IN THE HIGH COURT OF MALAYA AT IPOH
IN THE STATE OF PERAK DARUL RIDZUAN
[JUDICIAL REVIEW APPLICATION NO.: AA-25-3-02/2023]

BETWEEN

QUEST INTERNATIONAL UNIVERSITY PERAK
[Company No: DU021(A)] **... APPLICANT**

AND

1. INDUSTRIAL COURT OF MALAYSIA

2. MUNIANDY MUNUSAMY
[Identity Card No: 640825-02-5487] **... RESPONDENTS**

GROUNDS OF JUDGMENT

INTRODUCTION

[1] This judicial review application was filed by the Applicant, Quest International University Perak pursuant to Order 53 rule 2 of the Rules of Court 2012 for an order of certiorari to quash the decision of the Industrial Court in the Award No. 2352 of the year 2022 ("Award") involving the dismissal of Muniandy A/L Munusamy ("2nd Respondent").

BACKGROUND FACTS

[2] The Applicant is a private university in Ipoh. The 2nd Respondent is a Malaysian citizen who at the material time was employed by the Applicant as a lecturer in the Faculty of Business, Management and Social Sciences.

[3] The 2nd Respondent had on or about early 2015 applied for the position of lecturer at the Applicant University and had submitted his Job Application Form on 9.1.2015 ("Job Application Form").

[4] The 2nd Respondent had, in the Job Application Form to the Applicant University, submitted her qualification of Bachelor's Degree obtained from Phoenix International University, New Zealand on 27.12.2003 by undertaking relevant courses on part time basis from the year February 2002 to December 2003 at Perak Institute of Electronics, Ipoh, Perak.

[5] Vide an Offer of Employment dated 14.1.2015, the Applicant had offered the 2nd Respondent the position of lecturer attached to the Faculty of Business, Management & Social Sciences ("Employment Contract"), which the 2nd Respondent duly accepted.

[6] The 2nd Respondent commenced his employment with the Applicant University on 23.2.2015 with a base salary of RM5,000.00 subject to EPF contributions and other statutory deductions.

[7] Sometime in or about early May 2019, the Applicant discovered that the said PIU did not exist. The Applicant had, upon the said discovery, took steps to verify the existence of PIU with relevant authorities, namely the Malaysian Qualifying Agency ("MQA") and the New Zealand High Commission/Embassy.

[8] The Applicant had also conducted a SSM search on Perak Institute of Electronics in which the 2nd Respondent claimed that he was undergoing his Bachelor's Degree Program at between the period of February 2002 to December 2003, and discovered that the business registration of the said Institute had expired on 26.12.2002.

[9] The Applicant also discovered that a related institute, PIE Institute of Technology, had ceased operations on 15.4.2003.

[10] The Applicant claimed that due to the insufficient information and/or supporting documents provided by the 2nd Respondent, the Applicant had decided to issue a Show Cause Notice to the 2nd Respondent dated 21.6.2019 ("Show Cause Notice").

[11] On 3.7.2019, the Applicant served a Charge Sheet and a Notice of Domestic Inquiry on the 2nd Respondent. The Charge levelled against the 2nd Respondent was for the alleged act of providing false information and/or falsifying records in the Job Application Form.

[12] The Domestic Inquiry was held on 9.7.2019, following which the Domestic Inquiry panel found the 2nd Respondent guilty of the charge levelled against him. As a result, the Applicant, *vide* a Letter of Dismissal dated 17.7.2019 dismissed the 2nd Respondent.

[13] Following the 2nd Respondent's complaint of unfair dismissal to Section 20 of the Industrial Relations Act 1967, the dispute was referred to the learned Industrial Court Judge (ICJ).

[14] The learned Industrial Court Judge (ICJ) had concluded that the Applicant had failed to prove the misconduct alleged against the 2nd Respondent and therefore the 2nd Respondent was found not guilty of the charge levelled against him.

