superseded by the Police Act, 1967), rules and regulations made thereunder, standing orders and general orders in so far as they were applicable and the Constitution. The Police Act, 1967 came into force on 29th August, 1967. Article 4 of the Constitution provides in no uncertain terms that the Constitution is the supreme law of the Federation and any law which is inconsistent with the Constitution shall, to the extent of the inconsistency, be void.

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For the general control, direction and information of the police force, the Commissioner of Police (now known as the Inspector-General of Police) had issued administrative orders, commonly known as "Commissioner's Standing Orders." These were made under section 82 of the Police Ordinance, 1952 and not under Cap.D as alleged by the respondent whose allegation was accepted by the learned Judge. The version of Cap.D with which this appeal is concerned refers to Cap.D of 1956 (L.N. 432 of 1956) which was made under Clause 14 (4) of the Federation of Malaya Agreement. Hence, there could be no question of the Commissioner's Standing Orders being ultra vires Cap.D. The learned Judge was, therefore, wrong on this.

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It was contended that the Police Act, 1967 did not affect the Commissioner's Standing Orders by virtue of section 98 of the said Act. Therefore,

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it was argued that the action to dismiss the respondent was perfectly in order under the Commissioner's Standing Orders Part A 205 paragraph 7 to 9 (Exh.D2 at page 104 of Appeal Record) which read as follows:-

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Judgment of Lee Hun Hoe, Chief Justice, Borneo 8th March 1975 (continued)

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"7. If a superior police officer, subordinate police officer or constable is convicted of a criminal charge the Commanding Officer concerned may call for a copy of the relevant proceedings in the criminal court or for a report by the Legal Department on this proceedings and if, after consideration of the said proceedings or report, the Commanding Officer is of the opinion that the officer should be dismissed or otherwise punished on account of the offence of which he has been convicted, the Commanding Officer shall issue to the officer a letter on the following lines:

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"I have to inform you that your dismissal from the service is contemplated on the grounds that on..... in the.....Court..... you were convicted of the following criminal charge and were sentenced to.....

(state the criminal charge)

.....

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2. Any representations you wish to make should be submitted in writing and addressed to me within 14 days of the delivery to you of this letter.

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8. For the purposes of this Order, the terms "convicted" or "conviction" include a finding or an order involving a finding, by a criminal court that the officer charged has committed a criminal offence.

9. The Commanding Officer shall, after considering the officer's representations, if any, order that the officer be dismissed, or otherwise punished, without any of the disciplinary proceedings prescribed in Section 45 of the Police Ordinance, 1952, and in Part I of the Police Regulations, 1952. Provided that no punishment, other than those specified in the first Schedule to the Police Ordinance, 1952, shall be imposed."

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It is only fair to point out that the Chief Police Officer had never claimed to act under delegation of power from the Police Force Commission but rather under the Police Ordinance, 1952. During cross-examination he was emphatic that he was acting under the Commissioner's Standing Orders Part A 205 to which reference had been made previously. He also mentioned that the provisions of Exh.D2 were basically the same as those of General Orders Cap.D, paragraph 40 (See P.U. 290/68). He was aware of the delegation of power, but did not address his mind to it. There was no right of appeal under the Standing Orders or the General Orders other than to the dismissing authority itself.

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There is no question in this case that the Chief Police Officer terminated the services of the police constable as in the case of Government of Malaysia v. Lionel. (1974) 1 M.L.J. 3 at p.5

In that case respondent was appointed a temporary clerk interpreter in 1953 with the Police Clerical Service on a contract which incorporated the right of either party to terminate the contract. In 1962 disciplinary action was taken against him for breaches of discipline. He failed to exculpate himself. So, the Chief Police Officer proceeded to terminate his services. His appeal to the Public Service Commission for reconsideration also failed. In 1966 he sought a declaration that his purported dismissal by the Chief Police Officer was void, inoperative and of no effect. The High Court dismissed the action but the Federal Court allowed his appeal. The Privy Council set aside the order of the Federal Court and restored the judgment of the High Court. In the course of delivering the judgment of the Board, Viscount Dilhorne observed:-

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"Under English law a servant may be summarily dismissed for disobedience to orders or misconduct or may have his employment terminated by notice or the payment of wages in lieu of notice. Under the laws of Malaysia a similar distinction between dismissal and termination of services appears to exist and in their Lordships' opinion there is nothing in the Constitution which affects the right of the Government to terminate temporary employment in accordance with the terms of the engagement."

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Reference to B. Surinder Singh Kanda v. The

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Government of the Federation of Malaya (1962) M.L.J. 169 at 171 was made. There, it was held that since Merdeka the Police Service Commission and not the Commissioner of Police had power to appoint and dismiss members of the police service and that appellant's dismissal by the Commissioner was, therefore, void. In that case there was no agreement that the appellant's services could be terminated by notice and no question with regard to such termination arose. The only question was whether or not the dismissal was valid. The same may be said of the case under appeal. No question of termination arose.

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The Privy Council has also, in effect, corrected an erroneous impression created by H.T. Ong, then Chief Justice, that Article 135 guaranteed public servants a security of tenure. Article 135 provides that a dismissal can be effected by an authority with power to appoint a member of that service of equal rank, provided that such member is given an opportunity of being heard. In this case the learned Judge quite rightly held that respondent had been given a reasonable opportunity of being heard. The Privy Council pointed out that under the Constitution public servants could expect a degree of security of tenure of their appointments. This proposition of law is not new but has been accepted by Winslow, J. in Amalgamated Union of Public Employees v. Permanent Secretary (Health) & Anor (1965) 2 M.L.J. 209 and by Suffian, F.J., as he then was, in Haji Ariffin v. Government of Pahang (1969) 1 M.L.J.6 The decision of the Privy Council in Government of Malaysia v. Lionel (1974) 1 M.L.J. 3 at p.5 would seem to attach equal importance to the terms of a contract and constitutional safeguards. So that in a matter of misconduct the Government has the option either to terminate the service in accordance with the terms of the contract or to dismiss. The result is that if the Government chooses to terminate then Article 135 would seem to have no application.

It was contended by respondent that the dismissal should date from the time of dismissal, that is, 11th November, 1967 and not from date of suspension, that is 19th April, 1967 which was also the date of his conviction. In other words, dismissal cannot be retrospective. In Dukharam Gupta v. Co-operative Agricultural Association Ltd., Kawardha and Others A.I.R. (1960) Medhye Pradesh 273, 277 & 278 the Petitioner was the

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Manager of the respondent Association. On 19th March, 1955, an order was made by the Secretary of the Association suspending him from service. On 20th July, 1956 he challenged the validity of the order of suspension. Bhutt, J. set aside the order. The respondent Association filed an appeal. While the appeal was pending the petitioner was dismissed by the committee of the respondent Association and approval was subsequently given by the Joint Registrar who was invested with all the powers of the Registrar. The Divisional Bench, consisting of Hidayatullah, C.J. and Tare, J. holding that the suspension order having now merged in the order of dismissal the order made by Bhutt, J. became inoperative and must be discharged. However, they gave petitioner liberty to challenge the order of dismissal as well as the suspension order. On appeal, it was held that the Joint Registrar was not competent under the Bye-law to accord approval to the resolution of the Managing Committee dismissing the petitioner. Consequently, the dismissal was illegal. It was in regard to the discussion concerning the suspension order and order of dismissal that I am particularly interested. Dixit, C.J. made the following observations which may, with respect, very well be adopted:-

"It would suffice to say that to us it appears that the applicant's suspension was clearly one made pending an enquiry. That "suspension" is an implied incidence of removal, and an employee can be suspended pending final determination of the charges was recognized by the Supreme Court in Om Prakash Gupta v. State of Uttar Pradesh, (s) AIR 1955 SC 600.

The order of suspension lapsed with the order of the petitioner's dismissal. The suspension order is not revived with the declaration that the order of dismissal is illegal. The contention that if the order of dismissal was legal it could not be made effective from the date of the order of suspension is not sound. If an employee is suspended pending an enquiry into certain charges against him and if as a result of the enquiry an order of dismissal is passed against him, then as observed by the Supreme Court in (A) AIR 1955 SC 600 (supra), "the order of dismissal replaces the order of suspension," which then ceases to exist.

