Beatrice a/p AT Fernandez v Sistem Penerbangan Malaysia & Ors

FEDERAL COURT (PUTRAJAYA) — APPLICATION NO 08–51 OF 2003(W)
ABDUL MALEK AHMAD PCA, ALAUDDIN MOHD SHARIF FCJ AND NIK HASHIM JCA
11 MARCH 2005

Civil Procedure — Appeal — Leave to appeal — Federal Court — No further arguments to allow court to depart from established principles of law — Whether leave should be granted

Constitutional Law — Fundamental liberties — Equality before the law — Termination of employment of air stewardess upon pregnancy — Application of equal protection to persons in the same class — Whether unlawful discrimination — Federal Constitution art 8

Constitutional Law — Fundamental liberties — Equality before the law — Whether apply to collective agreement — Federal Constitution art 8

Labour Law — Employment — Collective agreement — Terms — Termination of air stewardess upon being pregnant — Whether discriminatory and offends Federal Constitution art 8 — Whether employer entitled to impose such condition — Whether implied term that employer will provide employee with other suitable work upon pregnancy — Whether employee bound by term requiring resignation upon pregnancy — Federal Constitution art 8 — Employment Act 1955 ss 40 & 37(1)

Labour Law — Employment — Termination — Compulsory termination of air stewardess upon being pregnant — Whether discriminatory and offends Federal Constitution art 8 — Whether employer entitled to impose such condition — Whether implied term that employer will provide employee with other suitable work upon pregnancy — Whether employee bound by term requiring resignation upon pregnancy — Federal Constitution art 8 — Employment Act 1955 ss 40 & 37(1)

Labour Law — Employment — Terms and conditions — Compulsory termination of air stewardess upon being pregnant — Whether discriminatory and offends Federal Constitution art 8 — Whether employer entitled to impose such condition — Whether implied term that employer will provide employee with other suitable work upon pregnancy — Whether employee bound by term requiring resignation upon pregnancy — Federal Constitution art 8 — Employment Act 1955 ss 40 & 37(1)

The applicant joined the first respondent as a Grade B flight stewardess and was bound by the terms and conditions of the relevant collective agreement ('the collective agreement'). The collective agreement, *inter alia* required all stewardesses in the applicant's category to resign on becoming pregnant and in the event she fails to resign, the first respondent shall have the right to terminate her services. The applicant became pregnant but she refused to resign. Therefore, the first respondent terminated her services. This led to her commencing proceedings at the High Court submitting that the provisions of the collective agreement were discriminatory in nature and therefore contravened art 8 of

the Federal Constitution rendering the collective agreement void. The High Court and Court of Appeal dismissed her application. The applicant then applied for leave to appeal to the Federal Court.

Held, dismissing the application for leave to appeal to the Federal Court:

(1) It is not possible to expand the scope of art 8 of the Federal Constitution to cover the collective agreements. Constitutional law — which deals with the contravention of individual rights by the Legislature or the Executive or its agencies — does not extend its substantive or procedural provisions to infringements of an individual's legal right by another individual. Further, the reference to the 'law' in art 8 of the Federal Constitution does not include a collective agreement (see para 13).

(2) There were special conditions applicable peculiarly to the job of a flight stewardesses, which the first respondent as the employer was entitled to impose (see para 14). Furthermore, the court took judicial notice that the nature of the job was certainly not conducive for pregnant women (see para 15). Therefore, there was no definite special clause in the collective agreement that discriminated against the applicant for any reason which would justify judicial intervention (see para 16).

(3) The equal protection in cl (1) of art 8 extends only to persons in the same class. It recognises that all persons by nature, attainment, circumstances and the varying needs of different classes of persons often require separate treatment. In this case, there was obviously no contravention (see para 18). In this case, the applicant chose to join the first respondent as a flight stewardess and agreed to be bound by the collective agreement. The applicant cannot compare herself with the ground staff or with the senior chief stewardesses or chief stewardesses as they were not employed in the same category of work (see para 19).