THE LAW

[15] The law on judicial review is now well-settled that the court may review a decision of a public authority in the exercise of public duty or function on the grounds of illegality, irrationality or procedural impropriety, not only on the decision-making process, but also on the merits as propounded in the leading Federal Court case of *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147; 1 MLJ 145 where Edgar Joseph Jr FCJ held at p. 172 of the report as follows:

"It is often said that judicial review is concerned not with the decision but the decision-making process. (See, e.g. Chief Constable of North Wales v. Evans [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the Courts in judicial review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in Council of Civil Sen/ice Unions v. Minister for the Civil Service [1985] AC 374, where the impugned decision is flawed on the ground of procedural impropriety.

But, Lord Diplock's other grounds for impugning a decision susceptible to judicial review makes it abundantly clear that such a decision is also open to challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the Courts to scrutinise such decisions not only for process, but also for substance.

In this context it is useful to note how Lord Diplock defined the three grounds of review, to wit, (i) illegality, (ii) irrationality and (Hi) procedural impropriety. This is how he put it:

> *By 'illegality' as a ground for judicial review I mean that the decision maker must understand directly the law that regulates his decision-making power and must give effect to it Whether he has or not is par excellence a justiciable question to be decided in the event of a dispute, by those persons, the Judges, by whom the judicial power of the state is exercised.*
>
> *By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness' (see Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1948] 1 KB 223). It applies to*

a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it Whether a decision falls within this category, is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the Courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's indigenous explanation in Edwards (Inspector of Taxes) v. Bairstow [1956] AC 14, of irrationality as a ground for a Court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decisionmaker.

'irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failing to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

Lord Diplock also mentioned 'proportionality" as a possible fourth ground of review which called for development."

[16] Notwithstanding the above decision, I find it prudent to emphasise that a judicial review is not an appeal but a review of the manner in which the decision was made. Courts, therefore, must be cautious, lest an application for judicial review is turned into an appeal. It is pertinent to note that this Court is not sitting in its appellate jurisdiction, but in its supervisory jurisdiction, where it performs a supervisory role whereby judicial intervention is justified only in cases where there is "illegality", "irrationality", or "procedural impropriety", as explained by Lord Diplock in **CCSU v. Minister for the Civil Service [1985] AC 374.**

[17] In *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629, an Industrial Court case, the Federal Court had set out the function of the court in an application for judicial review and the correct test to be applied in reviewing the finding of facts made by the ndustrial Court. Raus Shariff FCJ (as His Lordship then was) delivering the judgment of the court had stated as follows:

> *"[15] We find that there is merit on the submission advanced by learned counsel for the respondent. Historically, judicial review was only concerned with the decision-making process where the impugned decision is flawed on the ground of procedural impropriety. However; over the years, our courts have made inroad into this field of administrative law. Rama Chandran is the mother of all those cases. The Federal Court in a landmark decision has held that the decision of inferior tribunal may be reviewed on the grounds of 'illegality', 'irrationality' and possibly 'proportionality' which permits the courts to scrutinise the decision not only for process but also for substance. It allowed the courts to go into the merit of the matter. Thus, the distinction between review and appeal no longer holds.*
>
> *[16] The Rama Chandran decision has been regarded or interpreted as giving the reviewing court a license to review*

without restrain decisions for substance even when the said decision is based on finding of facts. However, post Rama Chandran cases have applied some brakes to the courts' liberal approach in Rama Chandran. The Federal Court in the case of Kumpulan Perangsang Selangor Bhd v. Zaid Noh [1997] 1 MLJ 789; [1997] 2 CLJ 11 *after affirming the Rama Chandran decision held that there may be cases in which for reason of public policy, national interest, public safety or national security the principle in Rama Chandran may be wholly inappropriate.*

[17] The Federal Court, in Petroliam National Bhd v. Nik Ramli Nik Hassan [2004] 2 MLJ 288; [2003] 4 CLJ 625, *again held that the reviewing court may scrutinise a decision on its merits but only in the most appropriate of cases and not every case is amenable to the Rama Chandran approach. Further, it was held that a reviewing judge ought not to disturb findings of the IC unless they were grounded on illegality or plain irrationality, even where the reviewing judge might not have come to the same conclusion.*

