1987 November 27

[DEMETRIADES, J.]

IN THE MATTER OF THE APPLICATION BY «ETERIA TYPOGRAFIA COSMOS LTD.,» FOR AN ORDER OF MANDAMUS,

and

IN THE MATTER OF THE JUDGMENT AND/OR THE ORDER OF THE INDUSTRIAL DISPUTES COURT, DATED 17.1.1987

(Civil Application No. 58/87).

Master and Servant — Industrial Disputes Tribunal — Appeal from its judgments — Governed by section 12(13)(e)(iii) of the Annual Holidays with Pay (Amendment) Law, 1973 (5/73) and Rule 17 of the Rules in the Schedule to the Regulations of 1968 — The Right of Appeal is confined to questions of law.

The Industrial Disputes Tribunal dismissed the application of Chr. Ioannou as it considered that she, by her repeated failure to appear before it, had abandoned her case

Chr. Ioannou applied for the re-opening of her case, alleging that the reason she did not appear at the hearing was because she had undergone an operation, she was bed-ridden and, in any event, she had never received the notices of her lawyer to appear before the Court.

The President of the Court in exercise of the powers given to him by section 30(3) of the Termination of Employment Law, 1967 (Law 24/67), as amended by section 3 of the Termination of Employment (Amendment) Law, 1973 (Law 6/73), ordered the re-opening of Application No. 15/85.

The applicants (respondents in the proceedings before the tribunal) applied for a case to be stated as regards the ruling, whereby the application had been re-instated, but the President of the Tribunal refused to state a case on the ground that his decision is not a judgment in the sense of the relevant rules of Court.

Hence this application

Held, *dismissing the application:* (1) The right to appeal from a judgment of the Industrial Disputes Court is now governed by section 12(13)(b)(iii) of the Annual Holidays with Pay (Amendment) Law 1973 (5/73) and Rule 17 of the Rules contained in the Schedule to the Regulations of 1968, which, though made pursuant to the repealed section 12(2)(c) of Law 8/67, continued in force by virtue of section 7 of Law 5/73.

(2) From the provisions of the Law stated above and Rule 17, it is clear that recourse to the Supreme Court by way of case stated can only be made on a question of law and that a litigant has no right to appeal on findings of fact

(3) In this case the issue of reinstatement was decided on mere facts No allegation was made by the applicants that the President made an error in law in exercising his discretion to order the reinstatement

Application dismissed with costs

Cases referred to

Re Gilmore's Application [1957] 1 All E R 796,

S and G Colocassides Co Ltd v President Industrial Disputes Court (1977) 1 C L R 59,

Tehrani and Another v Rostron [1971] 3 All E R 790

Application.

Application for an order of mandamus directing the President of the Industrial Disputes Court to prepare and send a Case Stated to the Supreme Court in respect of an order in Appl. No. 15/85 dated 17.1.87.

M. Kyriakides, for the applicants.

Chr. Ioannides, for the respondents.

L. Georghiadou (Mrs.), for respondent applicant in Appl. No 15/85.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. This is an application for an order of mandamus directed against the President of the Industrial Disputes Court, by which this Court is prayed to order the said President to prepare and send a case stated to the Supreme Court.

The facts that led to the present proceedings are the following:

The party to these proceedings, who is Chrystalla Ioannou, of Paliometocho, and to whom I shall be referring to as the respondent in these proceedings, filed in the Industrial Disputes Court (hereinafter referred to as the «Court») Application No. 15/85. In the affidavit in support of the application and the opposition filed in these proceedings, it is not, however, clear what the claim of the respondent was.

The case was fixed for hearing before the Court on a number of occasions but the respondent did not appear, so, finally, on the 16th June, 1985, her lawyer, because of the non-attendance of the respondent in Court, asked for leave to withdraw from the case. The Court did give her such leave and on the application of the present applicants dismissed the application as it considered that the respondent, by her repeated non appearance in Court, had abandoned the case.

On the 10th July, 1986, the respondent applied to the Court for the re-opening of the case, alleging that the reason she did not appear at the hearing was because she had undergone an operation, she was bed-ridden and, in any event, she had never received the notices of her lawyer to appear before the Court.

On the 17th January, 1987, the President of the Court in exercise of the powers given to him by section 30(3) of the Termination of Employment Law, 1967 (Law 24/67), as amended by section 3 of the Termination of Employment (Amendment) Law, 1973 (Law 6/73), ordered the re-opening of Application No. 15/85.

By their application to the Registrar of the Court, the applicants intimated their wish to appeal by way of case stated against the decision of the President of the Court dated the 17th January, 1987, on the following legal grounds:

«Α. Εδικαιούτο το Δικαστήριον Εργατικών Διαφορών να αποφασίση επί της αιτήσεως της Αιτητρίας ημ. 10.12.1986 και της ενστάσεως, άνευ ακροάσεως μαρτυρίας επί των γεγονότων των ενόρκων δηλώσεων;

Β. Οι καθιερωμένες και ακολουθούμενες υπό των πολιτικών δικαστηρίων προϋποθέσεις επανεκδικάσεως υποθέσεων ή/και ακυρώσεως αποφάσεων εκδοθεισών λόγω μη εμφανίσεως διαδίκου κατά την δικάσιμον ισχύουν και κατά την άσκησιν των εξουσιών του Προέδρου του Δικαστηρίου Εργατικών Διαφορών δυνάμει του άρ. 30(3) του Περί Τερματισμού Απασχολήσεως Νόμου 24/67, ή η εξουσία του είναι ανεξέλεγκτος και απεριόριστος;

