

**TINGGI MALAYA DI JOHOR BAHRU**  
**BERI JOHOR DARUL TAKZIM**  
**21NCvC-21-2011**

**ANTARA**

**FAUZIAH KHANOM BINTI IRSHAD ALI KHAN**

**... PLAINTIF**

**DAN**

- 1. PEGAWAI PEJABAT PELAJARAN DAERAH JOHOR BAHRU**
- 2. PENGARAH PELAJARAN JOHOR**
- 3. KETUA PENGARAH PELAJARAN MALAYSIA**
- 4. KERAJAAN MALAYSIA**

**...DEFENDAN-DEFENDAN**

**DI DALAM KAMAR MAHKAMAH**  
**DI HADAPAN Y.A. VERNON ONG**  
**HAKIM**

**GROUND OF JUDGMENT**

On 7.10.2011, the defendants application to strike out the plaintiff's Writ of Summons and Statement of Claim was dismissed. The grounds of the decision are as follows:

1. The plaintiff is a senior administrative teacher who was transferred from SK Taman Skudai Baru 2 to SK Tampoi Utama.
2. The plaintiff is seeking a declaration that her transfer was irregular, a declaration that she was denied a fair hearing in breach of the principles of natural justice and damages.

Application is premised upon:

- (a) that the Statement of Claim discloses no reasonable cause of action (*Pengarah Pelajaran, WP & Ors v Loot Ting Yee* [1982] 1 MLJ 68 (FC); *Dominic Selvam S Gnanapragasam v Pengarah Kesihatan Negeri Perak D R* [2011] 2 CLJ 826); and
- (b) it is an abuse of process as the plaintiff ought to have applied for judicial review under O 53 RHC 1980 (*Shaharuddin bin Ali v Superintendent of Lands & Surveys* [2004] 4 CLJ 775; *Robert Cheah Foong Chiew v Lembaga Jurutera Malaysia* [2005] 4 AMR 80; *Arab Malaysian Finance Bhd v Steven Phoa Cheng Loon* [2003] 1 CLJ 585; *Subramaniam Vythilingam v The Human Rights Commission of Malaysia (SUHAKAM)* [2003] 6 CLJ 175; *Ghozi Abu Bakar v Majlis Angkatan Tentera* [2006] 4 CLJ 291; *Ahmad Jefri bin Mohd Jahri v Pengarah Kebudayaan & Kesenian Johor* [2010] 3 MLJ 145 (FC))

[ground (a)]

4. The Court agrees with the plaintiff that in actions seeking declaratory relief, no cause of action need be disclosed (see *Teow Chuan v YAM Tunku Nadzaruddin ibni Tuanku Jaafar* [1999] 7 CLJ 195; *Tan Sri Haji Othman Saat v Muhamed bin Ismail* [1982] 2 MLJ 177 at 178 (FC)).
5. On the face of it, the action in the Statement of Claim cannot be decided summarily on affidavit evidence alone, or without an affidavit from the defendants as in this case.
6. The Court is satisfied that there is a reasonable cause of action premised on the plaintiff's complaint that she was transferred out to another school with any inquiry being convened to hear the complaints against her; and consequently her right to natural justice had been infringed.

7. In this instance, the plaintiff's action relates to the invalidity of the decision to transfer. It also relates to a collateral issue which is a declaration of the plaintiff's right arising under private law . the right to be heard. Instead of convening an inquiry into the complaint against her, the defendant merely ordered that the plaintiff be transferred to another school.
8. The plaintiff's case therefore falls within the exception laid down by the Federal Court in *Ahmad Jefri, supra*. The exception exists particularly where the invalidity of the decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law.

By reason of the foregoing, the defendant's application was dismissed and the action set down for trial on 1<sup>st</sup> & 2<sup>nd</sup> March 2012.

**(VERNON ONG)  
JUDGE  
HIGH COURT MALAYA  
JOHOR BAHRU**

**DATED: 20 DECEMBER 2011**

**COUNSEL**

Tetuan T Raja & Co., No.6-1 Jalan 1/109E, Desa Business Park, Taman Desa, 58100 Kuala Lumpur . for plaintiff.

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