DR THOMAS SAMUEL

v.

PERTUBUHAN KESELAMATAN SOSIAL (PERKESO) & ANOR

Court of Appeal, Putrajaya
Supang Lian, Gunalan Muniandy, Azizul Azmi Adnan JJCA
[Civil Appeal No: W-01(A)-681-11-2021]
6 November 2023

Administrative Law: *Judicial review — Certiorari and mandamus — Decision of 1st Respondent to transfer Appellant — Whether Appellant ought to have come to Court by way of writ or originating summons — Whether transfer decision an illegality and/or wrongful as it infringed Appellant's contract of employment — Whether 2nd Respondent had abdicated its decision-making responsibility on validity of transfer — Whether Appellant's appeal had merits*

This was the Appellant's appeal against the decision of the High Court Judge ("HCJ") dismissing his application for judicial review. The Appellant, a "Pegawai Perubatan Gred 27" in PERKESO (or SOCSO), sought, among others, the following reliefs: (a) an order of *certiorari* to quash the decision of the 1st Respondent ("R1") transferring the Appellant to PERKESO Tun Abdul Razak Rehabilitation Centre in Melaka; (b) an order of *certiorari* to quash the decision of the 2nd Respondent ("R2") refusing to transfer the Appellant from PERKESO Tun Abdul Razak Rehabilitation Centre in Melaka back to his original place of employment at PERKESO Head Office in Kuala Lumpur; and (c) an order of *mandamus* to compel R1 to transfer the Appellant back to R1's Head Office in Kuala Lumpur.

The HCJ, however, accepted the Respondents' preliminary objection ("PO") that the Appellant ought to have come to Court by way of writ or originating summons, rather than judicial review, as R2 was not a public body and the dispute was strictly a private employment law dispute. The HCJ also found that even if the application was considered on its merits, it was bound to fail as the Appellant's transfer by R1 was done in compliance with the terms and conditions of the Appellant's letter of offer of employment. In this appeal, the thrust of the Appellant's case was that the transfer decision was an illegality and/or wrongful as it infringed cl 4(iii) of his contract of employment with SOCSO. It was contended that the HCJ had misconstrued the provisions of cl 4(iii) in holding that the Melaka Centre to which the Appellant had been transferred was an office of R1 within the meaning to be ascribed to the word "office". Further, the Appellant averred that there was non-direction on the HCJ's part when he failed to consider that R2 had abdicated its decision-making responsibility by shifting it to the management of R1 to decide on the

validity of the transfer. Importantly, the HCJ had failed to bear in mind that R2's action was contrary to s 59N(2) of the Employees Social Security Act 1969 ("Act 4") since the decision appealed against was made by R1 itself. R2 had a statutory obligation and duty to decide the appeal on its merits and not summarily defer to the decision of R1 without further deliberation.

Held (allowing the appeal with costs):

(1) The HCJ had misdirected himself on the law in regard to the PO when he failed to direct his mind to the relevant question that should be asked in a judicial review application pursuant to O 53 r 2(4) of the Rules of Court 2012. Had he done so, he would have rightly held that the Respondents were public bodies exercising statutory functions in the exercise of which R1 had made a decision or taken an action with which the Appellant, who was also performing public duties under the SOCSO Act, was aggrieved. Hence, the HCJ had erred in principle and on the facts in sustaining the Respondents' PO. (para 29)

(2) The HCJ had not properly considered that while SOCSO was a public body, being an authority established and governed by law, the Melaka Centre was an entity that was legally separate from SOCSO. Under the circumstances, based on a proper construction of cl 4(iii) of the Appellant's letter of employment, his transfer was not in accordance with the explicit terms of the said clause that SOCSO was only authorised to transfer its employees, including the Applicant, to any of its offices. The Melaka Centre could not by any stretch of language be legally construed as an office of SOCSO, within the meaning of Act 4. Therefore, for R1 to transfer the Appellant, a public servant who had chosen employment with a statutory body, to continue his service with an institution owned by a private limited company, was *ultra vires* Act 4 and contrary to the terms of cl 4(iii) of the employment contract. The HCJ had thus erred in failing to properly construe and interpret the clear terms of the above contract to the detriment of the Appellant and arriving at a wrong conclusion that the transfer decision did not suffer from illegality. (paras 44, 50 & 51)

(3) A perusal of the legislative scheme provided for the establishment of the Board would, on the facts, make it abundantly clear that R2 was indeed a public authority. Hence, the Respondents' proposition that R2's decision or action was not amenable to judicial review for not being a public authority or body was obviously baseless and flawed. This was a typical instance of R2 having failed to apply its mind to the appeal lodged by the Appellant and instead sought to delegate the decision-making duty to R1, even though it was plainly a non-delegable duty under Act 4 (s 59J of Act 4). (paras 57-59)