(4) Section 40 of the Employment Act 1955 was of no assistance to the applicant. Unless and until the Employment Act 1955 is amended to expressly prohibit any term and condition of employment that requires flight stewardesses to resign upon becoming pregnant, such clauses are subject to the Contracts Act 1950 and continue to be valid and enforceable (see para 23).

(5) In the applicant's case, the collective agreement was obviously not an 'agreement to negotiate'. It was an agreement binding on all women who agreed to be employed as flight stewardesses working for the first respondent (see para 25).

(6) Section 37(1) of the Employment Act 1955 makes it mandatory for employers to pay maternity allowance to female employees on maternity leave. However, it does not prohibit provisions requiring female employees in specialised occupations such as flight cabin crew to resign if they become

pregnant, simply because they cannot be working till they are due to deliver (see para 26).

(7) The evidence disclosed no implied term that will require the first respondent to provide her with a ground job while she was pregnant or on maternity leave (see para 28).

(8) The applicant had no hope of success even if leave to appeal was granted. The applicant had not established any grounds for this court to consider the availability of any further arguments which might allow this court to depart from the established principles of law (see para 29).

[**Bahasa Malaysia summary**

Pemohon bekerja dengan responden pertama sebagai pramugari Gred B dan terikat kepada terma-terma dan syarat-syarat perjanjian kolektif yang berkaitan ('perjanjian kolektif tersebut'). Perjanjian kolektif tersebut, antara lain, menghendaki semua pramugari di bawah kategori pemohon untuk berhenti kerja jika mengandung dan sekiranya gagal untuk berhenti kerja, responden pertama mempunyai hak untuk menamatkan perkhidmatannya. Pemohon mengandung tetapi enggan berhenti kerja. Oleh itu, responden pertama telah menamatkan perkhidmatan beliau. Ini mengakibatkan beliau memulakan prosiding di Mahkamah Tinggi dengan berhujah bahawa peruntukan perjanjian kolektif tersebut adalah bersifat diskriminasi dan oleh itu bercanggah dengan per 8 Perlembagaan Persekutuan menyebabkan perjanjian kolektif tersebut tidak sah. Mahkamah Tinggi dan Mahkamah Rayuan telah menolak permohonan beliau. Pemohon kemudian memohon kebenaran untuk merayu ke Mahkamah Persekutuan.

Diputuskan, menolak permohonan untuk kebenaran merayu ke Mahkamah Persekutuan:

(1) Adalah tidak mungkin untuk meluaskan skop per 8 Perlembagaan Persekutuan untuk meliputi perjanjian kolektif. Undang-undang Perlembagaan — yang membincangkan perlanggaran hak individu oleh badan perundangan atau eksekutif atau agensi-agensinya — tidak memperluaskan pemakaian peruntukan substantif atau prosedurnya ke atas perlanggaran hak individu dari segi undang-undang oleh individu lain. Tambahan pula, rujukan kepada 'undang-undang' dalam per 8 Perlembagaan Persekutuan tidak meliputi satu perjanjian kolektif (lihat perenggan 13).

(2) Terdapat syarat istimewa yang digunakan khususnya berkaitan tugas pramugari, yang responden pertama sebagai majikan berhak untuk kenakan (lihat perenggan 14). Tambahan pula, mahkamah mengambil notis kehakiman bahawa sifat tugas tersebut sememangnya tidak sesuai untuk wanita mengandung (lihat perenggan 15). Oleh itu, tiada fasal khusus yang istimewa dalam perjanjian kolektif tersebut yang bersifat diskriminasi

terhadap perayu untuk apa-apa alasan bagi menjustifikasikan campur tangan kehakiman (lihat perenggan 16).

