

DR CHANDRA MUZAFFAR v. UNIVERSITI MALAYA
HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[ORIGINATING SUMMONS NO: R2-25-36-1999]
9 FEBRUARY 2002

ADMINISTRATIVE LAW: Exercise of administrative powers - Judicial review - Legitimate expectation - Non-renewal of applicant's contract of employment - Whether applicant had legitimate expectation of continued employment until confirmation as permanent staff member - Whether applicant had legitimate expectation to be heard before decision was made not to renew contract - Whether there was overriding public interest to frustrate applicant's legitimate expectations

The applicant's service as a professor in the University of Malaya ('UM') came to an end when UM decided not to renew his contract of employment. The applicant made the instant application for *certiorari* claiming that he had been dismissed from employment without being accorded a right of hearing. Alternatively, that UM did not give him the benefit of continued employment after inducing him to leave his permanent employment with University Science Malaysia ('USM'). The applicant claimed that the Deputy Chancellor (Academic Affairs) of UM had made representations to him that he would eventually be made a permanent staff member of UM and that his employment on a year to year basis was only due to administrative requirements. The applicant claimed that he had a legitimate expectation of continued employment as a professor of UM until he retired and a legitimate expectation to be heard before UM made its decision not to renew his contract.

Held:

[1] The applicant's argument that he was a member of the Education Service under the Federal Constitution and therefore entitled to constitutional protection under art. 135(2) of the Federal Constitution was without merit. Firstly, from the facts he was not dismissed from service. Secondly, the applicant was in the service of UM, a statutory entity, separate from public services which included the Education Service. (p 453 f-i)

[2] A public body which had lawfully entered into a contract is bound by it and has the same power under it as any other contracting party but in exercising its contractual power, it might also be restricted by its public law responsibilities. Therefore, a decision taken by a public body cannot be treated as purely in the realm of contract. It might at the same time be governed by statute. That principle would have to be viewed in the context with what the applicant claimed was a legitimate expectation to be heard before UM made its decision not to renew his contract and a legitimate expectation to continue in service. (p 456 b-c)

[3] The court accepted the very plausible version of the applicant that representations were made to him that he would head the relevant Centre until he retired and that it was just an administrative requirement of UM that he would be appointed as a contract professor serving on a year to year basis until he was confirmed as a permanent staff of UM. When someone of international stature in the academic world is head-hunted to start up and head a department

which is entirely new in concept and which will bring prestige to the University, the probabilities favour that such representations have been made. (p 466 a-d)

[4] The applicant had no enforceable right of being made a permanent staff of UM since the relevant university authority had not exercised its power to appoint him on a permanent basis. At the very least, the applicant had a legitimate expectation of continued employment as a contract professor until he was confirmed as a permanent staff member. While there was a concomitant legitimate expectation to be heard as to why the contract could not be renewed on a year to year basis until he was so confirmed, the benefit of being confirmed for another year should be given unless there was an overreaching public interest frustrating the legitimate expectation of the applicant. However, the reasons advanced by UM did not show that there was an overriding public interest for the University to renege on its representations to the applicant. (pp 466 h-i, 467 a-c & 468 c-d)

[5] The applicant's contention that the non-renewal of the contract was for a collateral reason which was political in nature, could not stand as it was based on a surmise. Also, no evidence had been offered by the applicant to justify the court making such an interference that his contract was terminated for a political reason. (p 467 h-i)

[6] The legitimate expectation of the applicant to be made a permanent staff could not be fulfilled and enforced because the power to place him on a permanent basis had not been exercised by the relevant authority. It followed that that could not form the basis for a monetary claim till the date he retired. The applicant had been denied the legitimate expectation of being continued in service for another year. It would be fair and just to compensate him for that one year which he had expected and which was not given to him. (p 476 d-e)

Case(s) referred to:

Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1 KB 223 (**refd**)

Attorney-General of Hong Kong v. Ng Yuen Shiu [1983] 2 AC 629 (**refd**)

Council of Civil Service Unions v. Minister for Civil Service [1985] AC 374 (**refd**)

Eng Mee Fong & Ors v. Letchumanan [1979] 2 MLJ 212 (**refd**)

[Fadzil Mohamed Noor v. Universiti Teknologi Malaysia](#) [1981] 1 CLJ 85; [1981] CLJ (Rep) 53 (**refd**)

In re Findlay [1985] AC 318 (**refd**)

[John Peter Berthelsen v. Director General of Immigration, Malaysia & Ors](#) [1986] 2 CLJ 409; [1986] CLJ (Rep) 160 (**refd**)

[Lori Malaysia v. Arab-Malaysian Finance Bhd](#) [1999] 2 CLJ 997 (**refd**)

[Majlis Perbandaran Pulau Pinang v. Syarikat Bekerjasama Serbaguna Sungai Gelugor Dengan Tanggungan Bhd \[1999\] 3 CLJ 65 \(refd\)](#)

Malloch v. Aberdeen Corporation [1971] 2 All ER 1278 (refd)

McInnes v. Onslow-Fane & Anor [1978] 1 WLR 1520 (refd)

NO'Reilly v. Mackman [1963] 2 AC 237 (refd)

R v. Ministry for Agriculture, Fisheries and Foods, ex p Hamble (Offshore) Fisheries Ltd [1995] 2 All ER 714 (refd)

R v. North and East Devon HA, ex p Coughlan [2000] 2 WLR 622 (refd)

R v. Secretary of State for the Home Department, ex p Hargreaves [1997] 1 WLR 906 (refd)

R v. Secretary of State for Transport, ex p Richmond upon Thames London BC [1994] 1 WLR 74 (refd)

[R Rama Chandran v. The Industrial Court of Malaysia \[1997\] 1 CLJ 147 \(refd\)](#)

Schmidt v. Secretary of State for Home Affairs [1969] 2 Ch 149 (refd)

[Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan \[1996\] 2 CLJ 771 \(refd\)](#)

[Tay Bok Choon v. Tahansan Sdn Bhd \[1987\] 1 CLJ 441; \[1987\] CLJ \(Rep\) 24 \(refd\)](#)

Webster v. Auckland Harbour Board [1983] 142 CR 646 (refd)

Legislation referred to:

Constitution of the University of Malaya (PU(A) 107/1997), ss. 2, 6(1), 15(1), 23, 48(1)(d), (2), (4)

[Courts of Judicature Act 1964, s. 25\(2\)](#)

[Federal Constitution, arts. 132\(1\)\(h\), 135\(2\), 141A](#)

[Rules of the High Court 1980, O. 53 rr. 1\(3\), 2\(3\)](#)

[Universities and University Colleges Act 1971, ss. 2, 7, 25\(1\), \(2\)](#)

Other source(s) referred to:

Michael Supperstone QC & James Goudie QC, *Judicial Review*, 2nd edn, 5.31, 5.32, 8.25, 8.30

PP Craig, *Substantive Legitimate Expectations in Domestic and Community Law*, 1996
Cambridge Law Journal 289

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