ST MICROELECTRONICS SDN BHD

v.

R JESUDAS S RAGHAVAN

High Court Malaya, Johor Bahru
Gunalan Muniandy JC
[Judicial Review No: 25-34-06-2013]
20 March 2014

Administrative Law: *Judicial review — Certiorari — Application to quash award of Industrial Court ('IC') — IC decided dismissal of respondent on charge of sexual harassment without just cause and excuse — Employer claimed IC made error of law or fact in said decision — Whether decision of IC based on overall evidence and application of correct principles of law — Whether decision of IC occasioned a miscarriage of justice — Whether there were valid grounds to quash said decision — Industrial Relations Act 1967, s 20(3)*

Labour Law: *Industrial Court — Decision – Reinstatement of respondent — Respondent found not guilty of charge of sexual harassment and awarded reinstatement as employee with employer — Whether court made any error of law in award of reinstatement — Whether court had considered all relevant facts and circumstances in awarding reinstatement — Whether remedy of reinstatement justified — Industrial Relations Act 1967, s 20(1)*

The respondent was an employee of the applicant. Pursuant to a complaint of sexual harassment received from another employee against the respondent, the respondent was issued a show cause letter for an explanation on the matter. Having considered the respondent's explanation and finding it to be unacceptable, the applicant directed the respondent to attend a domestic inquiry. Based on the evidence at the inquiry, the notes of proceedings and finding of the panel of inquiry, the applicant arrived at a decision to terminate the respondent's services. Dissatisfied, the respondent lodged a complaint under the Industrial Relations Act 1967 ("IRA"). Subsequently, the dispute was referred to the Industrial Court ("IC") for adjudication. At the end of the hearing, the IC Chairman ("ICC") made a finding that the charge against the respondent had not been established on a balance of probabilities and decided that the dismissal of the respondent was without just cause and excuse. Accordingly, the ICC ordered the reinstatement of the respondent to his former position and awarded him backwages. Hence, the present application for judicial review by the applicant for an order of *certiorari* to quash the award of the IC, contending that the ICC had made a serious error of law or fact in his decision and award of reinstatement.

Held (dismissing the applicant's application with costs):

(1) In the present case, the decision of the ICC was based purely on an analysis and evaluation of the overall evidence and the application of the correct principles of law. Thus, the IC had not made any serious error of law or fact

or misdirected itself on the evidence in arriving at its decision. The ICC had rightly performed his role under s 20(3) IRA. The decision of the ICC did not occasion a miscarriage of justice. Accordingly, there were no valid grounds to quash the decision of the IC by an order of *certiorari*. (paras 26-27)

(2) In view of s 20(1) IRA, there was no justification for the applicant's contention that the ICC had committed an error of law in awarding reinstatement of the respondent. The respondent had vindicated himself of the serious charge of sexual harassment. Following that, the ICC had correctly considered all the relevant facts and circumstances and the factual scenario of the case in deciding on whether reinstatement was the most appropriate remedy. It was also neither a perverse nor irrational decision unsupported by any evidence that warranted interference by the present court. The applicant's application was accordingly dismissed. (paras 28-30)

Case Commentaries

- An Industrial Court award cannot be appealed. However, a party dissatisfied with an award may file an application with the High Court for judicial review. The High Court does not look at the facts of the case but the decision-making process used by the Industrial Court. Where the High Court finds that the lower level tribunal has made an error of law, it has the power to issue an order of *certiorari* to quash the Industrial Court's award.
- It has been said on a number of occasions in the High Court and other superior courts that, "It can be gleaned from the authorities that in order to succeed in an application for judicial review the onus is on the applicant to show, *inter alia*, that the Industrial Court had:

    1) Committed an error of law in arriving at its decision; or

    2) Reached an unreasonable decision by taking irrelevant matters into consideration or failing to take relevant matters into consideration; or

    3) Made a decision that was so absurd or perverse that no reasonable person or tribunal so circumstanced would have reached that decision; or

    4) Committed procedural impropriety by failing to adhere to procedure prescribed by law or to principles of natural justice."

