DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN
[RAYUAN SIVIL NO. BA-12B-142-10/2019]

ANTARA

DANAPALASINGGAM K.KRISHNAN
(No. K/P: 470217-10-5679) ... PERAYU

DAN

MAJLIS BANDARAYA PETALING JAYA ... RESPONDEN

(DALAM MAHKAMAH SESYEN DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN
[GUAMAN NO. BA-B51-36-07/2016]

ANTARA

DANAPALASINGGAM K.KRISHNAN
(No. K/P: 470217-10-5679) ... PLAINTIF

DAN

MAJLIS BANDARAYA PETALING JAYA ... DEFENDAN

GROUNDS OF JUDGMENT

INTRODUCTION

[1] This is an appeal against the whole decision of the Learned Session Court Judge in dismissing the Appellant's/Plaintiff's claims against the Respondent/Defendant after a full trial.

BRIEF FACTS OF THE CASE

[2] The list of witnesses who testified during the trial are as follows:-

NO.	WITNESS	NAME	NAME AS
1.	SP-1	Abdul Muttalib Bin Mohd Ali	MUTTALIB
2.	SP-2	Danapalasinggam a/l K.Krishnan	DANA
3.	SD-1	Mohamad Rosnani Bin Haji Hamid	ROSNANI
4.	SD-2	Puan Noora	NOORA
5.	SD-3	Fazidah Binti Ahmad Puat	FAZIDAH

[3] The Appellant/Plaintiff was employed by Respondent/Defendant (a local authority) as Administrator Asisstant at Legal Department from 26th of January 1966 until 30th of September 2002.

[4] The Appellant/Plaintiff was a full-time employee of the Respondent/ Defendant as an Administrator Assistant at Legal Department, whom had chosen to be employed under the Employee Provident Fund Scheme (EPF Scheme).

[5] The Appellant/Plaintiff himself had signed Borang Pilihan Sendiri dated 4th of June 1977 and Borang Opsyen dated 11th of September 2001 to choose and elect for the mandatory retirement age of fifty-six (56) years under the EPF Scheme in accordance with the Pensions Act 1980 and Statutory and Local Authorities Pensions Act 1980.

[6] Vide a letter dated 30th of September 2002, the Respondent/Defendant approved the Appellant's/Plaintiff's application for early retirement.

[7] The Appellant/Plaintiff retired from service on the 1st of October 2002.

[8] Vide a letter dated 8th of February 2002, the Respondent/Defendant informed the Appellant/Plaintiff of his retirement date, which fell on the 17th of February 2003, and the consequences of his decision to continue under the EPF Scheme and retire before the age of 56 years meant he would not receive any pension and other retirement benefits.

[9] The Appellant/Plaintiff is being aware and still insisted to choose and elect to leave the employment on the 31st of September 2001 before attaining the mandatory retirement age of 56 years.

[10] The Appellant/Plaintiff initiated a legal action against the Respondent/Defendant and claims for the following:-

> *"(a) Caruman majikan kepada Kumpulan Wang Simpanan Pekerja pada kadar 17 1/2% daripada gaji bulan Plaintif setiap bulan dari 01.01.1976 sehingga 31.09.2002;*
>
> *(b) Gratuiti atau manfaat alin selepas persaraan pilihan beliau;*
>
> *(c) Elaun khas sebanyak RM 2,250.00;*
>
> *(d) Faedah-faedah persaraan lain, yang termasuk menyewa rumah rehat Majlis di Bayu Beach Resort dari Seri Bulan, kemudahan menggunakan Perpustakaan Majlis dengan kadar bayaran khas, kemudahan perubatan percuma di Klinik MBPJ, kemudahan menggunakan Dewan Majlis dengan kadar separuh harga, kemudahan menggunakan kereta jenazah/crematorium dan tanah perkuburan secara percuma, dan kemudahan menggunakan kerusi meja dan khemah dengan kadar bayaran separuh harga;*

> (e) *Bayaran ganji ("reimbursement") bagi perbelanjaan rawatan perubatan Plaintif sebanyak RM 7,280.50; dan*
>
> (f) *Faedah pada kadr 5% setahun ke atas jumlah penghakiman."*

[11] On the 15th of October 2019, after a Full Trial, the Learned Session Court Judge wholly dismissed the Appellant's/Plaintiff's claims against the Respondent/Defendant.