[18] The Court of Appeal has in a number of cases held that where finding of facts by the IC are based on the credibility of witnesses, those findings should not be reviewed (see William Jacks & Co (M) Sdn Bhd v. S Balasingam [2000] 7 MLJ 1; [1997] 3 CLJ 235; *National Union of Plantations Workers v. Kumpulan Jerai Sdn Bhd, Rengam* [2000] 2 MLJ 144; [2000] 1 CLJ 681; *Quah Swee Khoon v. Sime Darby Bhd* [2000] 2 MLJ 600; [2001] 1 CLJ 9; *Colgate Palmolive (M) Sdn Bhd v. Yap Kok Foong and another appeal* [2001] 4 MLJ 97; [2001] 3 CLJ 9). *However, there are exceptions to this restrictive principle where:*

(a) reliance upon an erroneous factual conclusion may itself offend against the principle of legality and rationality; or

(b) there is no evidence to support the conclusion reached.

(See Swedish Motor Assemblies Sdn Bhd v. Haji Md Ison bin Baba [1998] 2 MLJ 372; [1998] 3 CLJ 288*)."*

(Emphasis added)

[18] The above position was reaffirmed by the Court of Appeal in the case of *Malaysian Oxygen Bhd v. Soh Tong Wah & Another Appeal* [2015] 1 CLJ 191; **[2015] 3 MLJ 730** where it was held as follows:-

"[21] The statement was made in the context of the unfolding of the nature of judicial review over time through case law where judicial review is no longer confined to flawed process, and the further grounds identified required scrutiny of the decision not only for process but also for substance...

[22] Thus, Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd cannot be read as having eliminated the distinction between judicial review and an appeal entirely.

...

[24] Scrutiny for substance involves examination of findings of fact. The extent to which the court can review findings of fact of a tribunal has the same practical limitations as in an appeal from a trial court:

(b) The High Court in judicial review is in no position to reassess a finding of fact that is an assessment of credibility, including relative credibility of witnesses seen and heard giving testimony and tested on that testimony before the tribunal. See Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd...

(See also the Court of Appeal's decision in Robin Khoo Kah Chong v. Logik Pengurusan Sdn Bhd [2018] CLJU 469; [2018] 1 LNS 469*)"*

[19] Reference was further made by this court to the case of *Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn Bhd* [2017] 2 CLJ 1 where the Federal Court had stated as follows:-

> ***"[73]*** *It is now clear; and here to stay that the decision of an inferior tribunal may also be reviewed on the grounds of illegality and irrationality. The distinction between a review application and an appeal thus appears to no longer exist (see also Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629*).*
>
> ***[74]*** *Despite the introduction of the grounds of "illegality", ",irrationality" and possibly "proportionality", and the liberal approach, R Rama Chandran self-checked itself when it stated at pp. 183-184 (CLJ); p. 197 (MLJ) that:*
>
> > *Needless to say, if, as appears to be the case, this wider power is enjoyed by our courts, the decision whether to exercise it, and if so, in what manner, are matters which call for utmost care and circumspection, strict regard being had to the subject matter, the nature of the impugned decision and other relevant discretionary factors. A flexible test whose content will be governed by all the circumstances of the particular case will have to be applied.*
> >
> > *For example, where policy considerations are involved in administrative decisions and courts do not possess knowledge of the policy considerations which underline such decisions, courts ought not to review the reasoning of the administrative body, with a view to substituting*

their own opinion on the basis of what they consider to be fair and reasonable on the merits, for to do so would amount to a usurpation of power on the part of the courts.

[95] *The matter before us should be focused on whether any defect is detectable in the decisionmaking process ie, before the appellant arrives at its decision, and whether the decision falls within the R Rama Chandran approach..."*

[20] Based on the above authorities, it is not the function of this Court to scrutinise every piece of evidence adduced and to substitute findings of facts of the Industrial Court. This Court is strictly under the duty to determine if the findings of the learned ICJ were supported by evidence adduced before him, and that, in his conclusion, he had taken into consideration relevant factors, and discounted irrelevant matters. Reference on this point was made to the case of *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd and another appeal* [1995] 3 CLJ 34 where Mohd Azmi FCJ said:-

"In exercising judicial review, the High Court was obliged not to interfere with the findings of the Industrial Court unless they were found to be unreasonable, in the sense that no reasonable man or body of men could reasonably come to the conclusion that it did, or that the decisions of the Industrial Court looked at objectively, were so devoid of any plausible justification that no reasonable person or body of persons could have reached them (see Lord Denning's judgement in Griffiths (Inspector of Taxes) v. JP Harrison (Watford) Ltd [1962] 1 All ER 909 at p. 916, and judgment of Lord Diplock in Bromley London Borough Council v. Greter London Council & Anor [198311 AC 768 at p. 821; [1982] 1 All ER 153 atp, 159; [1982] 2 WLR 92 at p. 100)."