(3) Perlindungan saksama dalam fasal (1) kepada per 8 meliputi hanya kepada mereka dalam kelas yang sama. Ia membenarkan semua orang yang secara tabiat, keadaan dan keperluan berbeza dari kelas berbeza diberi layanan yang berbeza. Dalam kes ini, tidak terdapat percanggahan (lihat perenggan 18). Dalam kes ini, pemohon memilih untuk bekerja untuk responden pertama sebagai pramugari dan bersetuju untuk terikat dengan perjanjian kolektif tersebut. Pemohon tidak boleh membandingkan dirinya dengan staf lain atau dengan ketua pramugari kanan atau ketua pramugari kerana mereka bukan dilantik bekerja di bawah kategori kerja yang sama (lihat perenggan 19).

(4) Seksyen 40 Akta Pekerjaan 1955 tidak membantu pemohon. Kecuali dan sehingga Akta Pekerjaan 1955 dipinda untuk menghalang dengan nyata apa-apa terma-terma dan syarat-syarat pekerjaan yang menghendaki pramugari berhenti kerja jika mengandung, fasal sedemikian tertakluk kepada Akta Kontrak 1950 dan akan terus sah dan berkuatkuasa (lihat perenggan 23).

(5) Dalam kes pemohon, perjanjian kolektif tersebut bukan satu 'agreement to negotiate'. Ia adalah satu perjanjian yang mengikat semua wanita yang bersetuju untuk bekerja sebagai pramugari untuk responden pertama (lihat perenggan 25).

(6) Seksyen 37(1) Akta Pekerjaan 1955 menjadikannya mandatori untuk majikan membayar elaun bersalin kepada pekerja wanita yang mengambil cuti bersalin. Namun begitu, ia tidak menghalang peruntukan yang menghendaki pekerja wanita yang bertugas dalam pekerjaan yang khusus seperti krew kabin penerbangan untuk berhenti bekerja jika mereka mengandung, kerana mereka tidak boleh bekerja sehingga masa bersalin (lihat perenggan 26).

(7) Keterangan tidak mendedahkan apa-apa terma tersirat yang menghendaki responden pertama menukar beliau dengan tugas di darat semasa beliau mengandung atau semasa cuti bersalin (lihat perenggan 28).

(8) Pemohon tiada harapan untuk berjaya meskipun kebenaran untuk merayu diberikan. Pemohon tidak membuktikan apa-apa alasan untuk mahkamah ini menimbangkan apa-apa hujah selanjutnya yang mungkin akan membenarkan mahkamah ini menyimpang daripada prinsip-prinsip undang-undang yang tetap (lihat perenggan 29).]

Notes

For cases on equality before the law, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1768–1784.

For cases on fundamental liberties generally, see 3 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 1494–1653.

A For cases on collective agreements, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 756–758.
For cases on terms and conditions, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1180–1183.
For cases on termination of employment, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1070–1140.
B For cases on appeals to the Federal Court, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) para 599.
For cases on leave to appeal, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 892–945.

C

Cases referred to

Datuk Haji Harun bin Haji Idris v Public Prosecutor [1977] 2 MLJ 155 (refd)
Datuk Syed Kechik bin Syed Mohamed & Anor v The Board of Trustees of the Sabah Foundation & Ors and another application [1999] 1 MLJ 257 (refd)
Kam Mah Theatre Sdn Bhd v Tan Lay Soon [1994] 1 MLJ 108 (refd)
D *Sistem Penerbangan Malaysia v Yong Pau Ching* [1997] 2 ILR 898 (refd)

Legislation referred to

Contracts Act 1950
E Courts of Judicature Act 1964 s 96(a)
Employment Act 1955 ss 7, 7A, 37(1), 40, 43, Part IX
Federal Constitution art 8, (1), (2)
Industrial Relations Act 1967 s 14(3)

Appeal from: Civil Appeal No W–02–186 of 1996 (Court of Appeal, Kuala
F Lumpur)

Gurubachan Singh Johal (Nashir Johal & Co) for the applicant.
Vijayan Venugopal (Shearn Delamore & Co) for the first respondent.
S Ravichandran (P Kuppusamy & Co) for the second respondent.