(4) There were, hence, substantial merits in law and fact in the Appellant's appeal against the HCJ's decision in respect of both Respondents that warranted appellate intervention. Principally, the impugned decision was tainted with illegality and contrary to the contract of employment. (para 60)

Case(s) referred to:

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 1 MLRA 524 (refd)

Domnic Selvam S Gnanapragasam v. Kerajaan Malaysia & Ors [2007] 1 MLRH 1 (folld)

Commissioner Of The Independent Commission of Investigations v. Police Federation And Others [2020] UKPC 11 (refd)

Lembaga Jurutera Malaysia v. Leong Pui Kun [2008] 2 MLRA 422 (refd)

R v. Richmond LBC, Ex parte Watson [2001] QB 370 (CA) (refd)

Legislation referred to:

Employees Social Security Act 1969, ss 59A, 59B(1), (2), (3), 59H, 59J, 59M, 59N(2), 72(a), 95A

Rules Of Court 2012, O 53 r 2(4)

Counsel:

For the appellant: Shanmuga Kanesalingam (Khaizan Sharizad Ab Razak with him); M/s Seira & Sharizad

For the respondent: Ratha Govindasamy (Diba Natalia Ishak with her); M/s Skrine

JUDGMENT

Gunalan Muniandy JCA:

Introduction

[1] The Appellant's appeal is against the decision of the learned Judge of the High Court ['LJ'] dated 12 November 2021 dismissing the Appellant's Judicial Review Application.

Background Facts

[2] By a letter of offer of employment dated 20 January 2012, the 1st Respondent offered the Appellant a position as "Pegawai Perubatan Gred 27" in the organization ['PERKESO'].

[3] By a letter of acceptance dated 30 January 2012, the Appellant accepted the said offer. Effective 2 February 2012, the Appellant held the position of a "Pegawai Perubatan Gred 27".

[4] By letter dated 30 September 2014, the 1st Respondent wrote to the Appellant to confirm his position as a "Pegawai Perubatan Gred 27". The Appellant's confirmation was backdated to be effective from 2 February 2013.

[5] By letter dated 11 January 2017, the Appellant wrote to the 1st Respondent to apply for study leave (without pay) from 20 February 2017 until July 2019 to pursue a Master of Social Sciences degree at Waikato University Hamilton, New Zealand.

[6] By a memorandum ['memo'] dated 13 February 2017, the 1st Respondent informed the Appellant that his application for study leave (without pay) from 20 February 2017 until 31 July 2019 was not approved.

[7] By letter dated 14 March 2017, the Appellant wrote to appeal to the 1st Respondent against the non-approval of his application for study leave (without pay). The Appellant informed the 1st Respondent that he had obtained a deferment of the said course which would then begin from 3 July 2017 to 31 December 2019.

[8] By a memo dated 22 March 2017, the 1st Respondent informed the Appellant that it was unable to consider the Appellant's appeal.

[9] By a further letter dated 14 September 2017, the Appellant wrote to the 1st Respondent to reconsider his appeal against the non-approval of his application for study leave (without pay). The Appellant informed the 1st Respondent that he had obtained a further deferment of the said course to begin from 19 February 2018 until 31 August 2020.

[10] By a memo dated 23 October 2017, the 1st Respondent wrote to the Appellant to inform him that his application for study leave (without pay) to pursue a Master of Social Sciences degree at the Waikato University, Hamilton, New Zealand from 19 February 2018 until 31 August 2020 was not approved on the basis of "kepentingan perkhidmatan".

[11] By a letter dated 9 January 2018, the Appellant then wrote to the then Minister of Human Resources to appeal against the 1st Respondent's decision to not approve his application for study leave (without pay). The Appellant did not receive any reply from the then Minister of Human Resources.

[12] On 19 January 2018, the transfer of the Appellant to Pusat Rehabilitasi PERKESO Tun Abdul Razak in Melaka by R1 effective 22 January 2018 was not interfered with by R2.