[21] Similarly in the case of *Menara Pan Global Sdn Bhd v. Arokianathan a/l Sivapiragasam* [2006] 2 CLJ 501; **[2006] 3 MLJ 49**, Mohd Ghazali Yusoff JCA (as he then was) held that:-

> *"(vi) the High Court will not interfere with the findings of facts by the Industrial Court unless the same are completely unsupported by evidence and further, will not interfere merely because it may come to a different conclusion of fact on the basis of the same evidence; weighing and assessing the evidence of the witnesses is the function of the Industrial Court and not that of the High Court."*

> (see also the case of *Yong Peng Kean v. Akira Sales & Services (M) Sdn Bhd & Anor* [2015] CLJU 648; [2015] 1 LNS 648)

COURTS FINDINGS

[22] This court shall deal with the grounds raised by the Applicant i.e. whether the Court had erred in law and/or in fact and committed serious error in finding a case of unfair dismissal against the 2nd Respondent.

[23] In the Supreme Court case of *Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd.* [1988] 1 CLJ (Rep) 298 at page 302, the duty of the Industrial Court was firmly stated by his Lordship Saileh Abbas LP:

> *"When the Industrial Court is dealing with a reference under s. 20, the first thing that the Court will have to do is to ask itself a question whether there* was a *dismissaland if so, whether it* was *with or without just cause or excuse."*

[24] It was the Applicant's submission that the 1st Respondent had, in determining the 2nd Respondent's claim for unfair dismissal, had committed error of law, asked itself the wrong question and/or took irrelevant matters into consideration on the following grounds:-

(i) the 1st Respondent determined that intention is a necessary ingredient in proving that the 2nd Respondent had provided incorrect and/or false information in the Job Application Form;

(ii) the 1st Respondent had rejected and disregarded the email confirmation from MQA and/or the New Zealand High Commission which confirmed that PIU is not recognised and had never existed;

(iii) the 1st Respondent failed to consider the fact that the 2nd Respondent's qualification was very dubious in the that the 2nd Respondent's academic documents adduced were almost identical to CLW- 1 's, the Respondent's own corroborative witness;

(iv) the 1st Respondent held that because MQA approved the accreditation for the course taught by the 2nd Respondent, this impliedly meant that the MQA had no issues with the 2nd Respondent's qualification.

[25] The Applicant had conducted investigation in verifying the legitimacy of the 2nd Respondent's qualification by conducting a SSM Search on Perak Institute of Electronics which revealed that the business registration of the said Institute had expired on 26.12.2002.

[26] The Applicant had conducted further investigation by issuing emails to the New Zealand High Commission and the MQA seeking confirmation as to the existence of the PIU and it was confirmed that PIU is not recognised and/or has never existed.

[27] The 2nd Respondent's defence was merely that he did not commit any material breach and that he had no intention to defraud and/or did not defraud by tendering false credentials or certificates of his academic qualification to the Company.

[28] The 2nd Respondent also claimed that at the material time of obtained his Bachelor Degree, the said PIE Institute of Technology was in existence.

(i) The email confirmations from MQA and/or the New Zealand High Commission

[29] The Applicant had, in the present case, conducted further investigation by issuing emails to the New Zealand High Commission and the MQA seeking confirmation as to the existence of the PIU and it was confirmed that PIU is not recognised and/or has never existed.

[30] The learned ICJ had however disregarded the emails from MQA and New Zealand High Commission on the following grounds:-

(i) At the time when the 2nd Respondent obtained his qualification, the MQA had not yet been established and that it was the LAN which governed the private higher education therefore the email from MQA was insufficient to conclude that PIU did not exist in 2002 and 2003;

(ii) The Applicant failed to call representatives from MQA to confirm the content of the email regarding the non-existent of PIU;

(iii) The Applicant had failed to call Desiree Lee and Margaret Low of the New Zealand High Commission to confirm the emails; and

(iv) That the Applicant should have sought confirmation from the New Zealand Ministry of Higher Education and not from the New Zealand High Commission regarding the existence of PIU.