[12] SUMMARY OF THE APPELLANTS'/PLAINTIFFS' ARGUMENTS

12.1 The Appellant/Plaintiff in their submission put forth the issue before this Court namely:-

> ***"Whether the Plaintiff entitled to all the retirement benefit as pleaded in paragraph 8-12, 14 and 18 of the Amendment Statement of Claim as former employee of the Defendant who had retired from the employment of Defendant on 30.09.2002 under the Employee's Provident Fund Scheme as approved by the Defendant?"***

12.2 The Appellant/Plaintiff are entitled to those benefits, upon which the Respondent/Defendant failed in its responsibility to provide the same, which the Appellant/Plaintiff claimed that the Respondent/ Defendant had provided to other similar retiree of the Respondent/ Defendant.

12.3 The Statutory and Local Authorities Pensions Act 1980 (Act 239) applies to all employees of the Respondent/Defendant whatever the employees is under the Pension Scheme or Employees Provident Fund Scheme.

[13] THE RESPONDENT/DEFENDANTS' ARGUMENTS

13.1 On the other hand, the Respondent/Defendant put forth the following arguments, amongst others:-

(i) Applicability of Statutory and Local Authorities Pensions Act 1980 (Act 239) - The Appellant/Plaintiff solely rely on the Act 239. It was not disputed that the Appellant/ Plaintiff was under EPF Scheme which is not governed by the Act 239. Therefore, the Appellant/Plaintiff is not entitled to be granted the title and status of "Pensioner" and "Pensionable Employee" to enjoy the pensionable benefits.

(ii) Doctrine of Election - The Appellant/Plaintiff has knowledge at all the material times that he was not a retiree. The Appellant/Plaintiff elected to leave the employer at the age of 55 years 5 months upon heeding the advice of SP-1 after the Appellant/Plaintiff failed to obtain the legal position, despite having signed and elected to, to be under EPF scheme and exercise his option to retire at a mandatory age of 56 years.

(iii) Section 6A (5) and 5(A) of the Statutory and Local Authorities Pensions Act 1980 (Act 239) and Statutory Local Act Pensions(Amendment) Act 1980, eventhough the Appellant/Plaintiff was appointed before the 1st of October 2001, the Appellant/Plaintiff had been given an option on the 11th of September 2001 to opt for compulsory age fifty six (56) years upon which he elected in his free will. As such section 6A(5) is applicable to him whom he had chosen the EPF Scheme. However, the Appellant/Plaintiff resigned at the age of fifty five (55) years and 5 months. The Appellant/Plaintiff is estopped from denying own choice of resigning early.

(iv) All the Appellant's/Plaintiff's benefits are subject to Employment Provident Fund Act 1991 in which the Appellant/Plaintiff had elected the EPF Scheme. Further, the Appellant/Plaintiff failed to appreciate that the apportionment of the employer's contribution is in pursuant to Employment Provident Fund Act 1991. He had admitted that "he has nothing in writing" to justify his explanation on the retrospective employer's EPF contribution at the rate 17% (page 142 to 143 Rekod Rayuan [Jilid 2-Bahagian B],

(v) Section 6C of the Act 239 and Employment Provident Fund Act 1991 - The Appellant/Plaintiff had elected EPF Scheme. There was no justification on the respective Employee's EPF Contribution at the rate of 17%.

LEGAL PRINCIPLES

[14] In the case of Supreme Court, *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309 that held as follows:-

> *[18] <u>It is trite law that an appellate court will not intervene unless the trial court is shown to be plainly wrong in arriving at its conclusion and where there has been insufficient judicial appreciation of the evidence. The appellate court will intervene in a case where the trial court had so fundamentally misdirected itself</u>. (See: Merita Merchant Bank Singapore Ltd v. Dewan Bahasa dan Pustaka [2014] 9 CLJ 1064). The Federal Court in Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd [2015] 2 CLJ 453 reiterated the principle to be adopted by an appellate court when reversing findings of fact by a trial court: "... It is now established that the principle on which an appellate*

court could interfere with findings of fact by the trial court is "the plainly wrong test" principle; see the Federal Court in Gan Yook Chin & Anor; 2005] 2 MLJ 1 (at p. 10) per Steve Shim CJ SS. More recently this principle of appellate intervention was affirmed by the Federal Court in UEM Group Berhad v. Genisys Integrated Pte ltd [2010] 9 CLJ 785 where it was held at p.800: "It is well-settled law that an appellate court will not generally speaking, intervene with the decision of a trial court unless the trial court is shown to be plainly wrong in arriving at its decision. A plainly wrong decision happens when the trial court is guilty of no or insufficient judicial appreciation of evidence. (See Chow Yee Way & Anor v. Choo Ah Pat [1978] 1 LNS 32; [1978] 2 MLJ 41; Watt v. Thomas [1947] AC 484; and Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309."