[13] The Appellant filed an application for judicial review proceedings (encl 12) under O 53 of the Rules of Court 2012 (ROC) to seek the following reliefs:

(a) an Order of *Certiorari* to move into the High Court and quash the decision of the 1st Respondent as set out in their memorandum dated 19 January 2018 transferring the Applicant to PERKESO Tun Abdul Razak Rehabilitation Centre in Melaka;

(b) an Order of *Certiorari* to move into the High Court and quash the decision of the 2nd Respondent as set out in their letter and their email both dated 13 December 2019 refusing to transfer the Applicant from PERKESO Tun Abdul Razak Rehabilitation Centre in Melaka back to his original place of employment at PERKESO Head Office in Kuala Lumpur;

(c) an Order of *Mandamus* to compel the 1st Respondent to transfer the Applicant back to the 1st Respondent's Head Office in Kuala Lumpur;

(d) that the costs of the application for leave and the substantive application for judicial review be paid to the Applicant; and

(e) such further orders and/or directions as may be given or made as this Honourable Court deems fit and proper in the circumstances.

[14] The LJ dismissed the Appellant's application for judicial review (Encl 12). The LJ was of the considered view that the Appellant's Judicial Review Application ['JR'] is unsustainable as this case is purely a contractual and employment matter and is not suitable for judicial review. Even if the Appellant's JR is considered on its merits, the same is bound to fail as the Appellant's transfer by R1 was done in compliance with the terms and conditions of the letter of offer of employment. Therefore, the decision of the 1st and 2nd Respondents is not tainted with any errors of law, irrationality and/or unreasonableness that warrants the intervention of the High Court.

Appellant's Submission

[15] The Appellant submits as follows:

> That the 2nd Respondent is clearly a public body. It is an integral part of the 1st Respondent, the Social Security Organization (SOCSO). The 1st Respondent being a statutory body performs functions previously carried out directly by the Government. SOCSO was established as a statutory body corporate by virtue of s 59A of the Employees Social Security Act 1969 ("Act 4"). Section 59 provides that the Chief Executive Officer of the 1st Respondent is still officially called the "Director General", a term usually reserved for Government departments. Further, by s 95A, the Director General of the 1st Respondent has the power to compound criminal offences. Thus, the 2nd Respondent is quite clearly a public body.

[16] The Appellant in performing his duties performs a public function. His employment with the Respondents is a matter of the performance of duties of a statutory nature. The functions performed by the 2nd Respondent are, therefore, similar to the Public Services Commission, and fall under the ambit of a decision, action or omission of a public body exercising a public function.

[17] The Appellant is employed by a statutory body, which prior to its incorporation by statute was part of the Ministry of Human Resources. The services performed by the Appellant are the services of a public officer exercising public functions, even after the incorporation of the 1st Respondent as a separate statutory body. The High Court fell into error in finding that the Appellant was wrong in commencing this action by way of judicial review.

[18] The Appellant contends that the Transfer Decision ['TD'] was made *ultra vires* the Respondents' powers and as such, is void for illegality. The High Court premised its determination of the legality of the TD solely on the basis of contractual interpretation of cl 4(iii) of the Appellant's letter of appointment. The LJ did not consider at all or adequately the fact that an employee of the 1st Respondent, being in the nature of a public body governed by statute, cannot be made to work for a private corporation, whose objects are not concerned with the public interest. Nor did the LJ consider the authorities cited by the Appellant with regard to the conditions underlying the legality of a transfer.

Respondents' Submission

[19] The Respondents submitted that the LJ did not err in law and/or fact in dismissing the Appellant's Judicial Review Application. This matter involves the transfer of the Appellant pursuant to a letter of offer of employment between the Appellant and the 1st Respondent. It is a purely contractual and employment matter in the realm of private law, and an application for judicial review is not the appropriate course of action to be taken by the Appellant.

[20] In any event, even if the Appellant's Judicial Review Application is considered on its merits, the Appellant will nevertheless fail to successfully establish the grounds for judicial review as his transfer was properly carried out by the 1st Respondent in accordance with the terms of the letter of offer of employment.

[21] In view thereof, there is nothing improper, illegal and/or *ultra vires* about the 1st Respondent's decision to transfer the Appellant and the 2nd Respondent's decision not to interfere with the 1st Respondent's decision, and the processes which had led to the said outcome. There is also no evidence of breach of natural justice.

Our Decision

[22] We will start with the decision of the LJ on the Preliminary Objection ['PO'] raised by the Respondents ['R1' and 'R2'] as to the correct mode of proceedings. The LJ accepted the Respondents' objection on this point that the Applicant ought to have come to Court by way of writ or originating summons, rather than judicial review, as the 2nd Respondent was not a public body and the dispute was strictly a private employment law dispute' rather than a public law dispute. Thus, he upheld the PO. In support of his ruling, the LJ purported to rely on the decision of the Federal Court in *Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 1 MLRA 524.