[31] I find it pertinent to note at the forefront that the authenticity of the disputed emails was never challenged by the 2nd Respondent. The

issue as to its authenticity was in fact, raised for the first time, during trial before the ICJ.

[32] Notwithstanding the issue of authenticity of the said emails, the 2nd Respondent are not estopped from disputing the content of the emails.

[33] The learned ICJ had in his decision acknowledged that the MQA had replaced Lembaga Akreditasi Negara ("LAN") and the Quality Assurance Division ("QAD") on 1.11.2007 but had nevertheless gone on to hold that since it was LAN that was in charge of recognizing a particular course at any private higher institution at the material time when the 2nd Respondent obtained his Bachelors Degree, as such a confirmation email from MQA was insufficient to establish the nonexistence of PIU.

[34] This court finds that the **ICJ** had erred in law in the said decision as the LAN has been dissolved and their functions had been taken over by the MQA which was established to streamline and provide a unified system of qualifications, MQA was the proper statutory body in Malaysia to seek confirmation regarding the recognition of an educational institution by the Government of Malaysia (see the case of *Maritime Intelligence Sdn Bhd v. Tan Ah Gek* [2020] CLJU 2374; [2020] 1 LNS 2374; **[2021] 3 MLJ 78)**.

[35] It is also in this court's finding that the burden placed on the Applicant to seek confirmation from the New Zealand Ministry of Higher Education had been misplaced. The email correspondences to the New Zealand High Commission were evident of active measures taken by the Applicant to determine the issue of whether the PIU exists.

[36] A Domestic Inquiry was held which gave the 2nd Respondent ample opportunity to defend his case. Despite the Applicant's serious allegation as to the non-existence of PIU and the expiry of business

registration of both PIE Institute of Technology and the Perak Institute of Electronics, there was no active step taken by the 2nd Respondent to prove otherwise.

[37] The emails issued by the Applicant to the New Zealand High Commission and the MQA demonstrated the extent to which the Applicant had sought determination as to the authenticity of the 2nd Respondent's qualification and institutions involved.

[38] In view of the evidence adduced by the Applicant which casted doubt as to the existence of PIU, the evidential burden thus shifted to the 2nd Respondent to show that his qualification was obtained from a legitimate institution. However, the 2nd Respondent had failed to adduce any evidence in toto to show that the PIU exists. The 2nd Respondent had clearly failed to challenge the Applicant's claim that PIU was nonexistent.

(ii) Whether the 1st Respondent had considered irrelevant matter for which no cogent evidence was given

[39] The 1st Respondent had in finding that the 2nd Respondent did not commit misconduct as alleged considered the following matters:-

(i) A copy letter from JPA dated 9.8.2000 produced by the 2nd Respondent wherein JPA stated that it recognised the Masters in Business Administration from PIU ("JPA Letter");

(ii) The fact that Universiti Utara Malaysia ("UUM") offered the 2nd Respondent to pursue his MBA and DBA studies which the 1st Respondent held shows that the Qualification was genuine.

[40] It is pertinent to note that the authenticity of JPA Letter was at all material time disputed by the Applicant. The maker of which was never called to court as witness to verify the content therein.

[41] The 1st Respondent had clearly applied 2 separate rules of evidence during trial as the 1st Respondent had rejected the emails from MQA

as well as the email correspondences between the Applicant and the New Zealand High Commissions on the grounds that the makers were not called to verify the content of the emails. However, on the other hand, the 1st Respondent had accepted the JPA Letter unequivocally even though the maker of the JPA Letter was never called to verify it and the 2nd Respondent's own witness had admitted that the JPA Letter was obtained from a third party unrelated to the JPA.

[42] Furthermore, the 2nd Respondent had at all material time claimed that the 2nd Respondent had obtained his Bachelors Degree in 2003. However, the JPA Letter which was in relation to the 2nd Respondent's Masters in Business Administration from the Phoenix was issued on 9.8.2000 which was dated about 3 years before the 2nd Respondent had obtained his Bachelors Degree.