[19] <u>The Federal Court in Gan Yook Chin v. Lee Ing Chin (5) Lee Teck Seng [2004] 4 CLJ 309 held that the test of "insufficient judicial appreciation of evidence" adopted by the Court of Appeal was in relation to the process of determining whether or not the trial court had arrived at its decision or findings correctly on the basis of the relevant law and the established evidence</u>. The Federal Court further stated that a court hearing the appeal is entitled to reverse the decision of the trial judge after making its own comparisons and criticisms of the witnesses and of its own view of the probabilities of the case. It is also entitled to examine the process of evaluation of the evidence by the trial court and reverse a decision if it is wrong.

[20] The failure to consider the entirety of the evidence and material issues or the failure to make findings of fact

> *or the making of bare findings of fact will invite appellate intervention. Such ommissions by a trial judge will reguire the appellate courts to take on the role of first instance judge and review the evidence in its entirety afresh. "*

[15] In the case of *Md Hilmi Md Noor & Anor v. Azman Ahmad & Ors* [2016] 7 CLJ 360 [TAB 1] which advised the court at the appeal stage not to interfere with the findings of the lower court hearing the case based on facts and evidence especially when the lower court has the opportunity to observe the conduct and demeanour of the witnesses during the trial.

> *[19] In light of the above related evidence led by the plaintiffs, with respect, we are of the considered view that there is Justification in the complaint advanced by the plaintiffs' learned counsel. We are fully aware that an appeal court, such as this court ought not to disturb the findings of facts made by the learned trial judge as he, as the primary trier of facts has the distinct advantage of observing the demeanour of witnesses who had appeared before him. The appellate court would, as a general rule defer to his findings as such. Nevertheless, the appellate court will interfere with the findings made by the trial judge, if his findings could not be supported in light of the available evidence as led before him. We reiterate the settled principle as elucidated in the case of Majuikan Sdn Bhd v. Barclays Bank PLC [2014] 9 CLJ 337 where Justice Mohamed Ariff Yusof JCA had occasion to say, at pp. 348-349 as follows:*
>
> *[15] We are of course mindful, and keep the principles uppermost in our mind, that appellate intervention should only upset the decision of a trial judge if it can be*

> *demonstrated that the judge was plainly wrong. We acknowledge that the trial judge had the audio-visual advantage of the trial process, but nevertheless the issue is whether despite having that advantage, the judge has been plainly wrong in her evaluation and findings. It suffices to refer to the Federal Court decision in Ming Holdings (M) Sdn Bhd v. Tuan Syed Azahari Noh Shahabudin & Anor [20101 6 CLJ 857; [2010] 4 MLJ 577, where James Foong, FC J dealt with the applicable principles comprehensively, as follows:*
>
> *[41]... we feel a need to remind that a trial Judge has the advantage over an appellate court in hearing the witness and observing his demeanour. Thus, unless the trial Judge is plainly wrong in his finding, the appellate court should not reverse a finding of fact by the trial Judge. This 'plainly wrong' test has been long established and can be observed in the judicial committee of the Privy Council pronouncement in Chow Yee Wah & Anor v. Choo Ah Pat [1978] 1 LNS 32; [1978] 2 MLJ 41 where Lord Fraser said..."*

FINDINGS

[16] Upon reading the submissions of the learned counsels for the Appellant/Plaintiff and Respondent/Defendant, the Rekod Rayuan and the Learned Session Court Judge's Ground of Judgment, at the very outset, I found that the Learned Session Court Judge had not erred in his finding which requires the intervention of this Court. It could not be said that the Learned Session Court Judge's finding is plainly wrong, a test which had long established and observed in the judicial committee of Privy Council pronouncement in the case of *Chow Yee Wah & Anor v. Choo Ah Pat* [1978] 2 MLJ 41.

[17] The bone of contention between the parties herein is whether the Act 239 applies to the Appellant/Plaintiff. The Appellant's/Plaintiff's claim solely relied on the application of the said Act, in particular, section 6C and section 12 (3A). Thus, if Act 239 is not applicable, then the Appellant's/Plaintiff's claim is totally unsustainable or failed.