[23] It was the Appellant's contention that this ruling was an error of law and plainly wrong on the basis that R2 was clearly a public body or authority, being an integral part of the structure of the 1st Respondent, which is commonly known as SOCSO.

[24] It was common ground that SOCSO is a statutory body corporate established under s 59A of the Employees Social Security Act 1969 ['Act 4']. By virtue of s 59H of the same Act, all members of R2 and officers or servants of R1, including the Applicant, are deemed public servants within the meaning of the Penal Code when discharging their duties. Section 59H of the same Act provides that the Public Authorities Protection Act 1948, is an Act relating to the protection of a person acting in the execution of statutory and other public duties applies to R2.

[25] In law, R2 is entrusted with the responsibility of dispute resolution between the management and employees of SOCSO by way of arbitration.

[26] Hence, it was amply clear to us that R1 and R2 are public bodies performing public functions under statute. As such, the question for our determination was whether the Applicant is adversely affected by the "decision, action or omission" in relation to the "exercise of the public duty or function". This is precisely the test that the LJ ought to have invoked in deciding on the determinative question as to the correctness in law of the Judicial Review ['JR'] mode of proceeding pursuant to O 53 r 2(4) of the ROC 2012.

[27] On this threshold point, we are inclined to agree with the Appellant that the law only requires that the "decision, action or omission" of the body sought to be reviewed is in the exercise of a public function. If a decision is based on a statutory power, it must necessarily be amenable to judicial review. We are convinced that our view is consistent with the landmark FC judgment of *Ahmad Jefri Mohd Jahri (supra)* where it was remarked that:

> "So first we have to determine the parameter of matters amenable for judicial review. It is widely accepted that not every decision made by an authoritative body is suitable for judicial review. To qualify there must be sufficient public law element in the decision made. For this, it is necessary to examine both the source of the power and the nature of the decision made; whether the decision was made under a statutory power (see para 61 *Halsbury's Laws of England* (4th Ed, 2001 Reissue) Vol 1(1)."

[28] Unlike in *Ahmad Jefri (supra)*, the Appellant in our case commenced an action against the Respondents by JR whereas, in the former, the appellant, a Government officer, filed a writ of summons seeking, *inter alia*, a declaration that his dismissal from Government service was null and void. The Respondents successfully struck out the Appellant's action in the High Court. Both the Court of Appeal ['COA'] and the Federal Court upheld the High Court decision on the basis that the Appellant's claim was predominantly a public law claim that can only be pursued by recourse to JR.

[29] In our considered view, the LJ had misdirected himself on the law in regard to the PO when he failed to direct his mind to the relevant question that should be asked in a JR Application pursuant to O 53 r 2(4) of the ROC 2012. Had he done so, he would have rightly held that the Respondents were public bodies exercising statutory functions in the exercise of which R1 had made a

decision or taken an action with which the Applicant, who was also performing public duties under the SOCSO Act was aggrieved. Hence, we would conclude on the PO that the LJ had erred in principle and on the facts in sustaining the Respondents' PO and we, accordingly, set aside this decision.

Merits Of The Appeal

Our Decision

[30] At the core of the Appellant's appeal is that the Transfer Decision ['TD'] was made *ultra vires* the Respondents' powers and in breach of the contract of employment alluded to and as such, is void for illegality.

[31] It is crucial firstly to scrutinise the LJ's reasons for holding that the TD was not illegal which are the following:

1) The transfer "was carried out in proper accordance with the terms of the letter of offer of employment dated 20 January 2012", cl 4(iii) which provides that the 1st Respondent has the right to place the Appellant in "any of its offices" ("di mana-mana pejabatnya"); and

2) As the Melaka Centre is owned by Pusat Rehabilitasi PERKESO Sdn Bhd, which is wholly owned by the 1st Respondent, the Melaka Centre "is one of the 1st Respondent's offices".

[32] What figured prominently in the LJ's decision was the Appellant's Letter of Appointment ['LOA'], specifically cl 4(iii).

[33] In essence, the Appellant's dissatisfaction arose from the LJ's purported failure to judicially and sufficiently appreciate the fact that an employee of R1, being of its nature a public body governed by statute, cannot be directed work for a private corporation outside the structure of SOCSO as a statutory body.

[34] Importantly, it was contended that the LJ had erred in his contractual interpretation of cl 4(iii) of the LOA for these reasons:

1) First, that R1 as a public body has no power to transfer the Appellant, an employee of a statutory body performing public functions, to a private entity;

2) Second, that a proper interpretation of cl 4(iii) of the employment contract cannot include the Melaka Centre as an "office" of the 1st Respondent; and

3) Third, that in any event, the circumstances surrounding the TD renders it illegal or irrational.

