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Mandatory for King to accept PM's advice, High Court told

KUALA LUMPUR, Mon. - It was mandatory for the Yang di-Pertuan Agong to accept the advice of the Prime Minister on the removal of Datuk Seri Anwar Ibrahim from the Cabinet, the High Court heard today.

Senior Federal Counsel Datuk Zaitun Zawiyah Putih submitted that these provisions were under Article 43(5) of the Federal Constitution read together with Article 40(1A).

She said these provisions clearly showed that the King did not have the discretion but had to accept and act on information, advice and decision of the Prime Minister on Anwar's removal.

Article 43(5) of Federal Constitution says: "..., Ministers other than the Prime Minister shall hold office during the pleasure of the Yang di-Pertuan Agong, unless the appointment of any Minister shall have been revoked by the Yang di-Pertuan Agong on the advice of the Prime Minister but any Minister may resign his office."

Article 40(1A) says: "In the exercise of his functions under this constitution or federal law where the Yang di-Pertuan Agong is to act in accordance with advice, on advice, or after considering advice, the Yang di-Pertuan Agong shall accept and act in accordance with such advice."

Zaitun was submitting in Anwar's suit against Prime Minister Datuk Seri Dr Mahathir Mohamad and the Government challenging his dismissal from the Cabinet on Sept 2.

In the suit, Anwar is seeking a declaration that his removal was unconstitutional and that his dismissal as from 5.30pm on Sept 2 this year is null and void, inconsequential and of no effect.

Anwar, 51, is also seeking a declaration that he is still a Minister, and is claiming costs and any other relief deemed fit and proper by the court.

Lawyers Karpal Singh, Jagdeep Singh Deo and Gobind Singh Deo are representing Anwar while Zaitun and Senior Federal Counsel Abu Bakar Jais are representing the Attorney-General's Chambers.

The suit filed on Nov 13 is being heard before judge Datuk Mohd Saari Yusof.

Earlier, Mohd Saari dismissed Karpal's application to transfer the suit back to Datuk James Foong's court as the transfer had been carried out on the verbal and written instruction by the Chief Judge of Malaya. The authority was given in his capacity as the head of the civil division of the High Court.

Zaitun submitted that the King's private secretary, Ja'apar Wahab, had stated in an affidavit that he (Ja'apar) was informed by the King on the decision and advice of the Prime Minister to dismiss Anwar.

Ja'apar had also said the Prime Minister's decision and advice was accepted by the King and Anwar's dismissal received the Yang di-Pertuan Agong's consent.

Zaitun said there was no format, proper procedure or form that could be followed by the King and the act of revocation was already complete when the decision and advice was conveyed to him.

Ja'apar's affidavit and another by Chief Secretary to the Government, Tan Sri Abdul Halim Ali, was filed in support of a summons in chambers to set aside Anwar's suit filed by the A-G's chambers on Dec 1.

The affidavits state that Anwar's dismissal was consented to by the King who caused the Federal Ministers (Amendment) Order 1998 to drop Anwar's

name from the schedule.

The amendment also replaced Anwar's name with that of the Prime Minister for the post of Finance Minister.

Zaitun contended that the substitution of Finance Ministers could not have taken place if the original appointment had not been revoked.

Karpal submitted that Article 43(5) was amended on May 31, 1960 to insert the words "unless the appointment of any Minister shall have been revoked by the Yang di-Pertuan Agong on the advice of the Prime Minister but any Minister may resign his office."

He said the amendment was done to make clear who could dismiss a Minister and "since it was the King who appointed, it was only the King who could dismiss" while acting on the advice of the Prime Minister.

The letter of dismissal and a Press statement issued by the Prime Minister's Department announcing the dismissal and what was said in Parliament showed the Prime Minister had only "conveyed" his decision to the King.

Karpal said "the Prime Minister cannot make a decision to remove or dismiss a Minister who has been appointed by the King. The decision must be made by the King and no other authority has the right to use that power."

Hearing was adjourned to Wednesday.

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