[18] This court is of the view that the Learned Session Court Judge was correct in his finding that the Statutory and Local Authorities Pensions Act 1980 (Act 239) was only applicable to the Pensionable but not to the Appellant/Plaintiff who is under the Employee Provident Fund Scheme. It must be clearly stated that it was an undisputed fact that the Appellant/Plaintiff was under the EPF Scheme and had not retired at the mandatory age of 56. The Learned Session Court Judge had correctly 10 pointed out and relying on the following provisions under the Act (which can be found at page 14 and 15 of his Ground of Judgment) and the evidence of the witnesses in reaching to his finding.

[19] Section 2 of the Act 239 states that:-

> *"Employees Provident Fund Scheme" means a scheme under which an employee ceases to be eligible to be conferred the status of a pensionable employee or ceases to be a pensionable employee and is instead required to contribute, together with his employer, to the Employees Provident Fund.*
>
> *"pensionable employee" means an employee who has been conferred pensionable status under section 6 or deemed to have been conferred pensionable status under section 7."*

[20] Section 12(1) of the Act 239 states that:-

> *"Optional retirement*

> *12(1) An appropriate authority may, with the approval of the pensions authority on the employee's application, consent to the retirement of an employee on or after attaining the age of forty years."*

[21] Section 6C of the Act 239 states that:-

> *"An employee shall make contributions, in respect of each pensionable employee whose option has taken effect, to the Employee Provident Fund at the rate of seventeen and a half per centum of the employee's monthly salary for each month in the period commencing from the date the employee becomes a pensionable employee under section 6 or section 7 and ending on the date he ceases to be a pensionable employee under section 6B."*

[22] I found that the Learned Session Court Judge had correctly pointed out and ruled the distinct nature of the Employee Provident Fund Scheme (EPF Scheme) and the Pension Scheme at page 14 of his Grounds of Judgment:

> *"Under the law, it is established that the EPF scheme and Pension scheme are two separate and different schemes altogether. The Plaintiff who had elected EPF scheme and left the service/resigned before the mandatory retirement age is not now entitled to enjoy the pensionable benefits. "*

[23] The Appellant's/Plaintiff's own witness, SP-1 had advised the Appellant/Plaintiff to leave the service in which he acted on the advice and left the service before the mandatory retirement age.

[24] Further, section 6A(4) of the Act 239 clearly states, with the exception 6A and section 26, the other provisions under the Act 239 shall not be applicable to an employee who opted for the EPF Scheme, namely, the Appellant/Plaintiff.

[25] Section 6A(4) of the Act 239 states that:-

> *"(4) Where an employee opts for the Employees Provident Fund Scheme, the provisions of this Act, except this section and section 26, shall not applicable to the employee."*

[26] Bear in mind, it is not disputed that the Appellant/Plaintiff himself had signed Borang Pilihan Sendiri dated 11th of September 2001 to choose and elect for the mandatory retirement age of 56 years under the EPF Scheme.

[27] Section 6A(5) and (5A) of the Statutory and Local Authorities Pensions Act 1980 and Statutory and Local Authorities Pensions (Amendment) Act 2001 are the relevant provisions that govern the retirement age of an employee who opted for EPF Scheme. It states that:-

> *"(5) An employee who opts for the Employee Provident Fund Scheme shall retire from the service of a statutory or local authority on attaining the age of fifty-six years.*
>
> *(5A) Subsection (5) shall not apply to an employee who was appointed before 1st of October 2001 and had been given an option before such date and had not opted for the compulsory age of retirement of fifty-six years."*

[28] Further, parliamentary intention in drafting such law is reflected in the Parliamentary Debates House of Representative Fifth

Parliament Second Session held on the 20th of June 1980 which states:-

> *"(page 3328)*
>
> *Rang Undang-Undang ini membuat peruntukan bagi* ***mentadbirkan pengurniaan pencen, ganjaran dan lain-lain faedah tamat perkhidmatan kepada pekerja-pekerja pihak berkuasa berkanun dan tempatan dan orang-orang tanggungan pekerja-pekerja tersebut yang telah memilih gaji dan syarat-syarat perkhidmatan yang diperakukan oleh Jawatankuasa Kabinet Gaji yang telah dilaksanakan mulai daripada 1hb Januari 1976...***
>
> ***...mengenai faedah-faedah persaraan bagi kakitangan perkhidmatan awam yang telah memilih skim gaji dan syarat-syarat perkhidmatan Jawatankuasa itu.*** *Prinsip-prinsip yang terkandung dalam Akta Pencen 1980 telah diubahsuaikan untuk faedah pekerja-pekerja pihak berkuasa-pihak berkuasa berkanun dan tempatan..."*

[29] Thus, based on section 6A(4) of the Act 239, it is expressly stated that with the exception of section 6A and section 26 of (Act 239), the other provisions of the Act, is not applicable to such employee under EPF Scheme. Therefore, the Appellant/Plaintiff who had opted for the EPF Scheme is not entitled to be granted the Pensioner and Pensionable Employee status to enjoy the pensionable benefits.

