SULAIMAN MAT TEKOR & ORS v. NATIONAL POPULATION AND FAMILY DEVELOPMENT BOARD

HIGH COURT MALAYA, KUALA LUMPUR
HISHAMUDIN MOHD YUNUS J
[CIVIL SUIT NO: S3-21-20-2000]
31 OCTOBER 2008

ADMINISTRATIVE LAW*: Statutory bodies - Employment grade - Salary scale - Plaintiffs/employee's dissatisfied with salary scale - Complaint made after 32 years - Option papers willingly signed at material time - Whether plaintiffs had reasonable cause of action - Whether plaintiffs discharged legal burden that they were wrongfully placed in salary scale - Harun Salary Scheme - Cabinet Committee Report Salary Scheme*

The plaintiffs were first employed by the defendant statutory body as Field Assistants. Their employment was governed by contracts of service with the defendant. Later they were promoted as Assistant Information/Publication Officers. The plaintiffs were then under a domestic salary scheme ('Domestic Salary Scheme') with the defendant. Subsequently in 1975, the defendant adopted the Harun Salary Scheme wherein the salary scale was determined by the employees' academic qualifications. As the plaintiffs did not possess any degree qualifications, they were offered the salary scale grade of B13-4. They accepted the option offered and the post of information/publication officers. Then in 1977, the Cabinet Committee Report Salary Scheme ('CCR Salary Scheme') was implemented as the government decided to have a single service and salary scheme for government and statutory authorities. The defendant issued option papers to its employees and the plaintiffs accepted the offer and signed the said papers. They were placed in the B11 salary scale of the CCR Salary Scheme. Subsequently, the government issued two other service circulars ('two service circulars') which the defendant did not adopt and implement. The two service circulars placed information officers in the Ministry of Information in the A22 salary scale of the CCR Salary Scheme that was a higher salary scale than the one the plaintiffs were in. The officers in the A22 salary scale did not possess degree qualifications but held the post of information officers for at least five years. The plaintiffs contended that the defendant should have implemented the two service circulars for the benefit of its employees, in particular, the plaintiffs so that they too could be placed in the A22 salary scale. The plaintiffs claimed that their scope of work was similar to that of the information officers in the Ministry of Information and that they had satisfied the requisite number of years of service as stipulated in the two service circulars. Hence, the plaintiffs' action against the defendant. The parties agreed that there was only one main issue to be tried, namely, whether the defendant was right in law in placing the plaintiffs in the CCR Salary Scheme of B11 instead of A22.

Held (dismissing the action):

(1) The plaintiffs failed to disclose any reasonable cause of action. The plaintiffs' witness himself admitted that as the plaintiffs were in the B13-4 salary scale under the Harun Salary Scheme, they were only entitled to the B11 salary scale under the CCR Salary Scheme. (para 24)

(2) The plaintiffs did not object when they were placed in the B13-4 salary scale upon conversion to the Harun Salary Scheme from the Domestic Salary Scheme. On the contrary, they

willingly signed the option papers offered to them by the defendant in 1975. It was only now at this trial, 32 years later, that the plaintiffs complained of being placed in the B13-4 salary scale under the Harun Salary Scheme. Likewise they did not object when they were placed in the B11 salary scale upon conversion to the CCR Salary Scheme thereafter. They willingly signed the option papers then too. Furthermore, the plaintiffs' witness agreed that the two service circulars were not applicable to the plaintiffs but only applicable to certain categories of employees in the government sector. The defendant's witness too said in evidence that the two service circulars were not meant to be applicable to statutory bodies but were meant to be applicable to government employees under a Suffian Salary Scheme. (paras 25, 26, 27 & 28)

(3) There was nothing in law that compelled the defendant to adopt the two service circulars. The evidence showed that the government did not intend to apply the two service circulars to the defendant but to those under the Suffian Salary Scheme. In view of the contractual nature of the plaintiffs' employment with the defendant and the fact that the defendant was a separate legal entity *vis-a-vis*the Federal Government, the question whether the defendant was right in not applying the two service circulars to the plaintiffs was strictly a moral rather than a legal issue. (para 29)

(4) The issue that the plaintiffs should have been placed in the higher A11-9 salary scale upon converting to the Harun Salary Scheme should not be raised since the plaintiffs did not plead it in the statement of claim. Secondly, that issue did not come within the agreed main issue to be tried. Thirdly, the issue was brought up for the first time in trial after 32 years. In any event, the plaintiffs did concede that they were correctly placed in the B13-4 salary scale under the Harun Salary Scheme. Also, witnesses from both parties agreed that the plaintiffs were correctly placed in the B13-4 salary scale since they did not have any degree qualifications. (paras 30, 31 & 32)

(5) The plaintiffs' argument that they did not sign the option papers with full awareness of the implications when accepting the Harun Salary Scheme must be rejected. That allegation was not pleaded. Further, it was not an agreed main issue to be tried. In addition, the plaintiffs, in re-examination, did confirm that the conversion formula was correct and found no problems with their conversion to the said scheme. (para 33)

(6) The *jumud* issue ought not to be raised since it was not pleaded. In any event, there was evidence to show that the holder of a *jumud* post would not be deprived of any promotion or be placed in a less favourable position in terms of career advancement simply for the reason that he held a *jumud* post. (para 35 & 36)

(7) The legal burden was on the plaintiffs to prove on a balance of probabilities that they were wrongfully or unlawfully placed in the B13-4 salary scale under the Harun Salary Scheme. The plaintiffs failed to discharge the burden. They did not plead in their statement of claim that their conversion to the B13-4 salary scale was erroneous or unlawful. On the contrary, the evidence showed that they were correctly placed thereunder. Even if the plaintiffs were unlawfully or erroneously placed, it was too late now for the plaintiffs to complain. The plaintiffs signed the option papers in 1975. They did not protest against that placement for 32 years. As such, they had acquiesced to the act of the defendant in placing them in the B13-4 salary scale. (paras 40 & 41)

[Dismissed the action.]

Case(s) referred to:

Country Heights Holdings Bhd v. Rating Agency Malaysia Bhd [2008] 8 CLJ 301 HC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 132, 135, 136, 146

Population and Family Development Act 1966, ss. 3, 5(1)(g)

Counsel:

For the plaintiffs - S Kanawagi (Riza Makhzan & Dinesh Kanawagi with him); M/s Khana & Co

For the defendant - Karlos Israphil (Seira Sacha with him); M/s Zaid Ibrahim & Co

Reported by Usha Thiagarajah