IN THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL

No.33 of 1970

ON APPEAL FROM

THE FEDERAL COURT OF MALAYSIA

B E T W E E N

R. SAMBASIVAM — Appellant

- and -

1. THE PUBLIC SERVICES COMMISSION
2. THE GOVERNMENT OF MALAYSIA

Respondents

C A S E FOR THE R E S P O N D E N T S

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1. This is an appeal from the judgment of the Federal Court of Malysia (Ong.Hock Thye C.J. S.S.Gill and Ali F.J.J.) affirming the judgment of Raja Azlan Shah J. in the High Court of Malaya dismissing a motion by the Appellant for an Order of certiorari to quash the decision of the Public Services Commission terminating the Appellant's appointment in the Malaysian government service and also for a declaration in lieu of mandamus that the Appellant was entitled to be reinstated in his employment as Junior Assistant for Labour

2. The issues arise from the dismissal of the Appellant from the Public Service and the procedure adopted in connection therewith. Such dismissal was effected under General Orders Cap. D.38. That section begins:

"If the conduct of an officer on the pensionable establishment in Division I or II of the Public Service appears

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to the Head of Department to merit dismissal the following procedure will be adopted unless the method of dismissal is otherwise provided for either in these Regulations, or by special legislation".

A procedure embodying the steps described in the ensuing three paragraphs is then set out.

3. The Appellant, prior to the termination of his appointment by the Public Services Commission was by virtue of his position as Junior Assistant Commissioner for Labour an officer on the permanent establishment in Division II of the Public Service. On the 8th December 1966 the Secretary to the Public Services Commission informed the Appellant by letter that "his conduct appeared to the Head of Department to merit dismissal". The letter referred to General Cap. D 38(a) and called upon the Appellant to exculpate himself in accordance with that provision. The letter was sent to him through Dato Yeap Kee Aik, then Secretary to the Ministry of Labour.

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4. The Appellant failed to exculpate himself to the satisfaction of the Commission, and a Committee was accordingly set up under General Orders Cap. D.38(c) to enquire into the matter. This Committee sat on the 27th, 28th and 29th November 1967 and following an adjournment on the 5th, 6th and 7th March, 1968. Inche S. Kumar, then Commissioner for Labour, had the conduct before the Committee of the proceedings against the Appellant, who was himself represented by Counsel.

5. Subsequently to the adjourned hearing the Appellant was informed by letter from the Secretary to the Public Services Commission that he was to be dismissed forthwith .

6. The first two arguments of the Appellant before the High Court of Malaya and on appeal to the Federal Court of Malaysia were (1) that the proceedings against the Appellant were void because it had not appeared to the Appellant's Head of Department that his conduct merited dismissal; and (2) that the Committee had failed

to consider matters preliminary or collateral to the matter before it and affecting its jurisdiction (namely the matter raised in (1) above) or alternatively that if they had done so they had acted contrary to natural justice in failing to communicate their decision to the Appellant.

7. The following is an extract from the cross-examination of Inche S. Kumar by Counsel for the Appellant at the November hearing before the Committee:

(Q) The letter dated the 8th December 1966 to Siram that his conduct appeared to the Head of Department to merit dismissal was sent through the Setia Usaha Kementerian Buroh

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(A) Yes.

(Q) Dato Yeap Kee Aik was then the Secretary of the Minister for Labour.

(A) Yes.

(Q) The letter was sent through him because it was he who reported to the Public Services Commission that Siram's conduct merited dismissal?

(A) Yes.

(Q) Did he make this remark verbally or in writing?

(A) He did it in writing by a letter dated the 26th October 1966.

(Q) So the decision to initiate proceedings against Siram was his and his alone.

(A) Yes.

(Q) But it is you who is the Head of Department and not Dato Yeap Kee Aik.

(A) Yes, I am the Head of Department and not Dato Yeap.