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Abdul Malek Ahmad PCA (delivering judgment of the court):

[1] Except for a handful of cases, it is not really the norm to publish judgments pertaining to leave to appeal but public interest necessitates the writing of one for this particular application.

H

[2] The applicant rests her case upon art 8 of the Federal Constitution wherein cl (1) thereof states that all persons are equal before the law and entitled to the equal protection of the law.

[3] The facts of her case were straightforward. She joined the first respondent
I as a Grade B flight stewardess and she was bound by the terms and conditions of a collective agreement dated 3 May 1988 which came into operation on 1September 1987 for a period of three years. The said collective agreement

was recognised by the Industrial Court and registered as 'COG 81/88'. It must be emphasised at this juncture that this collective agreement was binding on all stewardesses.

[4] This point is highly relevant because cl (2) of art 8 of the Federal Constitution, which she is relying on, is there to ensure that there is no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender. It must be pointed out that 'gender' was only added in subsequently and came into force only on 28 September 2001.

[5] Paragraph (3) of cl 2 of the First Schedule to the collective agreement requires all stewardesses in the applicant's category to resign on becoming pregnant and in the event she fails to resign, the first respondent shall have the right to terminate her services. The applicant became pregnant but she refused to resign. Acting upon the relevant provision of the collective agreement, the first respondent terminated her services. This led to her commencing proceedings at the High Court seeking a declaration, *inter alia*, that cl 2, which deals with the notice of termination of employment, cl 14, which sets out the provisions for maternity leave for special cabin crew which includes senior chief stewardesses and chief stewardesses, and cl 19, which provides for the retirement age differently for different categories of female employees, of the collective agreement contravened art 8 of the Federal Constitution rendering the collective agreement void. The applicant also prayed that her termination from service was void for contravening the Industrial Relations Act 1967, in particular s 14(3) thereof, and the Employment Act 1955.

[6] It must be noted that the applicant was employed by the first respondent on 14 October 1980 as a Grade B flight stewardess and at the time of her termination, the applicant was still in that same category.

[7] On 29 February 1996, the High Court dismissed the application. She appealed but the Court of Appeal on 7 April 2003 came to the same conclusion and dismissed her appeal with costs.

[8] The applicant applied for leave to appeal to the Federal Court against the decision of the Court of Appeal. We heard the applicant's application for leave to appeal to this Court on 10 August 2004. We reserved our decision as we needed more time to consider the merits and to obtain the grounds of judgment of the Court of Appeal which were not then available. These were made available sometime in October 2004 and we delivered our decision on 11 March 2005.

[9] An appeal to the Federal Court is not automatic and all litigants in civil cases who wish to do so must first obtain leave from the Federal Court. In deciding whether leave to appeal is to be granted, the applicant must satisfy s96(a) of the Courts of Judicature Act 1964 (hereinafter the 'CJA'). In *Datuk Syed Kechik bin Syed Mohamed & Anor v The Board of Trustees of the Sabah Foundation*

& Ors and another application [1999] 1 MLJ 257, it was held that leave will not be granted unless both of the following criteria are satisfied by an intending appellant:

(a) the judgment of the Court of Appeal has raised a point of general principle which the Federal Court has not previously decided or a point of importance upon which further argument and a decision of the Federal Court would be to public advantage; and

(b) if the point is decided in favour of the intending appellant, there is a *prima facie* case for success in the appeal.

[10] We have carefully considered as to whether the judgment of the Court of Appeal has raised a point of general principle not previously decided or a point of importance upon which further argument and a decision of the Federal Court would be to public advantage. We are unanimous that this is not a proper case where leave to appeal should be granted.