- Sexual harassment is considered a serious form of misconduct which warrants dismissal. Employers are encouraged to introduce a variety of measures to try to prevent incidents of sexual harassment and to put in place a system whereby victims can make a report and be confident that a thorough investigation will take place and action will be taken against the harasser if there is adequate evidence that he is guilty of the offence.
- Claims of sexual harassment are exceedingly difficult to investigate. Furthermore, even where an employer has reasonable evidence at the time

of dismissal that a harasser is guilty, by the time a dispute over the dismissal of the harasser reaches the Industrial Court the evidence may be weakened by the fact that the victim may refuse to give evidence in open court out of embarrassment.

- Employees who claim that they are victims of sexual harassment must be informed of the importance of keeping any evidence that sexual harassment has occurred. For instance, if there have been a series of telephone text messages, the victim should carefully keep the messages. If the victim were to keep the alleged harassers messages but delete her replies, this would be considered suspicious behaviour on her part.
- Credibility of witnesses plays an important part of assessing which party, when there is a dispute over certain events, is telling the truth. When an alleged victim of sexual harassment fails to report the harassment immediately after the events, and waits some considerable time to do so without any acceptable reason for the delay, the court may tend to disregard her version of events.
- When the Industrial Court finds that an employee has been dismissed without just cause or excuse, the court has the power to choose the appropriate remedy, ie reinstatement or compensation *in lieu* of reinstatement. The superior courts are, on the whole, unlikely to interfere with this decision as it is well within the authority of the Industrial Court.

Case(s) referred to:

Ferodo Ltd v. R Barnes [1976] IRLR 302 (refd)

Harpers Trading (M) Sdn Bhd v. National Union of Commercial Workers [1990] 1 MELR 34 (refd)

Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor [1995] 1 MELR 1 (refd)

Malayan Banking Bhd v. Association of Bank Officers, Peninsular Malaysia & Anor [1988] 1 MELR 8 (refd)

Menara Pan Global Sdn Bhd v. Arokianathan a/l Sivapiragasam [2006] 1 MLRA 496 (refd)

Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 2 MLRA 23 (refd)

Petroliam Nasional Berhad v. Nik Ramli Nik Hassan [2003] 1 MELR 21 (refd)

Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 1 MLRA 268 (refd)

Teh Khian Woei v. Citibank Berhad [2011] MELRU 133 (refd)

Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd And Another Appeal [1995] 1 MLRA 412 (refd)

Legislation referred to:

Employment Act 1955, s 2

Industrial Relations Act 1967, s 20(1), (3)

Rules of Court 2012, O 53

Counsel:

For the applicant: Suganthi Singam (Nadia Abu Bakar with her); M/s Shearn Delamore & Co

For the respondent: S Shanker (Juanita Chua with him); M/s Shanker & Arjunan

JUDGMENT

Gunalan Muniandy JC:

[1] This application for judicial review for an order of *certiorari* arises out of an award of the Industrial Court ('IC') dated 26 April 2013 wherein the dismissal from employment of the respondent by his employer ('applicant') was found to be without just cause of excuse. The applicant sought to quash the said decision of the IC or in the alternative, an order of *certiorari* to quash part of the award with regard to reinstatement and backwages.

Brief Material Facts

[2] In 1996, the respondent commenced employment with the applicant, an electronics manufacturer, as a Production Superintendent but resigned in July 2007. However, about seven months later, in February 2008, he was re-employed by the applicant as a Production Manager. This was followed by a promotion to the position of Senior Manager in April 2011 which he continued to hold until his termination from employment, which is the subject of the reference to the IC.

[3] Pursuant to a complaint of sexual harassment received from an employee ('the complainant') against the respondent, the applicant issued a show cause letter dated 19 October 2011 to provide an explanation as to why disciplinary action should not be taken against him for the following charges:

> "Charge 1
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> On 5 September 2011, approximately between 4.00pm to 6.00pm, you (Jesudass a/l Raghavan PSID No 020445) outraged the modesty of one of the company's employees (Norimah binti Mohamad Johari, PSID 188045, Production Operator, Team 2) operating at machine #7 and #8, Conventional Mold Area, SOIC/PDIP Department. She claimed that you approached her and indulged in sexual talk with comment like "Pernah ke tengok atau menonton video blue", inviting her to have sex with remarks as "Awak suka yang extreme ke" "Cara macam mana yang kamu suka, ceritalah" and asking her to remove her smock in order to see her breast.
>
> Charge 2
>
> Between 13 September 2011 – 6 October 2011, you have frequently contacted Norimah binti Mohamad Johari using short messaging system (SMS). You have asked her to go out with you and invited her to have sex."

