

DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANG KUASA SIVIL)
RAYUAN SIVIL NO: J-01-50-2004

Antara

SUBRAMANYAN A/L SANNASY

... PERAYU

Dan

1. SAC II SYED ALWI BIN SYED HAMID
2. KERAJAAN MALAYSIA

**... RESPONDEN-
RESPONDEN**

DALAM MAHKAMAH TINGGI MALAYA DI JOHOR BAHRU
DALAM NEGERI JOHOR DARUL TAKZIM, MALAYSIA
GUAMAN SIVIL NO: 22-257-2003 (MT4)

Antara

SUBRAMANYAN A/L SANNASY

... PLAINTIF

Dan

1. SAC II SYED ALWI BIN SYED HAMID
2. KERAJAAN MALAYSIA

**... DEFENDAN-
DEFENDAN**

Coram : Zaleha Zahari JCA
Heliliah bt. Mohd Yusof JCA
K.N. Segara JCA

JUDGMENT OF THE COURT

The appellant (the plaintiff in the High Court) instituted a suit in which the claim was that the dismissal of the appellant vide a letter dated 26.8.2002 by the first respondent (the first defendant in the High Court) is null and void and the appellant is still a police officer in the police force. It was agreed by the parties that the claim is to be dealt with under Order 33 and/or Order 14 of the High Court Rules 1980. The undisputed facts are as follows:

1. On 15.11.2000, a police report was lodged against the Plaintiff for falsifying documents to release 3 Indonesian detained from the Police lock-up in Batu Pahat.
2. The Plaintiff was charged in Court for an offence under Section 222 Penal Code and was convicted and fined RM1500.00 in default to 3 months imprisonment. The Plaintiff paid the fine and did not appeal against the sentence.
3. Pursuant to the said court conviction, the Head of the Plaintiff's Department submitted a report to the Disciplinary Authority recommending that disciplinary action for the purpose of dismissal be taken against the Plaintiff under Regulation 33(a) Public Officers (Conduct and Discipline) Regulations 1993 (the 1993 Regulations).

4. On 20.8.2002, the Disciplinary Authority owing to the seriousness of the offence committed by Plaintiff decided to dismiss the Plaintiff from the Police Force.
5. In the letter dated 26.8.2002, (the dismissal letter) the Disciplinary Authority after considering the fact of the conviction and the recommendation of the Head of Department dismissed the Plaintiff pursuant to Regulations 33, 37 and 38(g) of the 1993 Regulations.

There is a single issue raised in this appeal. It is alleged that there has been occasioned an error in the decision making process, that is, a procedural irregularity leading to the appellant's dismissal. The root of that allegation is to be found in the letter dated 26.8.2002 (or dismissal letter) reproduced as follows:

**“ IBU PEJABAT POLIS
POLIS DIRAJA MALAYSIA
80990 JOHOR BAHRU
JOHOR**

Tel: 07-2254422

Ruj. Kami: (PR)RF/104687

Tarikh: 26 Ogos 2002

Lans Koperal Subramaniam a/l Sannasy
(RF/104687)
Ibu Pejabat Polis Daerah
Batu Pahat
JOHOR

Melalui :-

Ketua Polis Daerah,
BATU PAHAT

HUKUMAN TATATERTIB – BUANG KERJA

Adalah dimaklumkan bahawa Lembaga Tatatertib telah menerima laporan daripada Ketua Polis Daerah Batu Pahat, bahawa kamu Lans Koperal Subramaniam a/l Sannasy (RF/104687) telah dijatuhkan hukuman denda RM1500.00 i/d (3) bulan penjara (denda dibayar) bagi pertuduhan di bawah Seksyen 222 K.K. oleh Mahkamah Majistret Batu Pahat.

2. Pada menjalankan kuasa-kuasa tatatertib yang telah diwakilkan kepada Lembaga Tatatertib oleh Suruhajaya Pasukan Polis mengikut P.U. (B) 441 bertarikh 14.12.2000, saya SAC II Syed Alwi bin Syed Hamid, Pengerusi Lembaga Tatatertib setelah meneliti fakta sabitan bersama-sama Ahli Lembaga Tatatertib serta syor Ketua Polis Daerah Batu Pahat selaras dengan kehendak Peraturan 37, Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 dengan ini memutuskan kamu dikenakan hukuman '**BUANG KERJA**' di atas sabitan Mahkamah tersebut selaras di bawah Peraturan 38 (g), Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.