[11] The issues of law raised by the applicant in the intended appeal to the Federal Court are as follows:

(a) whether art 8 of the Federal Constitution is applicable to terms and conditions of a collective agreement between an employer and a trade union recognised by the Industrial Court where the terms and conditions are discriminatory in nature;

(b) whether para (3) of cl 2 and cl 14 in the First Schedule to the collective agreement dated 3 May 1988 between the first respondent and the second respondent is in violation of art 8 of the Federal Constitution which protects against discrimination;

(c) whether para (3) of cl 2 and cl 14 in the First Schedule of the collective agreement dated 3 May 1988 is *ultra vires* the provisions of the Employment Act 1955;

(d) whether art 5 of the Federal Constitution and the Employment Act 1955 guarantees the applicant the right to work and the right for continued employment during her pregnancy and to the enjoyment benefits of a female employee;

(e) whether the United Nations Convention on the Elimination of all Forms of Discrimination against Women 1979 is applicable to the terms and conditions of a collective agreement between the employer and a trade union which is recognized by the Industrial Court where terms and conditions are discriminatory in nature.

[12] The thrust of her application rests on an allegation that the collective agreement contravened cl (2) of art 8 of our Federal Constitution which reads:

(2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

[13] We took time to examine this allegation carefully and we found that it is simply not possible to expand the scope of art 8 of the Federal Constitution to cover collective agreements such as the one in question. To invoke art 8 of the Federal Constitution, the applicant must show that some law or action of the Executive discriminates against her so as to controvert her rights under the said Article. Constitutional law, as a branch of public law, deals with the contravention of individual rights by the Legislature or the Executive or its agencies. Constitutional law does not extend its substantive or procedural provisions to infringements of an individual's legal right by another individual. Further, the reference to the 'law' in art 8 of the Federal Constitution does not include a collective agreement entered into between an employer and a trade union of workmen.

[14] We also observed that the job requirements of flight stewardesses are quite different from that of women in other occupations including the other categories of women employees in the same collective agreement. There are occupational benefits peculiar to the job which are not available in other occupations. Likewise, there are special conditions applicable peculiarly in this occupation, which the first respondent as the employer was entitled to impose.

[15] It is not difficult to understand why airlines cannot have pregnant stewardesses working like other pregnant women employees. We take judicial notice that the nature of the job requires flight stewardesses to work long hours and often flying across different time zones. They have to do much walking on board flying aircraft. It is certainly not a conducive place for pregnant women to be.

[16] In our present case, the collective agreement requires the resignation, or termination in the event of refusal to resign, if a stewardess becomes pregnant and this was a lawful contract between private parties. There is no definite special clause in the collective agreement that discriminates against the applicant for any reason which will justify judicial intervention.

[17] The relevant provision of the collective agreement namely para (3) of cl 2 reads:

(3) A female cabin crew except those specified in cl 14 of the First Schedule and training check stewardess shall resign from the company on becoming pregnant. In the event she fails to resign, the company shall have the right to terminate her services.

A **[18]** In the circumstances, in construing art 8 of the Federal Constitution, our hands are tied. The equal protection in cl (1) of art 8 thereof extends only to persons in the same class. It recognises that all persons by nature, attainment, circumstances and the varying needs of different classes of persons often require separate treatment. Regardless of how we try to interpret art 8 of the **B** Federal Constitution, we could only come to the conclusion that there was obviously no contravention. We are also in agreement with the views expressed by Suffian LP in *Datuk Haji Harun bin Haji Idris v Public Prosecutor* [1977] 2 MLJ 155 at pp 165 and 166 on this point.

C **[19]** The applicant chose to join the first respondent as a flight stewardess and agreed to be bound by the collective agreement. It would have been different if she had joined the first respondent as a member of its administrative staff. The applicant cannot compare herself with the ground staff or with the senior chief stewardesses or chief stewardesses as they were not employed in the same category of work.