The word 'replaces' is very significant

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and leads to the conclusion that in such a case the order of dismissal would be effective from the date of the order of suspension. After all, the practical importance of the date of effectiveness of an order of dismissal is with regard to the claim for salary or wages during the period of suspension. In District Council Amraoti v. Vithal Vinayak Bapat, AIR 1941 Nag 125: ILR (1942) Nag 343, it was held that if the dismissal of a servant is justified, then he is not entitled to his wages or salary during the period of suspension preceding his dismissal.

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Thus where an employee is ultimately found guilty of the charges and is dismissed from service, he is not entitled to salary for the period of his suspension and his dismissal is regarded as operative from the date of his suspension."

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However, it is the appellant's case that the Chief Police Officer derived his power of dismissal under the instrument of delegation (Exh. D3). With respect, I cannot bring myself to agree with the view of the learned Judge that as the Chief Police Officer was not conscious of the existence of the delegation in dismissing respondent this affected the validity of the dismissal. I do not think it is necessary to decide whether the Chief Police Officer had directed his mind to the delegation so long as it could be shown that he had such power under the delegation at the time. The question is, of course, whether the Police Force Commission had delegated such power to the Chief Police Officer.

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The learned Judge was impeccable in his analysis of the law when he stated that under the Constitution the Commissioner may delegate his power of dismissal to the Chief Police Officer subject to the overriding proviso of Article 135 (1) which provides in effect that no police constable shall be dismissed by an authority subordinate to that which at the time of the dismissal has power to appoint a police constable. By this it must not be taken that I agree with his many observations on the law. I need not go into them all as they are not necessary for the purpose of this judgment.

On the question of validity of the delegation (Exh. D3) it is now quite clear the learned Judge was wrong to hold that the delegation was invalid

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by reason of the fact that six instead of eight members signed it. Fresh evidence allowed to be introduced before the hearing of the appeal clarified the confusion. At the time the Commission had under the Constitution as it then existed only six members not eight, so that the delegation was in order.

I doubt very much if appellant could be in a position to show that the Chief Police Officer had the power to appoint a police constable at the time of dismissal. Appellant could do no more than by introducing the instrument of delegation (Exh.D3). Any delegation of power to dismiss without delegating the power to appoint would result in breach of the Constitution. Under section 9(3) of the Police Ordinance, 1952 the Commissioner of Police had expressly been given the power of appointment. Even if the Commissioner of Police could delegate his power of appointment to the Chief Police Officer such delegation would be void. Thus, in B. Surinder Singh Kanda v. The Government of the Federation of Malaya (1962) 28 M.L.J. 169 at 171 the dismissal of Inspector Kanda by the Commissioner of Police was held to be void by the Privy Council in spite of the fact that the Commissioner of Police had the power of appointment. Since Merdeka the exclusive powers of appointment and dismissal rest with the Police Force Commission. So that there could not be two authorities having similar powers of appointment without conflicting with the provisions of the Constitution. Where there is a conflict the Constitution prevails. The Chief Police Officer cannot be in a stronger position than the Commissioner of Police. The delegation (Exh.D3) states that "the Police Force Commission delegates its functions under Article 140(1)." At a glance this would seem to be sufficiently wide to include the delegation of the powers of appointment and dismissal. But, I do not think the legislature intended to permit the Police Force Commission to delegate its powers under Articles 140(6)(b) or Article 144(6) in such a manner as to conflict with Article 135(1). I say this because the intention of the legislature is clearly reflected by the omission of the words "notwithstanding the provisions of Clause (1) of Article 135" from Articles 140(6)(b) and 144(6). These words, however, appear in Clauses (5A) and (5B) of Article 144. The insertion of those words is significant because the person given the power under such a delegation may dismiss a public servant even though

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he has no power to appoint an officer of equal rank.

Unless the powers of appointment could be delegated or unless those words mentioned earlier were inserted in a particular Clause then it would be no use for a delegatee to be conferred with the power of dismissal. Since the Chief Police Officer is clearly an authority subordinate to the Police Force Commission with whom lies the power of appointment at the time of dismissal, the exercise of the power of dismissal by the Chief Police Officer must necessarily be void and ineffective. On this aspect of the matter I would refer to what Lord Denning said in Kanda's case (1962) 28 MLJ 169 at 171

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"It appears to their Lordships that, in view of the conflict between the existing law (as to the powers of the Commissioner of Police) and the provisions of the Constitution (as to the duties of the Police Service Commission) the Yang di-Pertuan Agong could himself under Article 162(4), have made modifications in the existing law within the first two years after Merdeka Day. (The attention of their Lordships was drawn to modifications he had made in the existing law relating to the railway service and the prison service.) But, the Yang di-Pertuan Agong did not make any modifications in the powers of the Commissioner of Police, and it is too late for him now to do so. In these circumstances, their Lordships think it is necessary for the Court to do so under Article 162(6). It appears to their Lordships that there cannot, at one and the same time, be two authorities, each of whom has a concurrent power to appoint members of the police service. One or other must be entrusted with the power to appoint. In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail. The Court must apply the existing law with such modifications as may be necessary to bring it into accord with the Constitution. The necessary modification is that since Merdeka Day it is the Police Service Commission (and not the Commissioner of Police) which has the power to appoint members of the police service. And that is just what has happened."

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His Lordship continued:-

"Their Lordships do not overlook the argument of the Government that there was no conflict. The jurisdiction of the Police Service Commission, they said, would be satisfied by entrusting them with the power to appoint gazetted police officers, leaving the Commissioner of Police to appoint all others. Their Lordships cannot accede to this argument. Under Article 140 the jurisdiction of the Police Service Commission extends to all persons who are members of the Police service; and their functions under Article 144 apply to all of them also. The Commission has the duty and therefore the power, to appoint all members of the police service, and not merely the gazetted police officers. The Police Service Commission can, of course, delegate any of its functions under Article 144(6) but still it is its own duty and its own power that it delegates. It remains throughout therefore the authority which has power to appoint, even when it does it by a delegate."

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The judgment of the Privy Council was delivered on 2nd April, 1962. It is possible that as a result of that case the Police Force Commission made the delegation (Exh.D3) which was dated 9th April, 1962, a week after the Privy Council's decision. Therefore, to give the Chief Police Officer the power of dismissal, it is necessary to pray in aid the delegation (Exh.D3) as was done in this case. But, it is my view that the delegation (Exh.D3) has been superseded by a later delegation.

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The learned Judge would have been on firmer ground if he had stated that the delegation (Exh.D3) was invalid because it was superseded by a later delegation. This is precisely the position in this case. I may point out that delegation (Exh.D3) was in fact superseded by a later delegation. It seems to be that at page 107 of the Appeal Record another instrument of delegation was signed by a minimum number of six members as provided by the Constitution on 16th September, 1963 coinciding with the formation of Malaysia. This instrument was couched in a different manner in these terms:-

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"In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions under Article 140(1) to the extent set forth

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in Schedule "B" to this instrument of delegation to be exercised in accordance with the provisions of Schedule "B" by the officers, board of members of the Commission or boards of police officers specified therein. The composition of the boards specified in Schedule "B" shall be in accordance with Schedule "A" to this instrument of delegation.

Dated this Sixteenth day of September, 1963."

10 At least one of the six members of the Police Force Commission in 1963 was not a member in 1962. I do not think it is possible for appellant to argue that both instruments were in force at the same time. The position is clear. The 1963 delegation must be taken to have put the 1962 delegation out of action. Any other interpretation would create mischief. I do not think the Police Force Commission intended to contradict itself. Since the two instruments are repugnant, it is
20 right to apply the well known rule of construction that the last must prevail. A perusal of the 1963 instrument of delegation would show that it is more elaborate and mentions the various functions delegated to various Boards. It does not appear that the instrument delegates any power to any individual. Hence, it is not possible to read in this instrument any delegation of power to the Chief Police Officer. As I mentioned previously the appellant could only clothe the Chief Police
30 Officer with power if he could show that the delegation (Exh.D3) applied. To be blunt, I think the appellant has drawn this red herring across the path of the Court in order that the Court would be drawn off the scent. The appellant must be aware that the 1963 delegation would in no way assist his case. The Court should brush away the cobweb and show the transaction in its true light. The 1963 delegation being part of the evidence cannot be overlooked. The Chief
40 Police Officer could only have the power of dismissal from the Police Force Commission. Unless it could be shown that the power of appointment had also been delegated to him, his dismissal of respondent must be regarded as void and inoperative.

