

Thursday 27th August 2020

Subject: Taiping High Court allows Judicial Review application of Teacher who was unlawfully dismissed by the Education Ministry.

The Taiping High Court today allowed the application for Judicial Review by Yahaya Bin Wahi against the Education Ministry and the Government of Malaysia. Yahaya Bin Wahi was represented by Messrs Gibb & Co Advocates and Solicitors. Counsels for Yahaya Mr Ernest Balasingam together with Mr. Vigneshvar Ramamurthy and En. Syazwan Fakhiruddin.

Ernest Balasingam informed the Court that

- The Applicant (Yahaya) commenced his employment as a teacher in 15-1-2002 Sekolah Menengah Sains Hulu Selangor as an Add Maths and Physics Teacher and he was then in 2007 transferred to Sekolah Menengah Kebangsaan Gerik. However in 2012 he was transferred to Sekolah Kebangsaan RPS Kemar in the interior of Gerik.
- Unknown to the Applicant he was required to endure a 3 hour boat ride to the School. This caused him extremely distress and psychological and emotional distress due to an accident during his younger days which resulted in his brother drowning and also a later incident which involved his own drowning.
- The Applicant then made numerous applications to the Ministry for a transfer citing trauma which was accompanied by medical reports stating his condition thereto however they were rejected by the Ministry
- However the Applicant found a logging trail to the school which would take him 6 hours by a scrambler bike. However this journey proved even more perilous as he encountered Tigers, Panthers and Elephants. Several motorcycle breakdowns and falls from the bike resulted in him being unable to report for work.
- As his appeals were unheeded by the Ministry, the Applicant then decided not to report for work since there was no foreseeable way for him to report for work in the interiors of Gerik
- On 1-3-2019, he received a show cause letter from the Ministry which he replied to citing the above facts. However on 9-8-2019, he received a letter, terminating him from service.

Ernest Balasingam submitted that the Government had ridden roughshod over the Applicant in failing to use the Education Service Disciplinary Board Regulations 1994 to grant the Applicant the right to be heard and in view of his medical condition there should have been an Inquiry convened to address this issue. Further, he was denied his right to Appeal the decision of Board to the Disciplinary Appeal Board.

Justice Yang Ariff Tuan Muniandy A/L Kannyappan in delivering his Judgement held that the manner in which the Applicant was dismissed went against the Rules of Natural Justice where the Applicant was denied his right to be heard and further denied his right to an Appeal was illegal and irrational which amounted to procedural impropriety.

He further ordered that the Applicant be reinstated without loss of income with all benefits, emoluments, bonuses from the date of his dismissal

The matter is now fixed for Assessment of Damages on 11th September 2020