[4] The complainant also reported the incidents to the union representative who filed a grievance form on her behalf to the Human Resources Department of the applicant.

[5] Upon an extension of time being granted to the respondent to reply to the show cause letter, the respondent gave his reply vide letter dated 31 October 2011 in which he denied the allegations of misconduct.

[6] Having considered the respondent's explanation and found it to be unacceptable, the applicant vide letter dated 2 October 2011 directed the respondent to attend a domestic inquiry. The inquiry proceeded on 8 November 2011 in the absence of the complainant who failed to attend the inquiry. At the date of the proceedings she had ceased employment in the applicant company.

[7] Until the conclusion of the inquiry proceedings the respondent was on suspension from employment on full salary. Upon the completion of the proceedings, the panel of inquiry found the respondent guilty of the second charge.

[8] Based on the evidence at the inquiry, the notes of proceedings and finding of the panel of inquiry, the applicant arrived at a decision to terminate the respondent's services. The respondent was duly informed of the decision by letter dated 18 November 2011.

[9] Being dissatisfied with the decision of the applicant, the respondent lodged a complaint under the Industrial Relations Act 1967. The dispute was thereafter referred to the IC for adjudication.

[10] A full hearing of the dispute was conducted by the learned IC Chairman ('ICC'). Upon conclusion of the hearing, the ICC made a finding that the charge against the respondent had not been established on a balance of probabilities. He, accordingly, decided that the respondent's dismissal was without just cause and excuse. As for the remedy, the ICC ordered the reinstatement of the respondent to his former position and awarded him RM122,740.00 as backwages. Hence, this application for judicial review.

The Law Applicable To Judicial Review

[11] On the law in relation to judicial review applications against IC decisions, both parties rightly cited the Federal Court case of *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor* [1995] 1 MELR 1 which cited with approval the following passage from *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* [1995] 1 MLRA 268:

> "An inferior tribunal or other decision-making authority, whether exercising a quasi-judicial function or purely an administrative function, has no jurisdiction to commit an error of law. Henceforth, it is no longer of concern whether the error of law is jurisdictional or not. If an inferior tribunal or other public decision-maker does make such an error of law then he exceeds his jurisdiction. So too is jurisdiction exceeded, where resort is to an unfair procedure (see *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v. Setiausaha Suruhanjaya Pasukan Polis* [1995] 1 MLRA 57), or where the decision reached is unreasonable, in the sense that no reasonable tribunal similarly circumstanced would have arrived at the impugned decision.

> It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed. But it may be safely said that an error of law would be disclosed if the decision-maker asks himself the wrong question or takes into account irrelevant considerations or omits to take into account relevant considerations (what may be termed an anisminic error) or if he misconstrues the terms of any relevant statute, or misapplies or misstates a principle of the general law."

[12] The principle as regards the finding of fact by the IC is well established. The principle was succinctly expressed by the Supreme Court in *Malayan Banking Bhd v. Association of Bank Officers, Peninsular Malaysia & Anor* [1988] 1 MELR 8 as follows:

> "The general principle would appear to be that it will usually be proper to treat a decision-maker's tasks of fact-finding and the drawing of factual inferences from established facts as falling within the decision-maker's jurisdiction, unless the decision-maker has reached absurd results or reached results absurdly."

[13] Further, in *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd And Another Appeal* [1995] 1 MLRA 412 the Federal Court held:

> "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 judgment in *Griffiths (Inspector of Taxes) v. JP Harrison (Watford) Ltd* [1962] 1 All ER 090 at p 916), and judgment of Lord Diplock in *Bromley London Borough Council v. Greater London Council & Anor* [1983] 1 AC 768 at p 821; [1982] 1 ALL ER 153 at p 159, [1982] 2 WLR at p 100."

