



Amardeep Singh Toor
Partner
**Employment &
Industrial Relations**
E: ast@lh-ag.com



Ashreyna Kaur Bhatia
Associate
**Employment &
Industrial Relations**
E: akb@lh-ag.com

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Seeking Reinstatement To Employment Through Judicial Review

Noor Mohamad Bin Nordin v Petroliam Nasional Berhad [Judicial Review Application No.: KA-25-18-07/2023]

Introduction

The former employee (“**former employee**”) filed an application for leave to apply for judicial review against his former employer, Petroliam Nasional Berhad (“**Petronas**”). This followed Petronas’ decision to dismiss him from his employment on the ground of misconduct.

Judicial review is the means through which the decision-making process of public authorities or bodies performing a public function is scrutinised by the courts. The law requires that the “*decision, action, or omission*” of the body sought to be reviewed must be in the exercise of a public function.¹ To qualify, there must be sufficient public law elements.

¹ *Dr Thomas Samuel v Pertubuhan Keselamatan Sosial (PERKESO) & Anor* [2023] 1 LNS 2309

The former employee argued that (i) Petronas is a company incorporated by the government, (ii) is under the control and full surveillance of the Ministry of Finance, and (iii) is therefore carrying out a public function. He relied on a Court of Appeal case in which the Court recognised the existence of hybrid companies/private entities incorporated under the Companies Act 2016, which perform both public and private functions.²

Petronas argued that judicial review applies only to a public authority. Petronas, however, is a private entity incorporated under the Companies Act 2016. Further, notwithstanding that Petronas is under the control and full surveillance of the Ministry of Finance and may therefore carry out public functions from time to time, there are no such public functions that come into play in relation to the private employment relationship between the former employee and Petronas. It is merely a contractual relationship between two parties.

Decision of the High Court

The High Court agreed with Petronas and held that the crux of the dispute is a matter within the realm of private law, involving the dismissal of an employee upon a finding of misconduct. It concerns the contractual relationship between two parties in their respective capacities as employer and employee. Petronas was not exercising a public function.

The case underscores the applicability of judicial review concerning hybrid entities that engage in both public and private functions. It is crucial to fully appreciate the boundaries of the avenue through which the remedy of reinstatement in unjust dismissal claims may be sought.

² *Tan Kwor Ham & Anor v Pengurusan Danaharta Nasional Berhad & Ors* [2006] 1 CLJ 927

Head Office

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122

Johor Office

Suite 21.01
21st Floor, Public Bank Tower
No.19, Jalan Wong Ah Fook
80000 Johor Bahru, Johor
Tel: +607 278 3833
Fax: +607 278 2833

Penang Office

51-12-E, Menara BHL Bank,
Jalan Sultan Ahmad Shah,
10050
Penang
Tel: +604 299 9668
Fax: +604 299 9628

Email

enquiry@lh-ag.com

Website

www.lh-ag.com

As a rule of thumb, disgruntled employees who have been dismissed by their employer should avail themselves of the recourse prescribed under Section 20 of the Industrial Relations Act 1967 to seek reinstatement in the Industrial Court, instead of utilising judicial review as a backdoor method to seek reinstatement.

Petronas was represented by Lee Hishammuddin Allen & Gledhill's Amardeep Singh Toor and Ashreyna Kaur Bhatia.

If you have any queries, please contact Associate, **Ashreyna Kaur Bhatia** (akb@lh-ag.com), or her team Partner, **Amardeep Singh Toor** (ast@lh-ag.com).