[35] We have given due regard to the following points of significance impressed upon us by the Appellant. It is trite law that R1, as a public body and statutory

corporation, has only powers conferred directly or indirectly upon it by statute: *Commissioner of the Independent Commission of Investigations v. Police Federation And Others* [2020] UKPC 11 at 15. As succinctly stated by Buxton LJ in *R v. Richmond LBC, Ex Parte Watson* [2001] QB 370 (CA), at 385C, "A public body can only do that which it is authorised to do by positive law".

[36] Applying this settled principle to the instant scenario, nowhere in the governing law is there any provision which empowers R1 to use its funds, which are by nature public funds, to employ an individual to work for the benefit of a private corporation, even if that corporation is owned by R1.

[37] A fact that the Court should take judicial notice of is that a private entity or corporation is essentially profit-driven whereas a public body would have the public interest as its primary object.

[38] In support of the LJ's decision, the focus and emphasis of the Respondents' submission was that a management had the right to transfer its employees at its convenience and that a transfer decision is the prerogative of the management as long recognised in our jurisdiction. Several authorities were cited in support of this proposition.

[39] Briefly, the Respondents' position is that the Appellant's JR Application was unsustainable and a non-starter due to the following failures by the Appellant:

(a) Failed to adduce any cogent and convincing grounds as to why the 1st and/or 2nd Respondents' decision-making process was flawed;

(b) Failed to establish that the 1st and/or 2nd Respondents made an error in law and/or fact and/or had arrived at a decision that relied upon an erroneous factual conclusion and/or arrived at a decision with no evidence to support their conclusion;

(c) Failed to demonstrate that the decision of 1st and/or 2nd Respondents was perverse in the sense that no reasonable body similarly circumstanced would have made the same decision; and

(d) Failed to show that the 1st and/or 2nd Respondents had not considered all the relevant documentary evidence and had taken into account any irrelevant or extraneous factors.

[40] The hub and thrust of the Appellant's case for JR was that the TD was an illegality and/or wrongful because it infringed cl 4(iii) of the Appellant's Letter of Appointment ['LOA'] which was the contract of employment between him and SOCSO. It was urged upon us that the LJ had misconstrued the provisions of cl 4(iii) in holding that the Melaka Centre to which the Appellant had been transferred was an office of R1 within the meaning to be ascribed to the word "office".

[41] We are prepared to join issue with the LJ to the extent that the decision to transfer the Applicant to Pusat Rehabilitasi PERKESO was a management decision by R1 in relation to the Applicant's employment by adopting the principle in *Domnic Selvam S Gnanapragasam v. Kerajaan Malaysia & Ors* [2007] 1 MLRH 1 where it was observed that:

> "There is a book written by CP Mills entitled *Industrial Disputes Law in Malaysia*. At p 75 of the book, the learned author wrote this:
>
> > It is well settled that, normally, the right to transfer an employee from one place to another is the prerogative of the management and an employer is entitled to require his employee to work anywhere.
> >
> > The decision-making process of the defendants is beyond reproach. Being transferred from Bukit Aman, Kuala Lumpur to Taiping, Perak and from Taiping, Perak to Kota Kinabalu, Sabah is part and parcel of the management prerogative of the defendants. At p 244 of Alfred Avins' *Employees' Misconduct* (2nd Ed), the following recitals appear:
> >
> > > The liability to be transferred from one place to another by the employer is an implied condition of service of every employee... it can only be taken away or curtailed or regulated in express terms.... Therefore, unless the terms of employment provide otherwise, the company has the right to transfer and it is really for the employee to show that there was a contracting out of this position.
> > >
> > > It is the management prerogative of the defendants to transfer the plaintiff anywhere within Malaysia and to any part of Malaysia. The plaintiff has no cause to complain."

[42] However, on the issue of illegality of the transfer we are constrained to reject the LJ's conclusion on the issue at hand as follows:

> "The Applicant claims that Melaka Centre is a separate legal entity from PERKESO, thus the transfer was illegal. However, I find that the Pusat Rehabilitasi is owned by Pusat Rehabilitasi PERKESO Sdn Bhd which is wholly owned by R1. The Organisation Chart of R1 shows this. Therefore, the Pusat Rehabilitasi is one of the 1st Respondent's offices. Hence, I am of the considered view that the transfer itself was lawful and within the ambit of R1's powers as the Applicant's employer."

