

Federal Court Leave Application No. 08(f)-152-06/2024 (S)

**The Government of Malaysia & Anor v Ian Chin Hon Chong,
For Himself and on behalf of all the affected judges
who were appointed to the High Court in Sabah & Sarawak
before 1 July 2015 and receiving their pension
and on behalf of all persons who are receiving their derivative
pensions on account of the death of such judges**

Quorum:

**Justice Nallini Pathmanathan, FCJ
Justice Zabariah binti Mohd Yusof, FCJ
Justice Rhodzariah binti Bujang, FCJ**

Broad Grounds

We have given careful consideration to the submissions of the parties, both written and oral. Having done so we are of the unanimous view that leave should be and is hereby refused. Our reasons for so concluding are as follows:

- (i) It is evident from the facts on record that the promulgation of the **Amendment Act 1462** resulted in a reduction of the monthly pension of the Respondent as well as the retired judges he represents. This in itself amounts to a contravention of the constitutionally protected rights of a judge under **Art 125(7) and (9) of the Federal Constitution**. Such a contravention attracts **Art 4(1)** and the Courts below have correctly applied the very trite law in relation to the application of that **Article**. Accordingly the

amendment was declared void. We are of the view that this application of the law is well entrenched and requires no further ventilation in the Federal Court;

- (ii) We are also of the view that this matter does not meet the threshold of **section 96 CJA** because it is not a novel point, and is not a matter of public interest. This is because the issue here relates to a finite, small and diminishing group of retired judges and to that extent the public interest element is not met. On the issue of novelty as we have said, the application of **Art 125(7) and (9)** read together with the **Amendment Act 1462** and **PUA 59/2016** clearly shows a reduction in the pension received which in turn attracts **Art 4(1)**. **Section 15B sub-section (2)** in itself recognises that such a reduction subsists and goes on to provide for an exercise of discretion by the Yang di Pertuan Agong to remedy the same. However the very reduction itself and the possibility of the reduction either being remedied or not establishes that there is a removal of a constitutionally guaranteed pension payment. Therefore on a prima facie basis, there is no further need for ventilation of this matter in the Federal Court as the position in this regard is well established, namely that any inconsistency with **Art 125(7)** warrants the amendment legislation being declared void;

- (iii) It is important to note that the Judiciary is the third arm of the government and the last bastion for the citizens of the nation. Our role is to protect the sanctity **Federal Constitution** for the benefit of the citizenry. Who then is to protect the judges? Surely it must fall back on the **Federal Constitution**, and indeed the **Federal**

Constitution does provide such constitutional guarantees. The clear provisions there must be adhered to. Therefore **Art 125(7) and (9)** when contravened have to be put right. As it is clear and evident on the facts of this case, there is no further need for leave to ventilate the matter further;

- (iv) For these reasons we dismiss the motion for leave with no order as to costs.

Date: 17 October 2024