3. Hukuman buang kerja terhadap kamu berkuatkuasa mulai 20.8.2002 iaitu tarikh mesyuarat Lembaga Tatatertib, Kontinjen Johor di bawah Peraturan 38, Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993.

4. Sila akui penerimaan surat ini dengan menandatangani di ruangan yang disediakan.

- sgd -

(SYED ALWI BIN SYED HAMID) SAC II

Pengerusi Lembaga Tatatertib

KONTINJEN JOHOR

s.k.:-

Timbalan Pengarah Pengurusan (Tatatertib),
KPN (Perkhidmatan/Perjawatan),
KP JH (Rekod),
KP JH (Bahagian Gaji), - Sila ambil tindakan ke atas gaji subjek
KP JH (Perkhidmatan/Perjawatan),
Unit Khas Komputer,
Batu Pahat FLTT 13/2001,
Fail perp/perk. ”

The detailed aspects of this dismissal letter have been considered by the learned trial judge. The dismissal letter has made specific reference to the sentence imposed upon the appellant following upon his conviction for an offence preferred against him under section 222 of the Penal Code. No appeal has been lodged against the conviction. It is pertinent to note that the relevant regulations 33, 37 and 38 of the Federal Constitution Public Officers (Conduct and Discipline) Regulations 1993 (or Regulations 1993) being considered in this appeal are regulations which have since been replaced. The provisions of regulation 33 as it was applicable then states:

“ 33. Where criminal proceedings against an officer result in his conviction, or where his appeal against conviction is dismissed, the Head of Department shall apply to the Registrar or Senior Assistant Registrar of the court for a copy of the court’s decision. Upon receipt of the decision, the Head of Department shall send it to the appropriate Disciplinary Authority that has the power to impose a punishment of dismissal or reduction in rank, together with the record of service of the officer, and shall recommend whether the officer should-

- (a) be dismissed or reduced in rank;
- (b) be imposed with any punishment other than the punishment of dismissal or reduction in rank;
- (c) have his service terminated in the public interest; or
- (d) not be imposed with any punishment,

depending on the nature and seriousness of the offence committed in relation to the extent the officer has brought disrepute to the public service.”

The contents of the dismissal letter disclose that the Disciplinary Authority in question having received a report from the Chief Police Officer Batu Pahat together with a recommendation therein then made a determination that the appellant is to be dismissed in accordance with the provisions of regulation 37 and consistent with regulation 38 of Regulations 1993. The appellant has taken issue with the part of the letter that states ‘dengan ini memutuskan kamu di kenakan hukuman “Buang Kerja” di atas sabitan Mahkamah tersebut selaras di bawah Peraturan 38(g), Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993’. In the High Court it has been the submission of the learned counsel for the appellant that the issue in question is whether the dismissal has been effected in accordance with the procedure laid down under regulation 33 of the 1993 Regulations which in turn would entitle the Disciplinary Authority *inter alia* to dismiss the officer. Regulation 37 as it was then provides, *inter alia*,:

“ 37. (1) Where, after considering the report and the recommendation of the Head of Department forwarded in accordance with regulation 33 or 36, the appropriate Disciplinary Authority is of the opinion-

- (a) that the officer should be dismissed or reduced in rank, the Disciplinary Authority shall forthwith impose the appropriate punishment;
- (b) that the officer should not be dismissed or reduced in rank but should be imposed with a lesser punishment, the Disciplinary

Authority shall impose on the officer such lesser punishment as it deems fit and proper; or

- (c) that the officer should not be imposed with any punishment, the Disciplinary Authority shall so decide. ”

The submission is that regulation 38(g) as mentioned in the dismissal letter has no application in respect of regulation 33. The contention is as follows. Regulation 38 provides for a position where one of the range of punishments in regulation 38(g) can be imposed when the disciplinary authority finds an officer guilty of an offence for infringement of any of the regulations. The second respondent was empowered to invoke regulation 38(g) only where it had the jurisdiction to make a finding of guilt against the officer concerned in respect of any offence against the regulations. The requirement of finding of guilt was a prerequisite before the power under regulation 38(g) to punish could be invoked. It was urged upon us that we should apply the decision in **Perbadanan Kemajuan Negeri Selangor Petaling Jaya, Selangor Darul Ehsan & Ors v Perumal Manikam [2000] 1 CLJ 745**. Before referring to that case it is necessary to note that the dismissal letter itself has made a specific mention of regulation 37 (or Peraturan 37), Regulation 37(1) of Regulations 1993 is by its express terms directly linked to regulation 33. The learned trial judge in addressing this matter observed:

“ It follows that upon the Plaintiff’s conviction on the criminal charge, then regulation 33 of the 1993 Regulations comes into play whereupon the Head of Department shall refer the matter to the Disciplinary Authority with

the several recommendations in paragraph (a) to (d), ranging from no punishment at all to dismissal.

