

FOREIGN WORKERS

The Law And Practice In Malaysia

*Ashgar Ali Ali Mohamed
Farheen Baig Sardar Baig
Muzaffar Syah Mallow
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CLJ Publication

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PREMATURE TERMINATION OF
FIXED-TERM CONTRACT AND
ITS REMEDIES*

13.1 INTRODUCTION

Generally, a worker has, unless removed earlier on valid grounds, a legitimate expectation to continue in his employment for as long as he is able to work up to the normal retirement age. An impending dismissal or termination from employment should be based on just cause or excuse. In fact, the courts have equated job security akin to 'property right'. For example, in *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan and Anor*,¹ Gopal Sri Ram JCA stated:

The legislature has ... provided for security of tenure and equated the right to be engaged in gainful employment to a proprietary right which may not be forfeited save, and except, for just cause or excuse.

Further, the courts have also stated that a person's right to livelihood is protected in the Federal Constitution, art. 5(1).² Hence, once a person is retained in employment, he cannot be removed 'until something occurs (including redundancy) which justifies terminating it'.³

* This Chapter is contributed by Ashgar Ali Ali Mohamed.

1 See *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan and Other Appeals* [1997] 1 CLJ 665 (CA); *Ang Beng Teik v. Pan Global Textile Bhd., Penang* [1996] 4 CLJ 313, 323 (CA); *Malayan Banking Bhd v. Mohd Bahari bin Mohd Jamli @ Mohd Jamal* [1997] 1 LNS 558.

2 See, for example, *R Rama Chandran v. The Industrial Court of Malaysia and Anor* [1997] 1 CLJ 147 (FC); *Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan (supra)*; *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan and Anor* [1996] 2 CLJ 771 (CA); and *Harris Solid State (M) Sdn Bhd and Anor v. Bruno Gentil Pereira and Ors* [1996] 4 CLJ 747 (CA). The Federal Court however, had in *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan & Another Appeal* [2002] 4 CLJ 105, disapproved the liberal interpretation of 'right to life' in art. 5(1) to include 'right to livelihood.'

3 Finnigan, 'Equity-and-equality in Employment, with particular reference to New Zealand.' (1993) NZLJ 402, 403.