[14] It can be gleaned from the authorities that in order to succeed in an application for judicial review the onus is on the applicant to show, *inter alia*, that the IC had:

1) Committed an error of law in arriving at its decision; or

2) Reached an unreasonable decision by taking irrelevant matters into consideration or failing to take relevant matters into consideration; or

3) Made a decision that was so or absurd perverse that no reasonable person or tribunal so circumstanced would have reached that decision; or

4) Committed procedural impropriety by failing to adhere to procedure prescribed by law or to principles of natural justice.

[15] A foremost consideration in dealing with a judicial review application is that the role of the court should be distinguished from its role in the exercise of its appellate jurisdiction from the decision of a subordinate court. This was stated clearly by the Supreme Court in *Harpers Trading (M) Sdn Bhd v. National Union of Commercial Workers* [1990] 1 MELR 34 as follows:

> "It seems to us that it should be treated as trite law that judicial review is not an appeal from a decision but a review of the manner in which the decision was made and the High Court is not entitled on an application for judicial review to consider whether the decision itself, on the merits of the facts, was fair and reasonable."

[16] Similarly, in *Petroliam Nasional Berhad v. Nik Ramli b Nik Hassan* [2003] 1 MELR 21, the Federal Court emphasised that:

> "The fear of unnecessarily emasculating the functions of the Industrial Court can be laid to rest if the reviewing courts, in the exercise of their powers, constantly bear in mind that the review of the Industrial Court's award on the merits is a kin to, though not the same as, the exercise of appellate powers. The courts should also remind themselves that the Industrial Court operates under the Act, in accordance with principles quite different from those in the civil courts."

Issues For Determination

[17] 1) Whether the IC had erred in principle or seriously misdirected itself on the facts in arriving at its decision?

2) Whether the IC had acted unreasonably or irrationally in deciding that the dismissal of the respondent was without just cause or excuse?

3) Whether the finding of the IC was so perverse and contrary to the evidence that it warranted interference by the court in *certiorari* proceedings?

Findings

[18] The primary contention of the applicant in this judicial review is that the learned ICC in concluding that the respondent's dismissal was wrongful had failed to apply the test enunciated in the case of *Ferodo Ltd v. R Barnes* [1976] IRLR 302 which ruled that the correct approach in a case of dismissal is for the Industrial Tribunal to ask itself this question:

> "It must be remembered that in dismissing an employee including a dismissal where the reason is criminal conduct, the employer need only to satisfy himself that at the time of dismissal, there were reasonable grounds for dismissal, there were reasonable grounds for believing that the offence put against the employee was committed. The test is not whether the employee did it but whether the employer acted reasonably in thinking the employee did it and whether the employer acted reasonably in subsequently dismissing him."

Hence, that the decision was flawed and amenable to be quashed by an order of *certiorari*.

[19] The respondent, on the other hand, contended that the IC was fully justified in concluding that the applicant had no reasonable grounds to believe that the respondent was guilty of sexual harassment as alleged based on the evidence of communication between him and the complainant. The evidence disclosed that at the material time of the alleged sexual harassment there was

a two-way communication by short messaging service ('SMS') between them. This was brought to the knowledge of the applicant as the respondent had during the course of the domestic inquiry on 8 November 2011 submitted a list of SMS messages that had been exchanged between him and the complainant. However, it was in evidence that the complainant had hidden her outgoing messages to the respondent in response to his messages when she deleted them from her handphone when she surrendered it to the applicant. Hence, a crucial piece of evidence that went to the root of the sexual harassment charge had been destroyed and concealed from the applicant as well as the IC. This fact rightly figured prominently in the analysis of evidence by the ICC.

[20] The ICC also gave due weight to the inordinate delay by the complainant in reporting the alleged incident to the applicant. Having reviewed and considered her explanation he found it to be unreasonable and lacking in credibility under the relevant circumstances. The series of text messages by the respondent with alleged sexual connotations began on 13 September 2011 and stretched up to 6 October 2011 with several replies by the complainant. However, the latter did not lodge any report to the applicant's Human Resource Department until 12 October 2011. Her explanation for hesitating to report was that she had first to discuss with her friends or colleagues and further, that her wedding was around the corner and she did not wish to disrupt preparations for the ceremony. The ICC did not consider the reasons given worthy and credible in view of the serious allegation made against the respondent. As the complainant was about to tie the knot, in his finding, it was all the more reason for her to urgently act against any harassment of a sexual nature to be above suspicion. The ICC's finding that the late reporting by the complainant affected her credibility and raised doubts about her truthfulness was not, under the circumstances, unreasonable or erroneous.