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Federal
Court

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50 Although the reason which has led me to the same conclusion as the learned Judge may not be the same, the result is identical. On the evidence the learned Judge was right to decide in favour of respondent. Accordingly, I would dismiss the

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1975
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appeal with costs here and in the court below.

Delivered at Kuala Lumpur
on 8th March, 1975

Sgd. Lee Hun Hoe
CHIEF JUSTICE,
BORNEO.

Counsel:

Encik Abu Talib bin Osman for appellants
Senior Federal Counsel
Encik G.T. Rejan for respondent
Solicitors: M/s G.T. Rejan & Co.

Wan Hamzah, J. concurred.

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No.18

Order of
Federal
Court
8th March
1975

No.18

ORDER OF FEDERAL COURT

IN THE FEDERAL COURT OF MALAYSIA HOLDEN AT IPOH

(Appellate Jurisdiction)

Federal Court Civil Appeal No. 114 of 1973

BETWEEN

The Government of Malaysia

Appellant

and

Iznan bin Osman

Respondent

(in the matter of Civil Suit No. 506/
1968 in the High Court in Malaya at Ipoh)

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BETWEEN

Iznan bin Osman

Plaintiff

and

The Government of Malaysia

Defendant

CORAM: SUFFLAN, LORD PRESIDENT, FEDERAL COURT,
MALAYSIA;
LEE HUN HOE, CHIEF JUSTICE, HIGH COURT IN
BORNEO;
WAN HAMZAH, JUDGE, HIGH COURT IN MALAYA

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... IN OPEN COURT

THIS 8TH DAY OF MARCH, 1975.

THIS APPEAL coming on for hearing this 1st day of August, 1974 in the presence of Encik Abu Talib bin Othman, (Mr. Lim Beng Choon with him) Senior Federal Counsel appearing for and on behalf of the abovenamed Appellant and Mr. G.T. Rajan of Counsel for the Respondent AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that this Appeal do stand adjourned for Judgment AND the same coming on for Judgment this day at Kuala Lumpur in the presence of Encik Abu Talib bin Othman, Senior Federal Counsel appearing for and on behalf of the Appellant abovenamed and Mr. G.T. Rajan of Counsel for the Respondent IT IS ORDERED that this Appeal be and is hereby dismissed AND IT IS LASTLY ORDERED that the costs of this Appeal and the costs in the Court below be taxed by the proper officer of this Court and be paid by the Appellant to the Respondent.

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20 GIVEN under my hand the seal of the Court this 8th day of March, 1975.

Sd: E.E. SIM
CHIEF REGISTRAR.

(SEAL)

No.19

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL
TO HIS MAJESTY THE YANG DI-PERTUEN AGONG

In the Federal Court of Malaysia Holden at Kuala Lumpur

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(Appellate Jurisdiction)

Federal Court Civil Appeal No.114 of 1973

BETWEEN

The Government of Malaysia

Appellant

and

Iznan bin Osman

Respondent

(In the matter of Civil Suit No. 506 of 1968
In the High Court in Malaya at Ipoh

In the
Federal
Court of
Malaysia

—
No.18

Order of
Federal
Court
8th March
1975
(continued)

No.19

Order granting
conditional
leave to
appeal to
His Majesty
the Yang
di-Pertuan
Agong

In the
Federal
Court of
Malaysia

BETWEEN

Iznan bin Osman

Plaintiff

and

No.19

The Government of Malaysia

Defendant)

Order
granting
conditional
leave to
Appeal to
His Majesty
the Yang
di-Pertuan
Agong
(continued)

CORAM: GILL, CHIEF JUSTICE, HIGH COURT IN MALAYA;
ONG HOCK SIM, JUDGE, FEDERAL COURT MALAYSIA;
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT,
MALAYSIA.

IN OPEN COURT

THIS 12TH DAY OF MAY, 1975

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UPON MOTION made unto this Court this day by Encik Lim Beng Choon, Senior Federal Counsel, on behalf of the above named Appellant in the presence of Encik G.T. Rajan of Counsel for the Respondent abovenamed AND UPON READING the Notice of Motion dated the 16th day of April, 1975, and the Affidavit of Encik Lim Beng Choon affirmed the 31st day of March, 1975 and filed herein AND UPON HEARING Encik Lim Beng Choon, Senior Federal Counsel, appearing for and on behalf of the Appellant and Encik G.T. Rajan of Counsel for the Respondent IT IS ORDERED that leave be granted to the Appellant abovenamed to appeal to His Majesty the Yang di-Pertuan Agong against the judgment of the Federal Court given on the 8th day of March, 1975 upon the following Conditions:-

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- (a) that the Appellant do within three 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 \$5,000 (Ringgit five thousand only) for the due prosecution of the appeal, and the payment of all such costs as may become payable to the Respondent in the event of the Appellant not obtaining an order granting final leave to appeal, or of the appeal being dismissed for non prosecution or of His Majesty the Yang di-Pertuan Agong ordering the Appellant to pay the Respondent costs of the appeal as the case may be;

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- (b) that the Appellant do within the said

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period of three months from the date here-
of take the necessary steps for the
purposes of procuring the preparation of
the record and of the despatch thereof to
England; and

In the
Federal
Court of
Malaysia

No.19

Order
granting
conditional
leave to
Appeal to
His Majesty
the Yang
di-Pertuan
Agong
(continued)

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(c) that the execution and all further
proceedings on the judgment of the
Federal Court dated the 8th day of March,
1975 be stayed until the appeal to His
Majesty the Yang di-Pertuan Agong has been
heard and decided.

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
the 12th day of May, 1975.

Sd: E.E. Sim
CHIEF REGISTRAR

(SEAL)

No.20

No.20

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

Order
granting
final leave
to Appeal to
His Majesty
the Yang Di-
Pertuan Agong
18th August
1975

In the Federal Court of Malaysia Holden at Kuala
Lumpur

(Appellate Jurisdiction)

Federal Court Civil Appeal No. 114 of 1973

BETWEEN

The Government of Malaysia Appellant

and

Iznan bin Osman Respondent

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(In the Matter of Civil Suit No. 506 of 1968
in the High Court in Malaya at Ipoh

BETWEEN

Iznan bin Osman Plaintiff

and

The Government of Malaysia Defendant)

In the
Federal
Court of
Malaysia

CORAM: GILL, CHIEF JUSTICE, HIGH COURT, MALAYA;
ALI, JUDGE, FEDERAL COURT, MALAYSIA;
RAJA AZLAN SHAH, JUDGE, FEDERAL COURT
MALAYSIA.

IN OPEN COURT

—
No.20

THIS 18TH DAY OF AUGUST. 1975.

Order
granting
final leave
to Appeal to
His Majesty
the Yang Di-
Pertuan Agong
18th August
1975
(continued)

UPON MOTION made unto Court this day by
Encik Abu Talib bin Othman, Senior Federal
Counsel appearing for and on behalf of Appellant
in the presence of Encik G.T. Rajan of Counsel for
the Respondent herein AND UPON READING the Notice
of Motion dated the 31st day of July, 1975 and
the Affidavit of Encik Lim Beng Choon affirmed on
the 28th day of July 1975 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 Appellant to appeal to His
Majesty the Yang di-Pertuan Agong against the
Judgment of the Federal Court given on the 8th
day of March, 1975 AND IT IS ORDERED that the costs
of this application be costs in the cause.

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GIVEN under my hand and the Seal of the
Court this 18th day of August, 1975.

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(SEAL)

Sd: Abdul Hamid bin Mohamed
DEPUTY REGISTRAR,
Federal Court,
Malaysia.

EXHIBITS

EXHIBITS

EXHIBIT A42

A42

MEDICAL CERTIFICATE

Letter of
Appointment
1st June
1961

I hereby certify that IZNAN BIN OSMAN
N.R.I.C. No. PK206267 is free from organic disease
and is fit for duty in the Police Force.