Here the question is not in relation to a challenge on management prerogative but on the legality and correctness of the decision by R1 and R2 under the terms of employment and the governing statute.

[43] Having held as above, the LJ, in our view, was misconceived in concluding that there was nothing improper, illegal and/or *ultra vires* about R1's decision to transfer the Applicant, R2's decision not to interfere with the same, and the process which had led to the said outcome.

[44] We say so because, to our minds, the LJ had not properly considered the Applicant's assertion that while SOCSO which employed him was a public body, being an authority established and governed by law, the Melaka Centre was an entity that was legally separate from SOCSO and not established under the SOCSO Act but the Companies Act. We are inclined to agree with the Appellant's contention that, under the circumstances, based on a proper construction of cl 4(iii) of the Letter of Employment, the transfer was not in accordance with the explicit terms of the said clause that SOCSO is only authorised to transfer its employees, including the Applicant to any of its offices. The Melaka Centre cannot by any stretch of language be legally construed as an office of SOCSO, within the meaning of Act 4.

[45] As highlighted to us by the Appellant, the central question before us was not the conduct of the Appellant preceding the TD by R1 but whether the latter had acted lawfully and properly in accordance with the terms of the contract of employment, in particular the provisions of cl 4(iii) which governed the transfer of R1's employees to any of its offices. The further question raised as to whether the Respondents had acted in bad faith and/or *ultra vires* did not figure prominently in our deliberation on the core issue of illegality of the transfer from a public body to a private corporation.

[46] It bears reiteration and emphasis that R1, as a public body and statutory corporation, has only powers conferred directly or indirectly upon it by statute and must function within the confines of those prescribed powers.

[47] We accept the Appellant's proposition as correct that ownership of the private corporation to which he was transferred is immaterial. What is more crucial to note is that the Act does not contain any provision which empowers R1 to use its funds, which are by nature public funds, to employ an individual to work for the benefit of a private corporation, even if that corporation is owned by R1.

[48] Also, that a private corporation is essentially profit-driven, as opposed to a public body, whose highest object must be the public interest even at its own expense.

[49] It was undisputed that the Melaka Centre, owned by Pusat Rehabilitasi Sdn Bhd, which is in turn owned by R1, may carry out services which benefit the public and complement R1's functions, as a company limited by shares and incorporated under the provisions of companies' legislation. However, importantly it remains an essentially commercial enterprise where its primary motive is to maximize profits and returns to its shareholders.

[50] We would, therefore, uphold the Appellant's contention that for R1 to transfer him, a public servant who had chosen employment with a statutory body, to continue his service with an institution owned by a private limited company was *ultra vires* Act 4 and contrary to the terms of cl 4(iii) of the employment contract. From a literal reading of cl 4(iii), it would be crystal

clear that R1 is not empowered by Parliament to transfer the Appellant in the manner it did, no provision of contract between the 1st Respondent and the Appellant can remedy the illegality of the TD.

[51] We are constrained to hold that the LJ had erred in failing to properly construe and interpret the clear terms of the above contract to the detriment of the Appellant and arriving at a wrong conclusion that the TD did not suffer from illegality.

[52] From a plain reading of several provisions of Act 4 which use the term "office" and which strictly govern and empower the functioning of R1 in accordance with law, it can be safely and reasonably construed that:

(a) The term 'office' is confined to offices within the organisational structure of SOCSO as the statutory body established under Act 4;

(b) Such an office must be purely for the sole purpose of the 'efficient functioning' of R1 only and not for the purpose of maintaining any other entity. As expressly provided in s 59M of Act 4, R1 may "set up within the Organisation such divisions and regional and local offices as it may consider necessary for the efficient functioning of the Organisation." In the instant context, the Melaka Centre is obviously not an entity "within" the structure of R1. It is owned by a private company, which is managed by that company's own Board of Directors independent of SOCSO.

[53] Similarly in s 72(a) of Act 4, which governs the expenditure of R1, it is stated without qualification that R1 is authorised to incur expenditure in respect of offices and other services set up for the purposes of giving effect to the provisions of this Act.

[54] To conclude on this point, as the Melaka Centre is neither regulated nor bound by the Act it cannot, therefore, be regarded as an "office" of R1 so as to justify the expenditure of funds for the Appellant's employment for its benefit. We, would, therefore, hold that if cl 4(iii) of the employment is properly construed and given effect in accordance with the object and intention of Act 4, R1 was not authorised to transfer the Applicant to a private entity not set up under Act 4 as it was not vested with the power to issue the transfer which is contrary to the interests of R1 as a public body.