[43] The 1st Respondent had in accepting the 2nd Respondent's UUM's qualifications to establish that the qualification is genuine had held that it was "common knowledge" that UUM as national public university would reject or deny the 2nd Respondent's placement had he submitted an unrecognised, fraudulent or falsified Bachelor's degree.

[44] This court however finds a total absence of evidence adduced by the 2nd Respondent to show that proper verification was carried out by UUM before granting the 2nd Respondent a placement to do his MBA and DBA in UUM.

[45] It was thus in my considered view that the 1st Respondent's reliance on the JPA Letter and the UUM qualification was heavily misplaced.

(iii) The element of intention to commit the misconduct on the part of the 2nd Respondent

[46] The 2nd Respondent had on this issue held as follows:-

(i) That the 2nd Respondent had no intention of submitting false or non-authentic credentials to the Application when he signed the declaration in the Job Application Form; and

(ii) That the Applicant had failed to prove that the 2nd Respondent had the intention to cheat or that there was purposeful pre-employment misrepresentation by the 2nd Respondent.

[47] The absence of intention alone does not negate the issue of misrepresentation, a contract entered as a result of misrepresentation is invalid and therefore void ab initio, the usual remedy in the case of innocent misrepresentation would be rescission of contract. Reference was made to the case of *Ruth Chai Mei Hui v. Berjaya Steel Product Sdn Bhd* [2020] ILRU 0476; [2020] 2 LNS 0476 where it was held as follows:-

> *"**[68]** The Claimant however was unable to rebut the Company's assertion of Belford University issuing unaccredited degrees by producing evidence to show that her qualification was indeed genuinely obtained from an accredited university. In fact, she simply had no answer to the news reports of Belford University being ordered to shut down for being a degree mill on 31 August 2012. The Claimant herself admitted during cross-examination that producing a fake degree is illegal and cannot be accepted by any employer in Malaysia.*
>
> ***[69]** Making false representations, be it fraudulently or innocently, in order to secure an employment is a serious misconduct, more so where it involves the usage of fake degrees. The very substratum underlying an employment relationship between an employer and an employee, ie, trust and confidence, is irretrievably shattered when such dishonesty occurs. The Company was perfectly entitled to deem the employment to be at an end when they could no longer repose any trust and confidence in the Claimant."*

(Emphasis added)

[48] Acting on the above authority, it is in my finding that a false representation of qualification, be it fraudulently or innocently, in a job application process is a serious misconduct which warrants the dismissal of the employee. A fake degree is illegal and cannot be accepted by any employer in Malaysia.

[49] Based on my findings above, it is thus in my considered view that the learned ICJ had erred in law when he decided that the Applicant bore the burden to prove that the 2nd Respondent had intention to commit the misrepresentation. Misrepresentation by an employee, be it fraudulently or innocently, in obtaining an employment is a misconduct which justifies immediate dismissal. The contract of employment secured by misrepresentation becomes invalid.

[50] The Applicant had also acted with reasonable promptitude upon discovering that the 2nd Respondent's qualification was not authentic. The court found that there was no condonation of the misconduct of the 2nd Respondent by the Applicant.

[51] Upon analysing the evidence and facts of the case in its entirety, this Court finds that the 1st Respondent had considered irrelevant facts and materials and disregarded material evidence in concluding that the dismissal of the 2nd Respondent by the Applicant was done without just cause and excuse.

CONCLUSION

[52] Based on the foregoing reasons above, I am of the view that the decision of the Industrial Court is tainted with the error of law, irrationality and/or unreasonableness, that warrants the intervention of this court. The Applicant's application for Judicial Review is hereby allowed with costs of RM8,000.00 is to be paid by the Respondent to the Applicant.

Dated: 20 NOVEMBER 2023

(ABDUL WAHAB MOHAMED)
JUDGE
HIGH COURT OF MALAYA
IPOH, PERAK

Counsel:

For the applicant - Balan Nair Thamodaran & Reuben Raphael Joseph; M/s Lavania & Balan Chambers

For the 2nd respondent - Robin Lim and Skanda Yagasena; M/s Chan & Associates