Station..... Sd. Illegible
Medical Officer
Date..... Ulu Langat,
Kajang.

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AGREEMENT FOR SERVICE

I, Iznan bin Osman do this day engage under
the provisions of the Police Ordinance, 1952, to
serve for 3 years from this date, as a Regular
Police Constable, or in any rank in the Police Force
to which I may be appointed, promoted or reduced.

Interpreted to the Candidate by me

Sd. Illegible Sd. Iznan Osman
Signature of Candidate

20 I hereby appoint Iznan bin Osman to be a
Police Constable under the provisions of the
Police Ordinance, 1952, for a period of 3 years.

Station. Federal Police. Sd. Illegible
Depot Commandant,
Date..... 1,6,61.... Federal Police Depot,
Kuala Lumpur.

EXHIBIT P1

P1

DELEGATION OF POWERS

Delegation
of Powers
9th April
1962

FEDERAL CONSTITUTION

30 Delegation under Article 140(6)(b)

In accordance with Article 140(6)(b) of the
Federal Constitution, the Police Force Commission
hereby delegates its functions under Article 140
(1) in respect of members of the Police Force, other

EXHIBITSP1

Delegation
of Powers
9th April
1962
(continued)

than Gazetted police officers, to the Commissioner of Police and to other police officers or boards of police officers so as to be exercised as specified in the Police Ordinance, 1952, and in the rules, regulations and standing orders made or purporting to have been made thereunder

Dated this 9th day of April, 1962.

Sd. Illegible
Mohamed Din Bin Mohamed Sheriff

Sd. Illegible
Justice Azmi bin Haji Mohamed

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Sd. Illegible
C.R. Howitt

Sd. Illegible
Commissioner of Police

Sd. Illegible
Secretary to Ministry of External
Security

Sd. Illegible
Date Ismail bin Abdul
MINISTER OF INTERNAL SECURITY

20

D3

Instrument
of
Delegation
16th
September
1963

EXHIBIT D3INSTRUMENT OF DELEGATIONPOLICE FORCE COMMISSIONINSTRUMENT OF DELEGATION OF POWERS AND DUTIES

Members of the Royal Malaysia Police other than
Gazetted Officers

(1)

Royal Malaysia Police H.Q.s and Training and other
Establishment for which the Inspector-General is
directly responsible.

30

(a) In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions under Article 140(1) relating to members of the Royal Malaysia Police, other than gazetted officers,

10 serving on the staff of the Royal Malaysia Police Headquarters or any training or other establishment for which the Inspector-General is directly responsible.

10 (b) The functions of the Commission hereby delegated in relation to any member serving on any such staff as aforesaid shall be exercised in accordance with the provisions of the Police Ordinance (by whatever title called) applicable to the Component of which he was a member immediately prior to his appointment to such staff as if the disciplinary powers of the Commissioner under that Ordinance had been conferred upon the Inspector-General and the disciplinary powers of other officers of that Component had been conferred upon officers of corresponding rank serving on the staffs aforesaid.

20 (c) The appellate authority in respect of disciplinary decisions of the Inspector-General shall be the Police Force Commission and in respect of disciplinary decisions of other officers shall be the Inspector-General.

(2)

The States of Malaya

30 In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions under Article 140(1) relating to members of the States of Malaya Component of the Royal Malaysia Police, other than gazetted officers, to be exercised in accordance with the provisions of the Federation of Malaya Police Ordinance, 1952, and regulations thereunder and by the police officers therein specified.

Provided that:-

- 40 (a) the power to award disciplinary punishment of dismissal or reduction in rank to a superior police officer shall be exercised only by the Inspector-General, the appellate authority in such case shall be the Police Force Commission; and
- (b) the appellate authority in respect of a superior police officer, subordinate police officer or constable awarded disciplinary punishment by the Commissioner of Police, States of Malaya,

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EXHIBITS

shall be the Inspector-General.

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(continued)

(3)

Sabah

(4)

Sarawak

(5)

Singapore

Members of the Royal Malaysia Police including
Gazetted Officers

(6)

10

In accordance with Article 140(6)(b) of the Federal Constitution, the Police Force Commission hereby delegates its functions under Article 140(1) to the extent set forth in Schedule "B" to this instrument of delegation to be exercised in accordance with the provisions of Schedule "B" by the officers, board of members of the Commission or boards of police officers specified therein. The composition of the boards specified in Schedule "B" shall be in accordance with Schedule "A" to this instrument of delegation.

20

Dated this Sixteenth day of September, 1963.

Certified true copy of original duly signed by the members.	(Mohamed Din bin Mohamed Sheriff)
	(Justice Azmi bin Haji Mohamed)
15.9.72	(Raji Haji Ahmad bin Raja Endut)
(Dato Ibrahim Ali)	(Dato Nik Daud bin Haji Nik Mat)
Surohanjaya Pasokan Polis	(Dato C.H. Fenner)
	(Dato Ismail bin Dato Abdul Rahman)

30

PART AEXHIBITSD3POWERS AND DUTIES OF THE POLICE FORCE COMMISSION
EXCLUDING THOSE POWERS AND DUTIES WHICH ARE FULLY
DELEGATED AND WHICH APPEAR IN SUCCEEDING PARTSInstrument
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(continued)

- 10 1. (1) Any reference in this Schedule to the Federation of Malaya Police Ordinance, 1952, or any section thereof or to any subsidiary legislation made thereunder shall, where the Police Force Ordinance of Sabah, the Constabulary Ordinance of Sarawak or the Police Force Ordinance of Singapore applies, be construed as a reference to the applicable ordinance or the corresponding section thereof or to the corresponding subsidiary legislation made thereunder, as the case may be.
- 20 1 (2) Any reference in this Schedule to General Orders or any chapter thereof shall, where the General Orders of Sabah, Sarawak or Singapore apply, be construed as a reference to the General Orders of Sabah, Sarawak or Singapore, or to the corresponding chapter thereof, as the case may be.
- 30 2. Under Section 14(2) of the Federation of Malaya Police Ordinance, 1952, the approval of the discharge of a subordinate police officer or constable who has completed ten years service. The necessity to invoke this section has never in fact arisen in the States of Malaya.
- 40 3. Under Section 19(a) of the Federation of Malay Police Ordinance, 1952, the discharge of a superior police officer, subordinate police officer or constable on the grounds that he is unlikely to become, or has ceased to be efficient. The No.3 Board to submit recommendations. With respect to Section 19(b), the discharge of any officer or constable on medical grounds will continue to be dealt with under the pensions legislation and not under Section 19(b).

Procedure
Full
meeting
of the
CommissionCirculation
of papers
to full
Commission

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(continued)

4. Under Section 54(3) of the Federation of Malaya Police Ordinance, 1952, the confirmation of the findings and recommendations of a Court of Enquiry into the loss of Government property convened under Section 54(1) where the loss or damage exceeds \$500. This function has been largely superseded by the provisions of sections 17 and 18 of the Financial Procedure Ordinance.

Circulation
of paper to
full
Commission

10

5. Under Section 74 of the Federation of Malaya Police Ordinance, 1952, the approval of the decision of the Commissioner of Police to require any subordinate police officer or constable to retire from the Force on reaching pensionable age. The necessity to invoke this section has rarely arisen.

Circulation
of papers
to full
Commission

20

6. Under Regulation 15 of the Federation of Malaya Police Regulations, 1952, the appeal of superior police officer against dismissal or reduction in rank, or against some less serious punishment in cases in which the Inspector-General himself has awarded punishment. The No. 1 Board to submit recommendations.

Full
meeting of
the
Commission

30

7. Any matters referred to the Commission relating to the dismissal or reduction in rank of a superior police officer. The No.1 Board to submit recommendations.

Full
meeting of
the
Commission

Under General Orders Cap A

8. Under G.O. Cap A - 5, the employment in the Police Force as a gazetted officer of a person who has previously resigned from a public service. The No.3 Board to submit recommendations.

Circulation
of paper
to full
Commission

40

9. Under G.O. Cap A - 9, the appointment of probationary Assistant Superintendents of Police either under the direct entry scheme or by promotion from the rank of

Full
meeting of
the
Commission.