[30] Further, I find that the Learned Session Court Judge had correctly identified the issue of of law that the doctrine of estoppel is applicable in the Appellant's/Plaintiffs case, (which can be seen at para 62-88 Ground of Judgment and page 16 to 22 Rekod Rayuan Tambahan Kedua).

[31] The Appellant/Plaintiff had on his own accord chose to leave the employment early before attaining the mandatory retirement age of 56. Based on the Appellant'/Plaintiff's own witness, his superior, SP-1, Encik Muttalib testified that the Appellant/Plaintiff had opted for early retirement because the Appellant/Plaintiff had failed to obtain the legal post.

[32] The Appellant/Plaintiff had made his own election to leave the employment early at the age of 55 years 5 months upon the advice of SP-1 after the Appellant/Plaintiff failed to obtain the legal position, despite having signed and elected to be under the EPF Scheme and exercised his option to retire at the age of 56 years. This was confirmed by SP-1 that-

> ***"TSL:*** ***<u>So that time you suggested him for a legal post, when was it because it was mentioned in your question.</u>***
>
> ***MUTTALIB:*** ***<u>Yes. Legal post I think one year, almost one year before he opt for his early retirement, because when he failed to get the post he had about six months more to go before his age of 56. So in view of that 1 see there's no future for him in MPPJ. With the legal qualification he has he might as well go into practice and don't waste time. That was my advice to him. So he must be in his early 50's.</u>"***

[33] Further, vide a letter dated 8th of February 2002 issued by the Respondent/Defendant, it already highlighted the consequences of the Appellant/Plaintiff retiring early before attaining the mandatory retirement age of 56 years under the EPF Scheme. Thus, it could not be said that the Appellant/Plaintiff has no knowledge of the consequences of him retiring early. Thus, the Appellant/Plaintiff is estopped denying the consequences of his action and making his claim as such. The said letter is reproduced below:-

> *"Ruj. Kami: (236) dlm.MPPJ/PKTK/11*
> *Tarikh : 8 Februari 2002*
>
> *Encik Danapalasingam a/l Krishnan*
> *(No. KP: 0481273),*
> *Bahagian Undang-Undang,*
> *MAJLIS PERBANDARAN PETALING JAYA*
>
> *Tuan,*
>
> ***PERSARAAN ATAS HAD UMUR 56 TAHUN MULA117.2.2003***
>
> *Dengan hormatnya merujuk kepada perkara di atas, dimaklumkan bahawa tuan akan meningkat umur 56 tahun mu lai 17.2.2003 di mana pada tarikh tersebut tuan dikehendaki bersara dari perkhidmatan.*
>
> *2. Setelah diteliti didapati perkhidmatan tuan diletakkan di dalam kategori jawatan tetap dan tidak berpencen. Seperti yang tuan sedia maklum, perkara tersebut jelas berdasarkan kepada Opsyen yang tuan pilih dalam Pekeliling Perkhidmatan bil. tahun 1997 (Tawaran Permindahan Gaji Baru Jawatankuasa Kabinet), di Lampiran "F" berkenaan perenggan b (i) dan (ii) yang mana tuan telah bersetuju memilih untuk terus kekal mencarum kepada Kumpulan Wang Simpanan Pekerja (EPF).*
>
> *3. Implikasi dari pilihan tersebut, maka perkhidmatan tuan tidak berpencen dan tidak akan mendapat apa-apa bayaran dari faedah persaraan.*
>
> *4. Sehubungan itu, Majlis berharap supaya tuan dapat membuat persediaan untuk bersara kelak.*
>
> *Sekian, terima kasih.*