D **[20]** At this juncture, it is appropriate to refer to the Industrial Court case of *Sistem Penerbangan Malaysia v Yong Pau Ching* [1997] 2 ILR 898 where the dispute emanated from the summary dismissal of the claimant from the employ of the company, which she contended was without just cause or excuse. Whilst challenging the reasons for her dismissal, the claimant admitted her terms **E** and conditions of employment were governed by the collective agreement vide Cognisance No 8 of 1992. At the hearing, the company contended its right for summary dismissal when the claimant refused to tender her resignation, on the ground that she had become pregnant and delivered a child, thereby contravening cl 2(3) First Schedule of art 6 of the collective agreement. It was **F** the claimant's contention that the company had granted her study leave for 18 months during which period she had delivered a child. She submitted the company either varied the contract or is estopped from applying the provisions of the collective agreement.

G **[21]** It was held:

(a) in application of the law in regard to the variation occasioned by the supervening period of approved leave, the equitable doctrine of forbearance operating as an estoppel, the fundamentals of contractual requirements not excluded, and based on the reasonable test applied on the strict **H** construction of terminology in cl 2.3 of art 6 of the collective agreement, it was the finding of the court that the termination of the claimant of a summary nature to be unreasonable and unduly harsh, having regard to the constitutional position that the right to livelihood was equated to the proprietary right of the individual;

I (b) what was even more damaging to the company's case was that the human resources manager's admission that a new collective agreement taken cognisance by the court in which the seven-year qualification period

was reduced to five years and the effective date was 1 September 1995 while the letter dated 13 September 1995 was the date of the termination. To the court, this alone would nullify the company's termination of the claimant and render it invalid;

(c) the court was unable to conclude with reasonable certainty the effect of the provisions of Part IX of the Employment Act 1955 in regard to maternity protection wherein s 43 provides that any provision whereby any female employee relinquished her right under this part shall be void. It was also observed that s 14(3) of the Industrial Relations Act 1967 reinforced the repugnancy idea of s 43 of the Employment Act;

(d) the dismissal of the claimant was without just cause or excuse, and the court adjudicated backwages and reinstatement.

[22] However, that case was different as the stewardess had been given study leave for 18 months during the period she got pregnant and consequently delivered the baby. The Industrial Court Chairman said:

> In the opinion of this court, the answer would lie upon what strict construction of interpretation are the words 'on becoming pregnant' is to take. Having regard to the policy consideration of the company, as explained by COW1 and COW3, the logical approach by the company will be the anticipatory approach. That is to say, the company has the right to terminate on discovering someone is pregnant, 'because it will affect or disrupt the operations, as it takes six months to train and qualify someone, as replacement.' That will be a logical application of the strict rule, in order to preempt the operational problems – that makes sense.
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> To put it conversely, what is the purpose of terminating someone, who, having been given 18 months study leave, during which period all the terms are suspended and had in fact become pregnant (or already delivered a baby), now (on 1 January 1996) fit as a fiddle presents herself, ready willing and able to take up duties, for the company now, ex post facto, to terminate her? The company is punishing the claimant after the fact of delivery, ie retrospectively. Whereas, in contrast, the application of the rule should be before the fact of delivery.
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> That is the strict interpretation of 'on becoming pregnant' — not sooner not later. There is possibly some adverse consequences to the company before the delivery, but what is the consequence to the company after the delivery? In order to appreciate the logic of the company, one has to reflect on what COW2 said after the meeting with the claimant about her delivery of baby:
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> > Before breaking up, when claimant said she did not want to resign, we told her we have a facility on a yearly renewable contract basis of employment, and the company can consider if she wanted to apply after resigning.
>
> Herein, lies the argument revolving around the question, whether it is reasonable and fair, or is it harsh and unjust on the part of the company to take the drastic measure of summary dismissal, in the special circumstances of the claimant's case?