[55] As our considered view is firm and unequivocal that the impugned TD suffers from illegality and is contractually wrongful, we do not propose to deliberate on the alleged irrationality of the same or alleged improper motive of R1 under the surrounding circumstances.

[56] However, in regard to R2, we have to deliberate on the issue raised by the Appellant. In our view, there is substance and basis in the Appellant's contention that there was non-direction on the LJ's part when he failed to

consider that R2 had abdicated its decision-making responsibility by shifting it to the management of R1 through its letter dated 13 December 2019 to decide on the validity of the transfer. Importantly, the LJ had failed to bear in mind that R2's action was contrary to s 59N(2) of Act 4 since the decision appealed against was made by R1 itself. R2 had a statutory obligation and duty to decide the appeal on its merits and not summarily defer to the decision of R1 without further deliberation.

[57] A perusal of the legislative scheme provided for the establishment of the Board ['R2'] would make it abundantly clear that R2 is indeed a public authority. Hence, the Respondents' proposition that R2's decision or action is not amenable to JR for not being a public authority or body is obviously baseless and flawed.

[58] For convenience, we reproduce s 59B(1)-(3) of Act 4 which state that:

> Establishment of the Board
>
> 59B. (1) There shall be established a board to be known as the Social Security Organization Board.
>
> (2) The Board shall be composed as follows:
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> (a) a Chairman to be appointed by the Minister;
>
> (b) the Director General of the Organization;
>
> (c) an officer representing the Ministry of Finance;
>
> (ca) an officer representing the Ministry responsible for human resources;
>
> (cb) an officer representing the Ministry responsible for health;
>
> (d) not more than four persons representing employers to be appointed by the Minister in consultation with such Organizations representing employers as the Minister may think fit for that purpose;
>
> (e) not more than four persons representing insured persons to be appointed by the Minister in consultation with such Organizations representing insured persons as the Minister may think fit for that purpose;
>
> (f) three persons with experience in social security matters to be appointed by the Minister.
>
> (3) The appointment of members of the Board shall be notified in the Gazette.

[59] This was a typical instance of R2 having failed to apply its mind to the appeal lodged by the Appellant and instead, sought to delegate the decision-making duty to R1, even though it was plainly a non-delegable duty under Act 4 [Section 59J of Act 4].

[See *Lembaga Jurutera Malaysia v. Leong Pui Kun* [2008] 2 MLRA 422, FC]

Conclusion

[60] For the foregoing reasons, in our judgment, there are substantial merits in law and fact in the Appellant's appeal against the LJ's decision in respect of both Respondents that warrant Appellate intervention. Principally, as adverted to, the impugned decision, in our view, is tainted with illegality and contrary to the contract of employment.

[61] We would conclude that the LJ had with respect, erred in principle and on the instant facts in dismissing the JR Application based on these grounds:

(a) As regards the PO that the matter involves the transfer of the Appellant pursuant to a letter of offer of employment between the Appellant and R1. It is a purely contractual and employment matter in the realm of private law, and an application for judicial review is not the appropriate course of action to be taken by the Appellant.

(b) In any event, even if the Appellant's JR Application is considered on its merits, the Appellant will nevertheless fail to successfully establish the grounds for judicial review as his transfer was properly carried out by R1 in accordance with the terms of the letter of offer of employment.

[62] We, accordingly, allow this appeal with costs and set aside the decision of the High Court. In the result, the reliefs sought by the Appellant ought to be granted. We, therefore, grant an Order in Terms of prayers (a), (b) and (c) of the JR Application.

