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Jurisdictional Error by Industrial Court: Quantum of Relief

Sanwa Screen (M) Sdn Bhd v Mahkamah Perusahaan Malaysia & Anor
(Kuala Lumpur High Court Application for Judicial Review No WA-25-302-07/2019)

On 6 November 2019, the High Court allowed the company's application for judicial review to quash the Industrial Court's Award (Award No 1324 of 2019 dated 30 April 2019) in so far as it relates to the quantum of relief ordered by the Industrial Court.

It was undisputed that the employee had served the company for 12 years before her dismissal. The employee admitted before the Industrial Court that she was only unemployed for one month after her dismissal and thereafter had a part-time job. She also admitted that for four months, she worked simultaneously in two part-time jobs.

However, in complete disregard of the above, the Industrial Court, in finding that the employee was dismissed without just cause and excuse, went on to award the employee 24 months of backwages and 14 months of compensation in lieu of reinstatement.

High Court

The High Court allowed the company's application for judicial review on the following grounds:

- (a) On backwages, it is not disputed that the employee was gainfully employed one month after her dismissal. Although she was only employed on a part-time basis, this should have been taken into account by the Industrial Court in assessing the quantum of backwages as stipulated in Schedule 2 of the Industrial Relations Act 1987. From the evidence produced before the Industrial Court, the High Court noted that at one point in time, she even had two part-time jobs. The High Court agreed that the failure of the Industrial Court to take into account the employee's post-dismissal earnings in assessing the quantum of backwages was a jurisdictional error.
- (b) On compensation in lieu of reinstatement, Practice Note 1 of 1987 is still applicable, particularly paragraph 4(b), which states: "*Compensation in lieu of reinstatement of one month's pay for each year of completed service subject to a maximum of 24*

months". It is not disputed that the employee had only worked for 12 years. The Industrial Court's award of compensation in lieu of reinstatement of 14 years is clearly unreasonable and an error of law.

The High Court went on to set aside the Industrial Court's award on quantum and ordered that the matter be remitted to the Industrial Court for the quantum of relief to be reassessed in accordance with the law.

The company was represented by partner Shariffullah Majeed and associate Arissa Ahrom of [Lee Hishammuddin Allen & Gledhill](#).

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