> ***"BERKHIDMAT UNTUK NEGARA"***
>
> *Saya yang menurut perintah,*
>
> *t.t.*
>
> ***(SHARINAZ BINTI HAJI SAMSUDIN)***
> *Penolong Pengarah (Perkhidmatan dan Perjawatan)*
> *Bahagian Sumber Manusia,*
> *b.p. Yang Dipertua,*
> *Majlis Perbandaran Petaling Jaya.*
>
> *e-mail: sharinaz(p).mppi.qov.mY*
>
> *s.k. : PUU"*

[34] On the doctrine of estoppel, the Federal Court in the case of *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank* [1985] 3 MLJ 331 [TAB U], held, inter alia:-

> *"The width of the doctrine has been summed up by Lord Denning in the Amalgamated Investment case ([1982] 1 QB 84 at p 122; [1981] 3 All ER 577 at p 584; [1981] 3 WLR 565 at p 575) as follows:*
>
> > *The doctrine of estoppel is one of the most flexible and useful in the armoury of the law. But it has become overloaded with cases. That is why I have not gone through them all in this judgment. It has evolved during the last 150 years in a sequence of separate developments: proprietary estoppel, estoppel by representation of fact, estoppel by acquiescence, and promissory estoppel. At the same time it has been sought to be limited by a series of maxims: estoppel is only a rule of evidence, estoppel*

> *cannot give rise to a cause of action, estoppel cannot do away with the need for consideration, and so forth. All these can now be seen to merge into one general principle shorn of limitations. When the parties to a transaction proceed on the basis of an underlying assumption – either of fact or of law – whether due to misrepresentation or mistake makes no difference – on which they have conducted the dealings between them – neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands. (Emphasis added.)"*

[35] Accordingly, in respect of the Appellant's/Plaintiff's claim for the employer's EPF contribution rate at 17% retrospectively, the Appellant/Plaintiff is estopped from claiming the same, as the Appellant/Plaintiff was very much aware that the contribution rate was only at 12% in which the Appellant/Plaintiff had enjoyed and received the said contribution without any objection.

[36] Another point of argument raised by the Appellant/Plaintiff is that, the Appellant/Plaintiff had retired (early) in pursuant to Section 12 (Optional retirement) of the Act 239 and this provision is applicable to all employee regardless whether the employee is under the EPF Scheme or Pension Scheme. Thus, in pursuant to section 12(3A) of the same Act, the Appellant/Plaintiff is entitled to a gratuity or other benefits. Further, the Appellant/Plaintiff submitted that the early retirement has the approval of the Respondent/Defendant vide letter dated 30th of September 2002.

[37] On the "optional retirement" under section 12 of the Act 239, I am inclined to agree with the Respondent's/Defendant's submission that the said section is not applicable to the Appellant/Plaintiff as this section is only applicable to pensionable employee's optional retirement. As stated earlier, section 6A(4) of the Act 239 expressly stated that, with the exception 6A and section 26, the other provisions under the Act 239, SHALL not be applicable to an employee who opted for the EPF Scheme, namely, the Appellant/Plaintiff. As such, the Appellant/Plaintiff being under the EPF Scheme is not entitled to an optional retirement under law, in particular, relying on section 12 of the Act 239.

[38] Thus, I am of the view, the issue of whether the Appellant/Plaintiff has obtained the approval from the Respondent/Defendant is immaterial for consideration. In any event, even if section 12 is applicable (which this Court ruled it is not), the Learned Session Court Judge has correctly concluded that "SP-1 testified that the retirement must be approved by Jabatan Perkhidmatan Awam (JPA) in accordance with section 12 (1) of the Act 239. As such, the Appellant/Plaintiff was not retired from the Respondent/Defendant.

[39] In light of the aforesaid, the appeal herein is dismissed with costs of RM 10,000.00.

Dated: 11 JANUARY 2021

(KHAIRIL AZMI HAJI MOHAMAD HASBIE)
Judicial Commissioner
High Court
Shah Alam

Counsel:

For the plaintiffs - Chow Siew Wai; M/s Chooi, Saw & Lim

For the defendants - Eric T.S. Lai & Tseng Seng Guan; M/s Lai & Associates

Cases referred to:

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309

Md Hilmi Md Noor & Anor v. Azman Ahmad & Ors [2016] 7 CLJ 360

Chow Yee Wah & Anor v. Choo Ah Pat [1978] 2 MLJ 41

Boustead Trading [1985] Sdn Bhd v. Arab-Malaysian Merchant Bank [1985] 3 MLJ 331

Parliamentary Debates House of Representative Fifth Parliament Second Session 20th of June 1980