[21] Another fact considered by the ICC to be significant and important to the issue in dispute was the evidence of both the complainant and the respondent that the latter met the former together with her parents after the report wherein the complainant agreed to withdraw her allegations against the respondent. Based on this fact together with other evidence relating to her conduct during the material time, such as her response to the respondent's text messages, the ICC found that the complainant herself did not consider the conduct of the respondent to be sufficiently serious to affect her modesty and pride. His finding in this respect was clearly founded on the evidence before him and the relevant factors.

[22] The ICC duly took into account what in law constituted an act of sexual harassment. He referred to the case of *Teh Khian Woei v. Citibank Berhad* [2011] MELRU 133 where the phrase was defined as follows:

> "Sexual Harassment
>
> The complainant in this case has alleged Sexual Harassment on the part of the claimant. What really is the concept of "Sexual Harassment"? Ashgar Ali in his book "*Dismissal from Employment and the Remedies*," LexisNexis, 2007, describes "sexual harassment" as follows: "Sexual harassment refers to

> sexual conduct which is imposed on, and is unsolicited or unreciprocated by the recipient, for examples, repeated unwelcome sexual comments, looks or physical contact, among others."
>
> The court is mindful of the fact that sexual harassment is after all a form of harassment."

He also considered the statutory definition of the phrase as contained in the Employment Act 1955 of which s 2 provides that:

> "Sexual harassment" means any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment."

[23] The ICC after having heard the evidence of both parties and their witnesses on the charge of sexual harassment as preferred came to a finding that misconduct against the respondent had not been proved on a balance of probabilities. In arriving at this finding, the learned ICC had properly and thoroughly considered, analysed and evaluated the evidence of both parties in great detail and had also taken into account the credibility of both the complainant and the respondent. Having taken the correct approach and applied the established test whether the allegation of sexual harassment had been proved against the respondent, the ICC came to a finding of fact that the alleged misconduct had not been proved. In deciding this issue, he applied the correct burden of proof borne by the applicant to establish the charge against the respondent, ie proof on a balance of probabilities.

[24] It is trite law that findings of fact and reasonable inferences from proven facts by the ICC are not within the purview of the High Court in judicial review ('JR') proceedings. Findings of fact are not amendable to be quashed in *certiorari* proceedings unless the findings are unsupported by any evidence or the result of a serious misdirection on the facts and evidence. This is especially so in a case where, as in the instant case, the findings are based largely on the credibility and demeanour of witnesses who had testified before the IC.

[25] In dealing with judicial review, the principles applicable, particularly as regards the merits of the IC's decision or its findings of fact, were clearly laid down by the Court of Appeal in *Menara PanGlobal Sdn Bhd v. Arokianathan a/l Sivapiragasam* [2006] 1 MLRA 496 as follows:

> "In dealing with judicial review, a judge should have the following principles, *inter alia*, in the forefront of his mind: (i) judicial review is not an appeal from a decision but a review of the manner in which the decision was made; (ii) the High Court is not entitled on an application for judicial review to consider whether the decision itself, on the merits of the facts, was fair and reasonable; (iii) the High Court, through judicial review, should not introduce technicalities of the court of law to the Industrial Court; this would certainly be so as s 30(5) of the Act imposes a duty upon the Industrial Court to have regard to substantial merits of a case rather than to technicalities and it also requires the Industrial Court to decide a case in accordance with equity and good conscience; (iv)

> the main and only function of the Industrial Court in dealing with a reference under s 20 of the Act is to determine whether the misconduct or irregularities complained of by the management as to the grounds of dismissal were in fact committed by the workman and if so, whether such grounds constitute just cause or excuse for the dismissal; (v) the Industrial Court should not be burdened with the technicalities regarding standard of proof, the rules of evidence and procedure that are applied in the court of law; and (vi) the High Court will not interfere with finding 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 different conclusions on facts 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."

