

DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM  
DALAM NEGERI SELANGOR DARUL EHSAN  
SAMAN PEMULA NO. MT-21-248-2010

ANTARA

NOORFADILLA BINTI AHMAD SAIKIN

.....PLAINTIF

DAN

1. CHAYED BIN BASIRUN
2. ISMAIL BIN MUSA
3. DR. HAJI ZAHRI BIN AZIZ
4. KETUA PENGARAH PELAJARAN MALAYSIA, KEMENTERIAN PELAJARAN MALAYSIA
5. MENTERI PELAJARAN MALAYSIA, KEMENTERIAN PELAJARAN MALAYSIA
6. KERAJAAN MALAYSIA

.....DEFENDAN-DEFENDAN

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PLAINTIFF'S REPLY TO DEFENDANTS' FURTHER SUBMISSION  
*[Plaintiff's Reply To Defendants' Further Submission dated 22 June 2011]*

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*If it pleases Your Ladyship,*

1. This is the Plaintiff's Reply to Defendants' Further Submission dated 22 June 2011.
2. The Defendants are now clutching at straws to attach the nature of relief sought. The Plaintiff submits that it is irrelevant whether there is or was a contract, or whether the contract is or was a conditional one. The Plaintiff submits that the Executives' action to deny the Plaintiff a job and withdrawing the placement memo is *ultra vires* Article 8(2) of the Federal Constitution.
  - 2.1. The Supreme Court in *Teh Guan Teik v. Inspector-General of Police & Anor* [1998] 3 CLJ 153 held, at page 168 that [TAB 43 Annexed]:

*"I would like to make a general observation before I end this judgment of mine, ie, that claim for a declaration is a very efficient remedy for an*

*aggrieved citizen against ultra vires actions of all public authorities or governmental bodies. It has no coercive force by itself, inter alia, so that no such a governmental body need feel the threat of such force. Thus if a person's rights are affected by an order from such a public authority, he can sue for a declaration of the impropriety of the said order and if he succeeds he can ignore the said order with impunity; see: Dyson v. Attorney General [1911] 1 KB 410, or if a government servant categorised under art 132 of the Federal Constitution is dismissed from his post, he can claim a declaration that he stills hold it. See: Suringer Singh Kanda supra."*

3. The Defendants do not recognise pregnant women as able to be a *Guru Sandaran Tidak Terlatih* (GSTT). Hence, it is a form of discrimination based on gender.
4. Even if it is accepted that there was no binding contract, the question still remains if pregnant women may be employed. That is the question for the Court to decide, and the declaration is a proper remedy as provided for under the Specific Relief Act 1950 (Act 137). The procedural adjunct to the Act is to be found in Order 15 rule 16 of the Rules of the High Court 1980.
5. Section 41 of the Specific Relief Act 1950 [TAB 44 Annexed ] gives the Court the discretion to make declarations of status or rights. Section 41 provides that:

*Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief:*

*Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.*

6. In the words of the late Augustine Paul FCJ in *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney-General Malaysia (Intervener)* [2009] 4 CLJ 253 at paragraph 21 [TAB 45 Annexed]:

*“whatever restriction there may be on the use of O.15 r.16 it will not apply where a person seeks to assert, inter alia, his right to a legal status. This is statutorily recognised in the form of s.41.”*

7. In *YAB Dato' Dr Zambry Abd Kadir (supra)*, His Lordship held at paragraph 23 that:

*“Clearly the challenge of the applicants to their suspension from the Legislative Assembly is a matter that affects their legal status within the meaning of s.41. They are therefore entitled to seek a declaration of their legal right pursuant to O.15 r.16”.*

8. Further His Lordship held at paragraph 24 that:

*“Be that as it may, and in any event, in cases of this nature the most appropriate form of relief is by way of declaration.”*

9. Order 15 rule 16 of the Rules of the High Court 1980 [TAB 46 Annexed] provides:

*No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declaration of right whether or not consequential relief is or could be claimed.*

10. In *Teh Guan Teik (supra)*, the Federal Court held that:

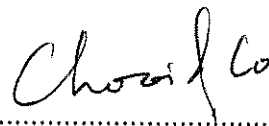
*“Order 15 r. 16 is statutory authority for a right to sue by declaration, and as if to exalt such right, it says it shall not be open to objection even no consequential relief is sought.”*

11. The Federal Court disagreed with the Court of Appeal's view and held that:

*“On this O.15 r.16, Abdoolcader J (as he then was) in **Sungai Wangi Estate v. Uni [1975] 1 MLJ 136**, stated that the rule “has the widest application. .... It does not prescribe any procedure nor is it limited to any specific matter. It applies to all proceedings for declaration ... when no special procedure is laid down, the claim for a declaratory judgment is brought by way of a writ.”*

12. The Federal Court also quoted Loe Hun Hoe CJ in *Datuk Syed Kechik v. Government of Malaysia and Sabah* [1979] 2 MLJ 101 , that: "The prevailing seems to be that the court's jurisdiction to make a declaratory order is unlimited subject only to its own discretion."
13. The Plaintiff submits that the declarations sought are appropriate and the consequential order would be for damages. The declarations is important not only for the Plaintiff but to clarify the circumstances to which all pregnant women in Malaysia may or may not be employed. Further, Article 8(2) of the Federal Constitution is being interpreted for the first time on a substantive basis post CEDAW ratification.
14. The Plaintiff further submits that the case of **Beatrice Fernandez** is irrelevant because the case concerned a private arrangement pertaining to collective agreement but in our instant case, this is a matter concerning public employment to which Article 8 (2) directly applies.

Dated this 29<sup>th</sup> day of June 2011



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Counsel for the Plaintiff  
Edmund Bon Tai Soon (Honey Tan  
Lay Ean and Syahredzan Johan with  
him)

*This Plaintiff's Reply to Defendants' Further Submission is filed by Messrs. Chooi & Company, solicitors for the Plaintiff abovenamed with an address for service at Level 23, Menara Dion, 27, Jalan Sultan Ismail, 50250 Kuala Lumpur.  
Tel: 03-2055 3888 Fax: 03-2055 3880  
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