Inspector. The No.3 Board to shortlist and interview candidates and submit recommendations to the No.1 Board, which in turn shall submit recommendations to the full Commission.

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(continued)

10 10. Under G.O. Cap A - 25(b) and (c), the discharge of a direct entry probationary Assistant Superintendent at the end of the probationary period because of failure to qualify for confirmation in appointment, or during probationary period in cases in which it can be foreseen that the officer would not be suitable for confirmation. The No.1 Board to submit recommendations

Circulation
of papers
to full
Commission

20 11. Under G.O. Cap A - 25(d), the termination of the appointment of a gazetted officer serving on probation without any reason being assigned. The No.1 Board to submit recommendations.

Full
meeting
of the
Commission

12. Under G.O. Cap A - 27, the reduction of probationary Assistant Superintendent to the rank of Inspector because of failure to qualify for confirmation. The No.1 Board to submit recommendations.

Circulation
of papers
to full
Commission

30 13. Under G.O. Cap A - 35, the re-engagement of an officer engaged on agreement, contract or letter of appointment. The No.3 Board to submit recommendations.

Circulation
of papers
to full
Commission

14. Under G.O. Cap A - 43, the promotions of gazetted officers. Recommendations for promotion to be submitted after the consideration of the claims of all eligible officers by:-

Full
meeting
of the
Commission

40 (a) the No.1 Board with respect to promotions to Superintendent, Assistant Commissioner and Senior Assistant Commissioner; and

(b) the No.1 Board, after considering the recommendations of

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(continued)

the No.3 Boards, with respect
to promotions to Deputy
Superintendent of Police.

Under General Orders Cap.C

15. Under G.O. Cap C - 42(b) and (c), the functions of the appropriate Authority in cases of scholarship courses and approved training courses for serving officers which will qualify the officers for promotion or enhance their prospects of promotion. The No.3 Board to submit recommendations to the No.1 Board which will in turn submit recommendations to the full Commission.

Circulation
of papers
to full
Commission

10

16. Under G.O. Cap D - 33, the final decision of the Disciplinary Authority in the disciplinary procedure for the dismissal of a gazetted officer not on the pensionable establishment. The No.3 Board to submit recommendations to the No.1 Board which will in turn submit recommendations to the full Commission.

Full
meeting
of the
Commission

20

17. Under G.O. Cap D - 34, the final decision of the Disciplinary Authority in the disciplinary procedure in the case of misconduct not warranting dismissal of a gazetted officer not on the pensionable establishment. The No.3 Board to submit recommendations.

Circulation
of papers
to full
Commission

30

18. Under G.O. Cap D - 35, the final decision of the Disciplinary Authority on the punishment of a gazetted officer not on the pensionable establishment who has been convicted on a criminal charge. The No.3 Board to submit recommendations to the No.1 Board which will in turn submit recommendations to the full Commission.

Full
meeting in
cases in
which dis-
missal is
recommended;
otherwise
circulation
of papers

40

19. Under G.O. Cap D - 38(k), (m) and (n), the final decision of the disciplinary procedure for the dismissal of a gazetted officer.

Full
meeting
of the
Commission

The No.1 Board to submit recommendations.EXHIBITS

- | | | | |
|----|--|--|---|
| | 20. Under G.O. Cap D - 39, the final decision of the Disciplinary Authority in the case of misconduct of a gazetted officer warranting a reduction in rank. <u>The No. 1 Board to submit recommendations.</u> | Circulation of papers to full Commission. | <u>D3</u>
Instrument of Delegation
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1963
(continued) |
| 10 | 21. Under G.O. Cap D - 40, the final decision of the Disciplinary Authority on the punishment of a gazetted officer who has been convicted on a criminal charge. <u>The No.1 Board to submit recommendations.</u> | Full meeting of the Commission | |
| | 22. Under G.O. Cap D - 45, the final decision of the Disciplinary Authority in the removal of a gazetted officer from the service on the grounds of public interest. <u>The No.1 Board to submit recommendations.</u> | Circulation of papers or full meeting | |
| 20 | 23. Under G.O. Cap D - 46(c) and (d), the functions of the Disciplinary Authority to decide (a) on the proportion to be refunded of the emoluments of a gazetted officer withheld during interdiction and (b) on an application from a gazetted officer under suspension or interdiction to leave Malaysia during the interval between reinstatement or dismissal. | Decision in (a) will be taken together with decisions under G.O. Cap D - 33 to 40. Decision on (b) by circulation of papers. | |
| 30 | | | |
| | 24. Under G.O. Cap D - 50(b), the final decision of the Disciplinary Authority on the stoppage or deferment of the increment of a gazetted officer. <u>The No.1 Board to submit recommendations.</u> | Circulation of papers to the full Commission | |
| | 25. Under G.O. Cap D - 50A, the final decision of the Disciplinary Authority on the remission of the punishment of a gazetted officer. <u>The No.1 Board to submit recommendations.</u> | Circulation of papers to the full Commission. | |
| 40 | | | |
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EXHIBITSPART "B"

D3
Instrument
of
Delegation
16th
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(continued)

POWERS AND DUTIES DELEGATED TO THE NO.1 BOARD WITH
RESPECT TO WHICH THE NO.1 BOARD WILL BE FULLY
COMPETENT WITHOUT REFERENCE TO THE FULL COMMISSION.

Under the Financial Procedure Ordinance, 1957.

1. Under Section 18 of the Financial Procedure Ordinance, 1957 to decide, after consultation with the Treasury, on surcharges with respect to failures to collect, improper payment, payment not duly vouched for, deficiency or destruction of Federation money or property in cases involving gazetted officers or gazetted officers and more junior officers.

10

Under General Orders Chapter "A"

2. Under G.O. Cap A - 25 (f) and (g), to decide on the extension of the period of probation of an Assistant Superintendent where the imposition of a penalty is involved in that the officer has failed to qualify for confirmation through his own fault, and to review and decide on application for the restoration of salary.

20

3. Under G.O. Cap.A - 36, to decide on acting appointments to the rank of Superintendent and above where the duration of the acting appointment is likely to exceed 3 months.

Under General Orders, Chapter D

4. Under G.O. Cap D - 27, to exercise the functions of the Disciplinary Authority in cases of pecuniary embarrassment.

5. Under G.O. Cap D - 39, to exercise the functions of the Disciplinary Authority in the case of misconduct of a gazetted officer not warranting dismissal or reduction in rank.

30

POWERS AND DUTIES DELEGATED TO THE NO.1 BOARD WITH
RESPECT TO WHICH THE NO.1 BOARD WILL NOT BE FULLY
COMPETENT

Under General Orders, Chapter D.

6. Under G.O. Cap D - 38 (except under G.O. Cap D 38 (a), see Part G para. 10 below), to exercise the functions of the Disciplinary Authority in the disciplinary procedure for the dismissal of a

40

gazetted officer except that the final decision will be made by the full Commission.

EXHIBITSD3

Instrument
of
Delegation
16th
September
1963
(continued)

7. Under G.O. Cap D - 39, to exercise the functions of the Disciplinary Authority in the case of misconduct of a gazetted officer not warranting dismissal but warranting a reduction in rank except that the final decision will be made by the full Commission.

10 8. Under G.O. Cap D - 40, to exercise the functions of the Disciplinary Authority in the disciplinary procedure for the punishment of a gazetted officer where the officer has been convicted on a criminal charge except that the final decision will be made by the full Commission.

9. Under G.O. Cap D - 45, to exercise the functions of the Disciplinary Authority in the procedure for the removal of a gazetted officer on the grounds of public interest except that the final decision will be made by the full Commission.

20 10. Under G.O. Cap D - 50(a) and (b), to exercise the functions of the Disciplinary Authority on the stoppage or deferment of the increment of a gazetted officer except that the final decision will be made by the full Commission.

11. The No.1 Board will deal with the following matters, except that the final decision will be made by the full Commission.

30 (a) Receive recommendations from the No.3 Boards for promotions from Inspector to Assistant Superintendent of Police; process such recommendations and submit them with further recommendations to the full Commission.

(b) Receive recommendations from the No.3 Boards for promotions from Assistant Superintendent to Deputy Superintendent of Police; process such recommendations and submit them with further recommendations to the full Commission.