[26] In this case, it has not been shown that the decision of the ICC, premised purely on findings of fact, was unsupported by any evidence, perverse, absurd, or contrary to the evidence in its totality that occasioned a miscarriage of justice. The decision was, on the contrary, based purely on an analysis and evaluation of the overall evidence and application of correct principles of law. A JR differs from an appeal in that the court is concerned with reviewing the decision making process rather than the substance or merits of the facts pertaining to the decision. In conclusion, I held that the ICC had not made any serious error of law or fact or misdirected itself on the evidence in arriving at its decision. The ICC had rightly performed his role on a reference under s 20(3) of the Industrial Relations Act 1967. As held by the Federal Court in the landmark case of *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 2 MLRA 23 as follows:

> "As pointed out by this court recently in *Hong Leong Assurance Sdn Bhd v. Wong Yuen Hock* [1995] 1 MLRA 412, the function of the Industrial Court in dismissal cases on a reference under s 20 is two-fold, first, to determine whether the misconduct complained of by the employer has been established, and secondly, whether the proven misconduct constitutes just cause or excuse for the dismissal."

Upon finding that on the facts the misconduct complained of against the respondent by the employer had not been proved, the ICC had rightly concluded that his dismissal was without just cause or excuse. For the reasons aforesaid, I found no valid grounds to quash the decision of the IC by an order of *certiorari*.

Remedy

[27] In its grounds of review, the applicant also contended that the learned ICC had committed an error of law by awarding the respondent the remedy of reinstatement. The applicant listed down several issues in its statement pursuant to O 53, Rules Of Court 2012 which the ICC had allegedly failed to consider in awarding reinstatement of the respondent to his former position. Amongst these is that the decision was premised on an erroneous conclusion that the respondent was not in gainful employment after his dismissal when in fact there was evidence before the court, which was not refuted, that he had secured employment within two months after his dismissal at a higher paying salary. Secondly, that ordering the reinstatement of a sexual predator in the applicant company whose workforce

was predominantly female was not conclusive to its industrial harmony as, amongst others, the nature of the complaint had resulted in the breakdown of mutual trust and confidence between the parties. The court itself had found the respondent's impugned text messages to bear sexual connotations.

[28] In response, the respondent contended that the primary remedy that a workman is entitled to under s 20(1), Industrial Relations Act ('IRA') 1967 is reinstatement. The section provides that:

> "(1) Where a workman, irrespective of whether he is a member of a trade union of workmen or otherwise, considers that he has been dismissed without just cause or excuse by his employer he may make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed."

I upheld the contention that in view of s 20(1) IRA there was no justification and erroneous for the respondent to contend that the learned ICC had committed an error of law in awarding reinstatement.

[29] As regards the issue of the respondent having secured gainful employment, the learned ICC had not ordered reinstatement on the sole basis that he was under the impression that the respondent had not found gainful employment after being dismissed. The ICC was of the considered view that under the circumstances and factual scenario of the case the most appropriate remedy was reinstatement. Moreover, the respondent had vindicated himself of the serious charge of sexual harassment, the truth of which the ICC found to be in serious doubt. The court had made a finding of fact that the complainant's accusation was unworthy of credit as it found her evidence sceptical. It does not, in my view, follow as a matter of course that when a workman who is dismissed by his employer on an accusation of sexual harassment succeeds at the IC in having the dismissal declared without just cause or excuse, the remedy of reinstatement should be refused. An analysis of all the relevant facts and circumstances, as was done by the learned ICC is called for in deciding on the appropriate remedy that the law provides.

[30] For the above reasons, I held that the learned ICC had not seriously erred in law or principle or misconstrued the facts in ordering reinstatement of the respondent. It was also neither a perverse nor irrational decision unsupported by any evidence that warranted interference in this review. I, accordingly, dismissed the application to quash the award and order an alternative remedy *in lieu* of reinstatement.

[31] This application for JR therefore, had no merits. I dismissed it with costs of RM5,000.00.