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8. On the basis of Inche S. Kumar's replies, Counsel for the Appellant submitted to the Committee that the proceedings against the Appellant were ultra vires and void since the requirement of General Orders Cap. D. 38 set out in paragraph 2 hereof, namely that the conduct of the Appellant should appear to the Head of Department to merit dismissal, had not been fulfilled. He submitted that :-

(i) The Committee could stop the hearing until this issue had been decided; or

(ii) The Committee could conclude the hearing of the case against the Appellant and at the end of it report to the Public Services Commission its findings on law and the facts to the extent that it supported the legal submission so that the Public Services Commission could decide whether they wished to proceed with the enquiry; or

(iii) The Committee could hear the entire case (including that of the Appellant) and could make its comments thereon. He submitted that this third course was not to be recommended as it would have the effect of putting the Appellant into jeopardy without just cause.

The Committee thereupon adjourned the hearing and in answer to a written request dated 28th December 1967 from the Appellant's Solicitors for information as to the Committee's decision on the submission, the Secretary of the Commission indicated by letter dated 13th January 1968 that the Committee had decided to defer its decision pending completion of the enquiry. At the resumed hearing the Committee were again requested on behalf of the Appellant to make known their decision.

9. The first argument, namely that the proceedings were void, was rejected both in the High Court and in the Federal Court. Before the matter came before Raja Azlan Shah J. an affidavit was filed on behalf of the Respondents

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sworn by one Abu Hanifah Bin Long, Assistant Secretary (Promotion/Discipline) in the Public Services Commission. He testified therein that "on the question of whether or not Dato Yeap Kee Aik was the head of department, the Committee found that Dato Yeap Kee Aik was the applicant's head of department and alternatively the Committee found that even if he was not the head of department there was nothing in General Orders Cap. D 38 which makes it incumbent for the head of department himself to make a report so long as the applicant's conduct appeared to the head of department to merit dismissal. This was complied as set out in paragraph 1 of the said letter Ex.RS.I." Page 34 Page 35

10. Raja Azlan Shah J. rejected the Appellant's first argument on the ground that Dato Yeap Kee Aik as Secretary to the Ministry of Labour was the Head of Department for the purposes of Cap.D.38. He acknowledged that Inche Kumar was Head of the Department of Labour. He referred to General Orders Cap. A. which deals with appointments and promotions and unlike Cap.D contains a definition of Head of Department. Cap.A 3(g) reads "The term 'Head of Department' shall be deemed to include a 'Secretary to a Minister or Ministry and the Principal Establishment Officer in respect of the services listed in sub-paragraph (a) to General Order 41"). He further added "the true view is that while the mandatory provisions of General Orders 38 Cap D must be strictly construed, the phrase 'appears to the Head of Department to merit dismissal' which precedes these provisions is only a machinery providing for the mode in which the question which can only be decided by the Disciplinary Authority is to come before them. Page 50 Page 50

11. Ong.Hock Thye C.J. with whose judgment S.S.Gill and Ali F.JJ. concurred, quoted the above passage with approval. He pointed out the dichotomy existing between that part of Cap.D 38 which relates to the view of the Head of Department and the part following the word 'will' which sets out the procedure to be followed on the initiation of proceedings. The latter provisions were mandatory; the former was not. Page 70 Page 71

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12. Neither Raja Azlan Shah J. nor Ong.Hock Thye C.J. referred in their judgments to a further point in this connection, namely that even were it to be accepted that Inche Kumar and he alone was the Appellant's Head of Department for the purposes of Cap.D.38 there is no evidence - apart from allegations contained in submissions for the Appellant - to be found on the record which suggests that Inche Kumar did not consider the Appellant's conduct merited dismissal. The passage quoted in paragraph 7 hereof shows merely that it was not he who initiated the proceedings against the Appellant.

13. With reference to the Appellant's second ground of complaint - the Committee's alleged failure to consider the preliminary question of jurisdiction and their failure to communicate their decision thereon to the Appellant - it is
Page 34 of course clear from the affidavit of Abu Hanifah Bin Long that the Committee did in fact consider the matter and that their decision was adverse to the Appellant.

Page 51 14. Raja Azlan Shah J. when dealing with the issue said "The Committee did not shut its eyes to the issue. It considered the collateral question but indicated in its letter of 13th January 1968 that it 'had decided to defer its decision pending completion of the enquiry'. The fact that it completed the enquiry and submitted its report to the Disciplinary Authority is indicative of conduct amounting to rejection of Counsel's submission. Regrettably that decision was never conveyed to the Applicant. Is failure to do so a serious defect in procedure as to deprive it of jurisdiction? I think not". This view was endorsed by Ong.Hock
Page 72 Thye C.J.