40 (c) Receive recommendations from the various Commissioners of Police for promotions to the ranks of Superintendent, Assistant Commissioner and Senior Assistant Commissioner of Police; process such recommendations and submit them with further recommendations to the full Commission.

EXHIBITSD3

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1963
(continued)

(d) Receive recommendations from the No.3 Boards in regard to the appointment of direct entry probationary Assistant Superintendents; process such recommendations and submit them with further recommendations to the full Commission.

12. The submission of recommendations to the Commission as noted above in Part "A" paragraphs 6, 7, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 24 and 25.

10

PART "C"

POWERS AND DUTIES DELEGATED TO THE NO.3 BOARD WITH
RESPECT TO WHICH THE NO.3 BOARD WILL BE FULLY
COMPETENT WITHOUT REFERENCE TO THE FULL COMMISSION

Under the Financial Procedure Ordinance, 1957.

Under Section 18 of the Financial Procedure Ordinance, 1957, to decide, after consultations with the Treasury, on surcharges with respect to failure to collect, improper payment, payment not duly vouched for, deficiency or destruction of Federation money or property in cases involving superior police officers, subordinate police officers or constables.

20

Under the Malaysia Act

2. The No.3 Board in Sabah or Sarawak, as the case may be, shall be fully competent to decide, in the matter of the "protection of certain members of the State serving in Borneo States from termination of secondment to federal service", (a) whether suitably qualified local candidates are available, and (b) the selection of those members of the State service whose secondment is to be terminated. For this purpose, the Inspector-General, or his representative, shall be a member of the No.3 Board and shall for this purpose become the Chairman.

30

3. The No.3 Board in Sabah or Sarawak, as the case may be, shall be fully competent to decide on the appointment or transfer to the Sabah or Sarawak component as gazetted officers of persons or officers from outside these components on a permanent or contract basis. For this purpose, the Inspector-General, or his representative, shall

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be a member of the No.3 Board and shall for this purpose become the Chairman.

Note:The delegations in paragraphs 2 and 3 above shall have effect until the end of August, 1968, and thereafter until the Commission determines to the contrary.

POWERS AND DUTIES DELEGATED TO THE NO.3 BOARD WITH RESPECT TO WHICH THE BOARD WILL NOT BE FULLY COMPETENT.

4. Under G.O. Cap A - 15, to receive reports of untrue declarations from the Commissioner of Police and to continue action thereon in accordance with G.O. Cap D - 33.

Under General Orders Cap. D

5. Under G.O. Cap D - 33, to exercise the functions of the Disciplinary Authority in the disciplinary procedure for the dismissal of a gazetted officer not on the pensionable establishment except that the final decision will be made by the full Commission. Recommendations of the No.3 Board to be submitted via the No.1 Board.

6. Under G.O. Cap D - 34, to exercise the functions of the Disciplinary Authority in the case of misconduct not warranting dismissal of a gazetted officer not on the pensionable establishment except that the final decision will be made by the full Commission.

7. Under G.O. Cap D - 35, to exercise the functions of the Disciplinary Authority in the disciplinary procedure for the punishment of a gazetted officer not on the pensionable establishment where the officer has been convicted on a criminal charge except that the final decision will be made by the full Commission. Recommendations of the No.3 Board to be submitted via the No.1 Board.

8. The submission of recommendations to the Commission, or to the No.1 Board, as appropriate as noted above in Part "A" paragraphs 3, 8, 9, 13, 14, 15, 16, 17, and 18.

EXHIBITS

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September
1963
(continued)

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EXHIBITSPART "D"D3

Instrument
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Delegation
16th
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1963
(continued)

POWERS AND DUTIES DELEGATED TO THE INSPECTOR-
GENERAL OF POLICE WITH RESPECT TO WHICH THE
INSPECTOR-GENERAL WILL BE FULLY COMPETENT WITHOUT
REFERENCE TO THE FULL COMMISSION

1. To decide application for legal aid and urgent cases in the absence of the Secretary to the Commission.

Under General Orders Cap.A

2. Under G.O. Cap A - 25 (e), to decide on the extension of the probationary period of Assistant Superintendents in cases in which the imposition of a penalty is not involved. 10

3. Under G.O. Cap A - 28, to decide on the confirmation of appointment of probationary Assistant Superintendents, in cases in which such officers were appointed under the direct entry scheme, and of emplacement on the pensionable establishment.

4. Under G.O. Cap A - 36, to decide in respect of the Inspector-General's Headquarters' Staff on acting appointments to the ranks of Assistant Superintendents and Deputy Superintendents, whether or not the duration of the acting appointment is likely to exceed 3 months, and to decide on acting appointments to the ranks of Superintendents and above in cases in which the duration of the acting appointment is not likely to exceed 3 months. 20

Under General Orders Cap.D

5. Under G.O. Cap D - 39, to exercise the functions of the Disciplinary Authority in the case of misconduct of a gazetted officer meriting a severe reprimand. (N.B. The appeal of a gazetted officer against a severe reprimand or reprimand awarded by the Inspector-General will be referred to the full Commission). 30

6. Under G.O., Cap D 46(a) and (b), to exercise the functions of the Disciplinary Authority to interdict gazetted officers from duty. N.B. This function is also directly conferred on the Commissioner under section 52(1) of the Federation of Malaya Police Ordinance, 1952, and under section 52(3) of the Ordinance and interdictions will be reported forthwith to the Police Force Commission. 40

PART "B"POWERS AND DUTIES DELEGATED TO THE COMMISSIONERS
OF POLICE (COMMISSIONER OF CONSTABULARY IN SARAWAK)Under General Orders Cap A

- 10 1. Under G.O. Cap A - 36, to decide on acting appointment to the "ranks of Assistant Superintendents and Deputy Superintendents", whether or not the duration of the acting appointment is likely to exceed 3 months, and to decide on acting appointments to the ranks of Superintendent and above in cases in which the duration of the acting appointment is not likely to exceed 3 months.
2. Under G.O. Cap D - 46 (a) and (b), to exercise the functions of the Disciplinary Authority to interdict gazetted officers from duty.

Under General Orders Cap.D

- 20 3. Under G.O. Cap D - 39, to exercise the functions of the Disciplinary Authority in the case of misconduct of a gazetted officer meriting a reprimand. The appeal of a gazetted officer against a reprimand will be referred to the full Commission.

PART "F"POWERS AND DUTIES OF THE SECRETARY TO THE COMMISSIONUnder General Orders Cap A

1. Under G.O. Cap A - 8, to receive notifications and draft advertisements of existing or impending gazetted officer vacancies.
2. Under G.O. Cap A - 9, to receive applications for gazetted officer appointments.
- 30 3. Under G.O. Cap A - 11, to inform unsuccessful candidates for gazetted officer posts of the results of their applications.
4. Under G.O. Cap A - 40 and 42, to receive papers on the filling by promotion of vacancies arising in Superscale gazetted officer posts.

EXHIBITSD3

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of
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16th
September
1963
(continued)

EXHIBITSPOWERS AND DUTIES DELEGATED TO THE SECRETARY TO THE COMMISSIOND3

Instrument
of
Delegation
16th
September
1963
(continued)

5. To decide on applications for legal aid. The Secretary to be fully competent.

Under General Orders Cap.A

6. Under G.O. Cap A - 9, to make necessary arrangements for the selection of candidates for gazetted officer appointments.

7. Under G.O. Cap A - 12 and 14(a), to sign offers of appointment of gazetted officers and to forward such offers of appointment to the candidates through the Inspector-General. 10

8. Under G.O. Cap A - 14(b) and (c) to receive documents and reports relating to offers of gazetted officer appointments.

Under General Orders Cap.D.

9. Under G.O. Cap D - 24, to receive reports of disreputable action of gazetted officers.

10. Under G.O. Cap D - 38(a), to exercise the functions of the Disciplinary Authority in the disciplinary procedure with a view to dismissal of a gazetted officer. 20

11. Under G.O. Cap D - 52 to receive petitions and co-ordinate action thereon.

Under General Orders Cap M

12. Under G.O. Cap M - 32, to approve and counter-sign Certificates of Service of gazetted officers.

PART "G"

1. Confidential reports will be kept in the Commission's secretariat. 30

2. The discharge of a gazetted officer, superior police officer, subordinate police officer or constable on medical grounds will continue to be made under the procedure in the pensions laws as at present and not under the provisions of Section 19(b) of the Federation of Malaya Police Ordinance, 1952.