> In application of the law therefore in regard to the variation occassioned by the superverning period of approved leave, the equitable doctrine of forebearance operating as an estoppel, the fundamentals of contractual requirements not excluded, and based on the reasonable test to be applied on the strict construction of the terminology in cl 2.3 art 6 CA, it is the finding of the court that the termination of the claimant of summary nature is unreasonable, unfair, and unduly harsh in the circumstances (having regard also to the constitutional position that the right to livelihood is equated to proprietary right of the individual)…
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> …The court will however leave the issue — of whether such CA provisions are repugnant to existing legislations, or contrary to law and therefore void — open, since the court is unable to make a conclusion with reasonable certainty.

[23] We have also looked at s 40 of the Employment Act 1955 and totally agree with the Court of Appeal that it is of no assistance to the applicant. Unless and until the Employment Act 1955 is amended to expressly prohibit any term and condition of employment that requires flight stewardesses to resign upon becoming pregnant, such clauses are subject to our Contracts Act 1950 and continue to be valid and enforceable.

[24] Clauses which are uncertain in its meaning and which requires the signing of a formal agreement may be construed as 'an agreement to negotiate'. The Supreme Court in *Kam Mah Theatre Sdn Bhd v Tan Lay Soon* [1994] 1 MLJ 108 referred to a contract which was dependent on the signing of a formal agreement and held at p 118:

> We were of the view that there was no contract at all, because we found that the said document was dependent on the signing of a formal contract to be further negotiated and approved by both parties.

[25] In the applicant's case, the collective agreement was obviously not an 'agreement to negotiate'. It was an agreement binding on all women who agreed to be employed as flight stewardesses working for the first respondent. While working for the first respondent, she would no doubt have enjoyed all the benefits accrued under the collective agreement.

[26] We also took pains to examine s 14(3) of the Industrial Relations Act 1967 and ss 7, 7A and 43 of the Employment Act 1955 which were cited by the applicant, and unfortunately for her, those laws are of no relevance to her case. Section 37(1) of the Employment Act 1955 makes it mandatory for employers to pay maternity allowance to female employees on maternity leave. This section clearly protects the rights of working women in Malaysia. However, it does not prohibit provisions requiring female employees in specialised occupations such as flight cabin crew to resign if they become pregnant, simply because they cannot be working till they are due to deliver.

[27] The Federal Court has the power to consider points of law that were not raised by the parties or in the court below. Thus, we exercised our power and in the interests of justice, we went a step further and explored other areas of our law to see if there is any valid ground for her to appeal.

[28] We asked ourselves if the evidence adduced by the applicant disclosed any implied term that will require the first respondent to provide her with a ground job while she was pregnant or on maternity leave. We have examined the applicant's affidavits but could find no evidence that such an implied term existed. This is not surprising because a normal human pregnancy lasts 37 weeks. If the maternity leave period is added on, it would mean that the first respondent would almost perpetually be finding ground jobs of about 12 months long for their stewardesses who have become pregnant. It is simply an impracticable situation and more importantly, for the purpose of this case, there is clearly no evidence to support any contention of an implied term.

[29] Thus, this is a case where, upon careful examination of the law, it is better for the applicant's application to be dismissed at this stage to save her from incurring more legal fees unnecessarily. Both the High Court and Court of Appeal below had considered her case carefully based on existing laws. It is our view that the applicant has no hope of success even if we were to grant her leave to appeal. Granting her leave to appeal would only be giving the applicant false hopes. Regardless of how we view and review art 8 of the Federal Constitution, we could only come to the same conclusion as the courts below that the collective agreement does not in any way contravene our Federal Constitution. The applicant has not established any grounds for this court to consider the availability of any further arguments which might allow this court to depart from the established principles of law discussed earlier.

[30] In the circumstances, we had no other alternative but to dismiss her application for leave to appeal to the Federal Court with costs. The deposit is to go to the respondent to the account of taxed costs.

Application dismissed.

Reported by Loo Lai Mee