Under regulation 37(1), the Disciplinary Authority, after considering the report and recommendation under regulation 33, may impose any of the punishments ranging from no punishment at all to dismissal.

It is cannot be disputed that the letter of dismissal also makes reference to regulation 37. However, instead of dismissing the Plaintiff forthwith under regulation 37, the Disciplinary Authority dismissed him under the general penalty of regulation 38. The question arises whether such circumstances warrant this court to hold that the Plaintiff's dismissal is null and void because there has been an unfair procedure. ”

It is in this context that the decision in Perumal Manikam's case is different and hence inapplicable. In that case the Court of Appeal was clearly evaluating a position where a case of dismissal was effected pursuant to a provision that dealt not with dismissal, but with reduction of salary and hence it was clear that the Disciplinary Authority vide the dismissal letter has manifested non compliance with the relevant provisions of the then Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 which have since been superseded. In the instant appeal before us regulation 33 is an enabling provision where it is incumbent on a head of department to submit a recommendation to the relevant disciplinary authority in a situation where an officer has been convicted as a result of criminal proceedings. The contents of the dismissal letter indicate that the Disciplinary Authority acted in furtherance of regulation 37 that is the appropriate provision to impose the punishment of dismissal. It has

also been submitted that regulation 33 does not give the disciplinary authority the jurisdiction to convict the officer concerned and that where an officer is convicted under regulation 33 only then regulation 37 applies. It is averred that the first respondent ought to have invoked the provisions of regulation 37. Two observations may be made. Firstly an erroneous interpretation has been rendered to the dismissal letter on behalf of the appellant for as indicated above the dismissal letter has already made a specific reference to regulation 37. Secondly the contention that the reference to regulation 38 in the dismissal letter amounts to the disciplinary authority acting without jurisdiction is without merit. The scope of Regulations 1993 indicates that regulation 33 is only one of the provisions where the disciplinary authority is emplaced in a position to determine what is the appropriate punishment to impose. Implicit in regulation 33 is that the conviction and sentence imposed by a court of law by itself constitutes a breach of the code of conduct or in effect a misconduct.

Regulations 1993 constitute the *corpus* of regulations promulgated to regulate the conduct and discipline of those serving in the public services. While regulation 38 uses the term “offence” and the words “..... finds an officer guilty of contravening any of the provisions of these Regulations” it is in substance a general description that in the event of the violation of any conduct laid down which amounts to an offence the relevant disciplinary authority under regulation 38 is generally vested with the power to exercise its discretion to make the appropriate determination on the form of punishment to be imposed befitting the circumstances of each

contravention of the regulations. The question here is whether in its totality the disciplinary authority in this appeal has considered a matter and arrived at a decision in accordance with the procedure laid down by the Regulations 1993. Our response is that it is in the affirmative. The appellant has also failed in his allegation that the disciplinary authority has not purportedly directed itself to appreciate directory or mandatory provisions found in the 1993 Regulations. In our view the reference to regulation 38 is mere surplus that does not constitute an error in jurisdiction or an absence of exercise of discretion.

We also find it unnecessary and irrelevant to express any view on the principle of substantive fairness in the circumstances found in this appeal. This appeal is therefore dismissed with costs. The decision of the High Court is affirmed.

Dated on 2nd June 2009.

t.t.

(DATUK HELILIAH BT. MOHD YUSOF)

Judge

Court of Appeal Malaysia.

Counsel For The Appellant:

Encik Karpal Singh
Puan Sangeet Kaur Deo

Solicitors For The Appellant:

Tetuan Karpal Singh & Co.

Counsel For The Respondents:

Puan Nizam bt. Zakaria, SFC

Solicitors For The Respondents:

Jabatan Peguam Negara