3. The secretariat of the Commission will receive confidential reports and arrange the gazetting of appointments and promotions under G.O. Cap M 8(d) and 29, acting where appropriate on the instructions of the Secretary to the Commission.

10 4. The present procedure for the administration of G.O. Cap C - 12(a), 14(b), 17(b), 19(b), 21(a), 22(a), 24, 25, 27(a), 30(b), 31(c) and (d), 32, 35(a) and (b), 36(d), 39(a), 88(b), 89(d) and 91(g) and (h), which is at present carried out by the Principal Establishment Officer, and by the Commissioner of Police in respect of rank and file under Cap C 19(b), 21(a) and 22(a) will continue.

20 5. The administration of the provisions of Cap D 1 - 17, 26 and 27 in respect of gazetted officers will be carried out by the Police Force Commission, except that powers to decide on applications for Government's permission to own land, houses and other property or shares in companies carrying on business locally will be decided by a board consisting of the Inspector-General and the member of the Public Services Commission.

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1963
(continued)

SCHEDULE "A"COMPOSITION OF THE BOARDS REFERRED TO IN APPENDIX "A"No.1 Board

- 30 1. The member of the Public Services Commission (Chairman)
2. The Inspector-General of Police
3. The Secretary to the Ministry of Internal Security
4. Enche Mohamed Din bin Mohamed Shariff, J.M.N.

Quorum: A Quorum for meetings may be formed by three members including the Inspector-General of Police.

No.3 Board in the States of Malaya

- 40 1. Commissioner of Police (Chairman)
2. Deputy Commissioner of Police
3. Senior Assistant Commissioner "A"
4. Senior Assistant Commissioner "E"

No.3 Board in SingaporeNo.3 Board in SabahNo.3 Board in Sarawak

EXHIBITSD3

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of
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September
1963
(continued)

Quorum: A quorum for meetings of any of the No.3 Boards will be formed by any three members.

Note: A meeting held to deal with questions specified in paragraphs 2 and 3 of Part "C" of Schedule "B" shall include the Inspector-General, or his representative, who shall for this purpose become the Chairman.

10

A1

Letter
Pejabat
Ketua
Pegawai
Polis to
I. bin
Osman
22nd April
1967

EXHIBIT A1

Letter Pejabat Ketua Pegawai Polis
to I. bin Osman

RE/25529

Pejabat Ketua Pegawai Polis,
Polis di-Raja Malaysia,
Perak - Ipoh.

22nd April, 1967

DPC.25529

DPC.25529, Iznan bin Osman,
c/o Head Special Branch,
Perak.

20

Order of Suspension

In consequence of your conviction and a fine of \$1,000/- which was passed to you by the Magistrate, Ipoh on 19th April, 1967, you are hereby suspended from duty without pay under General Order Cap. D43 with effect from 19th April, 1967 until such time as your appeal against the conviction is decided.

30

2. You are to take note that this order of suspension also precludes you from the exercise of your powers as a Police Officer with effect from 19th April, 1967.

3. You will acknowledge receipt of this letter on the duplicate copy.

Sd. Merican bin Sutan

(MERICAN BIN SUTAN)
Ketua Pegawai Polis,
Perak.

40

I hereby acknowledge receipt of the Order of Suspension served on me today.

Date: 22.4.67

Signed: Iznan bin Osman
DPC.25529

Served by me:

Signed: Illegible
Pegawai Pentadbir
Kontijen Perak.

Rank Ag/Supt. this 22nd day of April, 1967.

EXHIBITS

A1

Letter
Pejabat
Ketua
Pegawai
Polis to
I bin
Osman
22nd April
1967
(continued)

10

EXHIBIT A2

A2

Letter Pejabat Ketua Pegawai Polis
to I. bin Osman

RF/25529

PEJABAT KETUA PEGAWAI POLIS,
Polis Di-Raja Malaysia,
Perak-Ipoh.

7th September, 1967.

DPC.25529, Iznan bin Osman,
c/o Head Special Branch,
Perak.

Letter
Pejabat
Ketua
Pegawai
Polis to
I. bin
Osman
7th September
1967.

20

I have to inform you that your dismissal from the Service is contemplated on the ground that on 19th April, 1967, in the Magistrate's Court, Ipoh, you were convicted of the following criminal charges and were fined a total sum of \$1,000/-.

30

- (a) That you on 12.3.1966 at about 3.00 p.m. at Jalan Pasir Puteh, Ipoh in the District of Kinta, State Perak, being the registered owner of motor-car PA.4487 permit to use the said vehicle as a public service vehicle without there being in Force in respect to the said vehicle a valid licence authorising such use, and thereby committed an offence punishable under Sec.92(ii) of the Road Traffic Ordinance, 1958.
- (b) That you at the same time, date and place being registered owner of motor-car PA.4487 permit to use the said vehicle as a public service vehicle without there

EXHIBITS

A2

Letter
Pejabat
Ketua
Pegawai
Polis to
I. bin
Osman
7th Sept.
1967
(continued)

being in Force in relation to the vehicle a policy of insurance in respect of Third Party Risks and that you thereby committed an offence under Sec.74(i) and punishable under Sec. 74(ii) Road Traffic Ordinance, 49/58.

2. You appealed against the conviction and your appeal was dismissed by the High Court on 4.8.1967.

3. Any representations you wish to make should be submitted in writing and addressed to me within 14 days of the delivery of this letter.

10

Sd: Mohd. Pilus bin Yusoh
(MOH. PILUS BIN YUSOH)
Ketua Pegawai Polis
Perak.

A3

Letter
Iznan bin
Osman to
Tuan Ketua
Pegawai
Polis
19th Sept.
1967

EXHIBIT A3

Letter Iznan bin Osman
To Tuan Ketua Pegawai Polis

Iznan bin Osman,
d/a Ibu Pejabat,
Chawangan Khas Perak,
IPOH.

20

19th September, 1967.

To:

Tuan Ketua Pegawai Polis,
Negeri Perak,
Ipoh.

Sir,

Re Appeal for re-employment

I appeal for your sympathetic consideration for re-employment as a Police Officer in the Special Branch Section Headquarters, Ipoh.

30

2. Although I have been convicted by the Lower Court Ipoh on 19.4.1967 on traffic offence and I have been fined a total sum of \$1000/- and I have made an appeal at the High Court Ipoh on my own behalf, but it was dismissed because the High Court did not recognize my letter of agreement. I am glad to inform you that the offence was not

purposely committed, as it was my bad luck. My car which belong to me was sold in a hurry, because I needed money urgently, the incident happened to me unexpectedly at the time I sold my car P.A. 4487 to a Chinese named Lee Ming Ting. I have received down payment of \$400/- for the sale of the car and the balance of \$500/- to be paid later. I made an agreement with him dated 7.3.1966 and after that the final payment then only the transfer will be effected from me to Lee Ming Ting.

10

3. During this period before final settlement this incident happened and the Traffic Branch charged me in Court as owner of the car and I was convicted as above.

4. As such the offence was not committed purposely I appeal with full hope to you to consider my application so that I will be re-employed, with the help and sympathetic consideration from you which will enable me to support my two children and the rest of my brothers who are in my car

20

That is all and concluding with thanks.

Yours faithfully,

Sd. Iznan bin Osman

EXHIBIT A6

Letter Ketua Pegawai Polis, Perak
to Iznan bin Osman.

OFFICE OF THE CHIEF POLICE
OFFICER,
ROYAL MALAYSIAN POLICE
PERAK - IPOH

30

RE/25529

11th November, 1967.

PC(G) 25529 Iznan bin Osman,
C/O Office of Head of Special Branch,
Perak.

Through: K.C.K. Perak.