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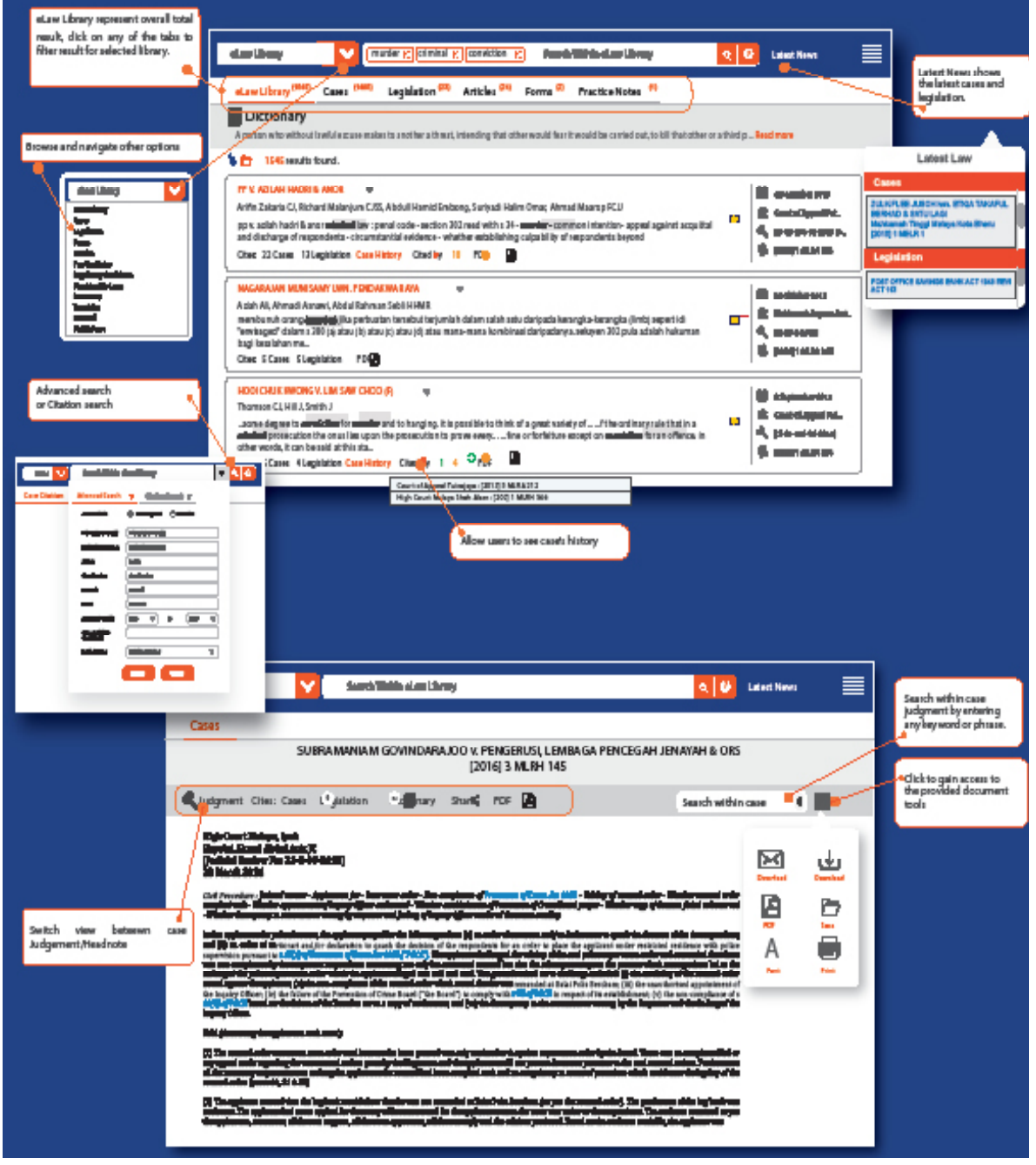

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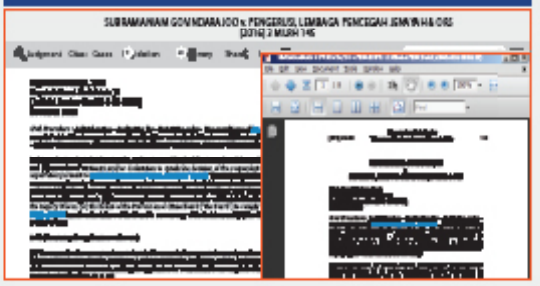

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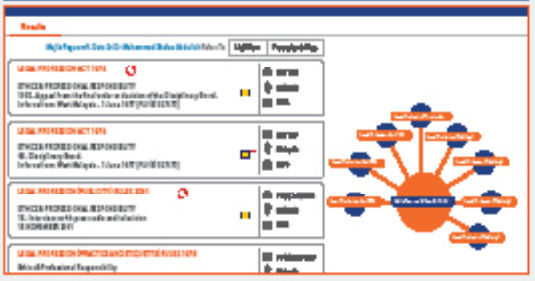

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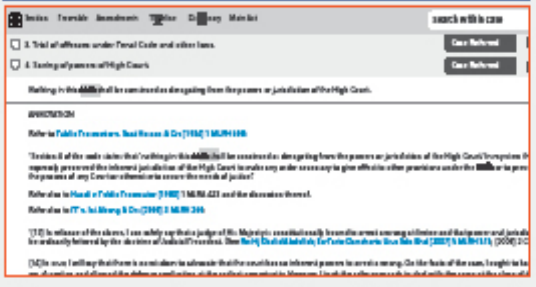

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