15. It is material to note that the procedure adopted by the Committee in relation to the Appellant's submission - namely hearing out the evidence of both sides before deciding the matter - was in fact one of the course suggested to the Committee by Counsel for the
Page 18 Appellant, although, it is true, the one which he suggested was least desirable.

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16. The Appellant has based his case in both of the Courts below on two further grounds. The first of these relates to charges against the Appellant of which the Commission were cognizant but which were not proceeded with. In the passage from the cross-examination of Inche Kumar quoted in paragraph 7 hereof reference was made to a letter dated the 26th October 1966 from Dato Yeap Kee Aik to the Commission. This letter contained various allegations against the Appellant, a number but not all of which were made the subject of charges against the Appellant. The letter of the 26th October 1966 was never formally introduced into the proceedings although it was at his request shown to the Appellant during the hearings.

17. The Appellant contended that the fact that the Commission were cognizant of some allegations against him which were not embodied in charges against him denied him any opportunity to defend himself against such charges and that this raises an inference that the Commission were influenced by that letter in commencing proceedings against him.

18. In his affidavit of the 28th December 1968 Abu Hanifah Bin Long testified that "the letter dated 26th October 1966 ... was not part of the proceedings of the Inquiry and it in no way influenced the decision of the Public Services Commission". Page 35

19. The Appellant's argument was rejected by Raja Azlan Shah J. who said "... that letter is merely an information which entitles the Commission to act. It was shown to the applicant but it was not made use of against him. That is the explanation why it was not formally produced and formed part of any of the charges. That being so, it is beyond comprehension how it can be argued that the applicant was deprived of an opportunity of explaining something which is not the subject matter of any of the charges." The learned judge further held that there had been "no reasonable impression of bias" let alone any "real likelihood" of bias. Page 52

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20. This view was endorsed in the Federal Court by Ong. Hock Thye C.J. who continued: "having seen the nature of the charges pursued before the Committee and the Appellant's

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explanation, I need say no more than that I have no reason to doubt that neither the Committee nor the Public Services Commission was influenced in their decision by anything contained in Dato Yeap's letter."

21. The fourth and final ground of appeal pursued by the Appellant related to an allegation that the Committee had admitted hearsay evidence at the hearing and were consequently in breach of their duty to act judicially. This submission was rejected by Raja Azlan Shah J:

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> "The short answer is that the Committee in exercising quasi-judicial functions is not a court of law. It can obtain any information which is relevant for the purpose of the inquiry, from any source or through any channel unfettered by the strict rules of evidence and procedure which govern court proceedings. The only limitation is that the rules of natural justice must be observed".

22. Accordingly the Respondents submit that the judgment dismissing the Appellant's motion is right and should be upheld for the following among other

R E A S O N S

(1) BECAUSE the proceedings against the Appellant were properly brought and were carried through according to the principles of natural justice.

(2) BECAUSE the reference in General Orders Cap.D.38 to the views of the Head of Department in relation to the Appellant's conduct are directory and not mandatory.

(3) BECAUSE Dato Yeap Kee Aik was the Appellant's Head of Department and the Appellant's conduct appeared to him to merit dismissal

~~merit~~ ~~dismissal~~

(4) Alternatively, BECAUSE Inche Kumar was the Appellant's Head of Department and the Appellant's conduct appeared to him to merit dismissal

(5) BECAUSE neither (1) the omission to inform the Appellant explicitly that his submission in relation to the ~~prelinary~~ preliminary question of vires had been rejected;

nor (2) the fact that the letter of 26th October 1966 contained allegations which were not made the subject of charges against the Appellant;

not (3) the alleged admission of hearsay evidence,

amounted to a denial of natural justice.

(6) BECAUSE the judgments of Raja Azlan Shah J. and of the Federal Court of Malaysia are right and ought to be affirmed.

ROBERT ALEXANDER

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CASE FOR THE RESPONDENTS

STEPHENSON HARWOOD & TATHAM,
Saddlers' Hall,
Gutter Lane,
Cheapside,
London, E.C.2.
Solicitors for the Respondents