Subject: NOTICE OF DISMISSAL

40

Reference my letter RE/25529 dated 7th
September, 1967, I have received your appeal dated

EXHIBITS

A3

Letter
Iznan bin
Osman to
Tuan Ketua
Pegawai
Polis
19th Sept.
1967
(continued)

A6

Letter
Ketua
Pegawai
Polis, Perak
to Iznan bin
Osman.
11th Nov.
1967

EXHIBITS

19th September, 1967 regarding the above matter.

A6

Letter
Ketua
Pegawai
Polis, Perak
to Iznan bin
Osman.
11th Nov.
1967
(continued)

2. After having regard to all the facts concerned regarding the incident I have decided to dismiss you from the Police Service with effect from 19.4.67 in accordance with the powers conferred on me as per the 1st Schedule to the Police Ordinance, 1952.

3. Please note that you may appeal to the Commissioner Royal Malaysia Police, Kuala Lumpur regarding this dismissal within 10 days from the date of this order (notice) i.e. from 10.11.1967 in accordance with Section 15(2) of Police Regulations 1952.

10

4. Please acknowledge receipt of this letter by signing the second copy.

Sd. Mohd. Pilus

(MOHD. PILUS BIN YUSOF)
Chief Police Officer,
Perak.

ACKNOWLEDGEMENT

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I acknowledge receipt of the original of this notice.

Signature: Sd. Iznan bin Osman

Served by me: Hisham b. Abdullah

on 17.11. 1967.

Signature: Sd. Hisham b. Abdullah

Rank: Chief Inspector of
Police.

EXHIBIT A7

Letter Iznan bin Osman
to Ketua Polis Negara.

Iznan bin Osman,
31-A, Jalan Che Tak,
Ipoh, Perak.

10.11.1967

EXHIBITS

A7

Letter
Iznan bin
Osman to
Ketua Polis
Negara
20th Nov.
1967

To:

10 Ketua Polis Negara,
Malaysia,
Kuala Lumpur.

Dear Sir,

Re: Application for re-employment

I am glad to refer to a letter from Chief Police Officer, Perak dated 11th November, 1967 in connection with the subject "Notice of dismissal" vide File No. RF/25529. The said letter was acknowledged by me on 17.11.1967.

20 The said letter from the Chief Police Officer, Perak states that the letter is still under consideration so that I could make an appeal to perhaps it would give me hope for re-employment, I herewith submit my appeal to you for the first time with the hope of getting sympathetic consideration for re-employment in the Police service.

30 Though I am treated as a "convicted person" in the Police Service as stated by the Chief Police Officer, Perak in his letter dated 7th September, 1967 and suspending me from service vide a letter from Chief Police Officer, Perak dated 22nd April, 1967, but I presume you are still considering on the conviction so as to give me another chance for re-employment in the Police service which I love so much.

As you are aware, I have no permanent job since the suspension of my service, while I am having a wife and two children.

40 Though my wife W/Sgt. 148 Salmah binti Haji Abdul Majid is drawing a fixed monthly salary from the Police Force it is not proper for me to depend on her, whilst we have responsibility to our family.

EXHIBITSA7

Letter
Iznan bin
Osman to
Ketua Polis
Negara
20th Nov.
1967
(continued)

I have no hope of getting other employment, if you do not consider my application for re-employment in the Police Force. At the moment while my service is suspended my livelihood is at stake and I am mentally tortured.

I have made various appeal to the Chief Police Officer, Perak to reconsider my re-employment, I repeat again that my future and that of my family is solely depended in my service with the police force.

10

Livelihood is given by God the merciful, and you are a servant of God who will find ways to help me also a servant of God. Once again I stress that you are only my sole hope in this world.

As I am given a chance to appeal to you, I shall be pleased if you will reconsider my record of service while I was in the Police Force. I feel that I have not committed any serious offence, my policy is that to abide and obey orders to perform my duties. Unfortunately I have committed a minor offence which I never expected to commit as the old folks saying "no person is perfect". But I hope you will not forget that every mistake could be rectified.

20

Every person will not be free from making mistakes and every mistake can be rectified, I therefore appeal for your goodwill to accept me to resume my service in the Police Force, it is to you I make this appeal and you are the only person on whom depend the future of my family and myself.

30

May God bless you and God will always be with true persons.

That is all, concluding with thanks for your kind consideration.

Sd. Iznan bin Osman
Ex-D/PC 25529.

EXHIBITS

Letter Ketua Polis Negara
to Iznan bin Osman

HEADQUARTERS,
THE ROYAL MALAYSIA
POLICE, KUALA LUMPUR.

Letter
Ketua Polis
Negara to
Iznan bin
Osman
29th Feb.
1968.

RF/25529

29th February, 1968.

Iznan bin Osman,
31-A Jalan Che Tak,
Ipoh,
Perak.

10

Enche,

Appeal on dismissal of service

Kindly refer to this Headquarters letter in
the same series dated 22nd January, 1968.

I am directed to inform you that your said
appeal has been fully considered with care by the
Inspector-General, himself. He has decided not to
interfere with the decision made by the Chief
Police Officer, Perak in respect of the dismissal
of service. As such the decision of dismissal
of service is final.

20

3. That is all for your information.

Your obedient servant.

Sd. Samsuri bin Arshad
for Ketua Polis Negara,
Polis Di-Raja Malaysia.

EXHIBITS

EXHIBIT D2

D2

Commissioner's
Standing
Order

COMMISSIONER'S STANDING ORDER

COMMISSIONER'S STANDING ORDER

"A" DEPARTMENT

PART A205

RETIREMENT, RESIGNATION, DISCHARGE AND DISMISSAL.

1. Every member of the Force who is dismissed or discharged will be informed in writing by his Commanding Officer of the reason for his dismissal or discharge.

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2. -

3. -

4. -

5. -

6. -

7. If a superior police officer, subordinate police officer or constable is convicted of a criminal charge the Commanding Officer concerned may call for a copy of the relevant proceedings in the criminal court or for a report by the Legal Department on this proceedings and if, after consideration of the said proceedings or report, the Commanding Officer is of the opinion that the officer should be dismissed or otherwise punished on account of the offence of which he has been convicted, the Commanding Officer shall issue to the officer a letter on the following lines:

20

"I have to inform you that your dismissal from the service is contemplated on the grounds that on..... in the.....Courtyou were convicted of the following criminal charge and were sentenced to.....:-

30

(state the criminal charge)

.....
.....

2. Any representations you wish to make should be submitted in writing and addressed to me within 14 days of the delivery to you of this letter."

EXHIBITSD2Commissioner's
Standing
Order
(continued)

8. For the purposes of this Order, the terms "convicted" or "conviction" include a finding or an order involving a finding, by a criminal court that the officer charged has committed a criminal offence.

10 9. The Commanding Officer shall, after considering the officer's representations, if any, order that the officer be dismissed, or otherwise punished, without any of the disciplinary proceedings prescribed in Section 45 of the Police Ordinance 1952, and in Part I of the Police Regulations, 1952. Provided that no punishment, other than those specified in the first Schedule to the Police Ordinance, 1952, shall be imposed.

20 10. In the case of a superior police officer, the Commanding Officer shall not himself award a punishment of dismissal or reduction in rank, but in any case where such a punishment is recommended for award to a superior police officer, the Commanding Officer shall forward the papers to the Commissioner of Police for the award of punishment.

30 11. If a stay of execution has been granted in respect of a punishment imposed by a criminal court in the case of an appeal against conviction by the criminal court, the proceedings in paragraphs 7 and 10 above shall not be instituted until such time as the appeal has been decided.

12. An officer who has been convicted by a Criminal Court and against whom proceedings as above are contemplated shall be suspended from duty under G.O. Cap. D - 43 and shall not receive any emoluments from the date of conviction pending a decision on his case under the preceding paragraphs.

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

(Defendant)
Appellant

- and -

IZNAN BIN OSMAN

(Plaintiff)
Respondent

RECORD OF PROCEEDINGS

STEPHENSON HARWOOD & TATHAM,
Saddlers' Hall, Gutter Lane,
Cheapside, London EC2V 6BS.

Appellant's Solicitors

Philip Conway Thomas Esq
61 Catherine Place
~~WILSON FREEMAN,~~
~~6/8 Westminster Palace Gardens,~~
~~London SW1P 1RL.~~
London SW1E 6HB
Respondent's Solicitors