Γ. Βαρυνόμενη με το βάρος της αποδείξεως, απέδειξεν η Αιτήτρια γεγονότα δικαιολογούντα επανεκδίκασιν της υποθέσεως;

Δ. Διατάττον επανεκδίκασιν της υποθέσεως το Δικαστήριον Εργατικών Διαφορών ήσκησεν την διακριτικήν του ευχέρειαν ορθά επί των γεγονότων;

(«A. Was the Industrial Disputes Court entitled to decide on the application of the applicant dated 10.12.1986 and the opposition, without hearing evidence on the facts contained in the affidavits?

B. The established and followed by the civil courts prerequisites for the retrial of cases and/or annulment of judgments delivered for non appearance of a party at the hearing are applicable also in the exercise of the powers of the President of the Industrial Disputes Court under section 30(3) of the Termination of Employment Law 24/67, or such power is not subject to any control and is unlimited?

C. Did the applicant, on whom the burden of proof lied, prove facts justifying retrial of the case?

D. In ordering retrial of the case has the Industrial Disputes Court exercised its discretionary power correctly on the facts?)»

The President of the Court dismissed the application on the ground that his decision was not a judgment as difined in the Rules of Court. It is this decision of the President of the Court that is challenged today by the applicants.

The issue that calls for decision in the present proceedings is whether there is a right by a party to an application before the Industrial Disputes Court to apply to its President to state a case after a ruling is given in interlocutory proceedings.

Counsel for the applicants submitted that the Ruling of the Court by which reinstatement of Application No. 15/85 was ordered was a judgment or decision within the meaning of Rules 10 and 17 of the Rules of Court made by virtue of section 12 of the Annual Holidays with Pay Law, 1967 (Law 8/67), as amended by Law 6/73.

I must here say that I cannot see how Rule 10 can be of any help to counsel as regards the meaning of the word «decision». In his effort to persuade the Court that the Ruling of the President of the Industrial Disputes Court was a «judgment» or «decision» within the meaning of Rules 10 and 17, he relied on the definition given

to these words in Roudin Law Dictionary, 2nd ed., at p. 175, under the word «judgment» and Black's Law Dictionary (Revised), 4th ed., under the word «decision». He further relied on the case of *Re Gilmore's Application,* [1957] 1 All E.R. 796 and the Cyprus case of *S. & G. Colocassides Co. Ltd. v. President Industrial Disputes Court,* (1977) 1 C.L.R. 59.

Counsel appearing for the Industrial Disputes Court, as well as counsel for the respondent, submitted that as section 30 of Law 24/67, as amended, gave absolute discretion to the President of the Court to deal afresh with a case or review any judgment on any payment made out of the Fund, the Supreme Court cannot deal with the facts of a case tried by the Court. They further submitted that an interlocutory order of the Court cannot be made the subject of a case stated.

Let us first see when and under what circumstances the judgment of the Court can be challenged before the Supreme Court.

This right was given to a party to litigation before the Industrial Disputes Courts by section 12(2)(c) of Law 8/67, which read:

«(2) Οι δυνάμει του παρόντος άρθρου, εκδιδόμενοι Κανονισμοί θα περιλαμβάνωσι -

.....

(γ) πρόβλεψιν δι έφεσιν εξ οιασδήποτε αποφάσεως του Διαιτητικού Δικαστηρίου εις το Ανώτατον Δικαστήριον βάσει οιουδήποτε λόγου συνεπαγομένου νομικόν σημείον μόνον, γενομένην δι' υπομνήματος (case stated) εντός είκοσι και μιας ημερών από της ημέρας της αποφάσεως»

(«(2) Regulations made under this section shall include-

.....

(c) provision for appeal from any judgment of the Tribunal to the Supreme Court on any ground involving only a question of law, made by way of case stated within twenty-one days of the date of the judgment»)

This provision was repealed and replaced by means of section 12(13)(b)(ii) of the Annual Holidays with Pay (Amendment) Law, 1973 (Law 5/73), which is identical to the above, but as no new

Regulations were made under Law 5/73, the Rules contained in the Schedule to the Regulations of 1968 continued to be in force by virtue of section 7 of Law 5/73.

Rule 17 of the Rules of Court reads:-

« Έφεσις δι' υπομνήματος.

17.(1) Διάδικος επιθυμών να εφεσιβάλη απόφασιν του Διαιτητικού Δικαστηρίου δι' υπομνήματος δυνάμει του άρθρου 12(2)(γ) του περί Ετησίων Αδειών μετ' Απολαβών Νόμου του 1967, δέον όπως, εντός 21 ημερών από της τοιαύτης αποφάσεως, υποβάλη *έγγραφον αίτησιν τω Πρωτοκολλητή, εκθέτων άμα και* τα νομικά σημεία εφ' ων στηρίζει την έφεσίν του.

(2) Το υπόμνημα συντάσσεται συμφώνως τω Τύπω 5. Ο Πρόεδρος δέον όπως υπογράψη και καταθέση τούτο παρά τω Πρωτοκολλητή εντός 14 ημερών από της λήψεως υπό του Πρωτοκολλητού της δυνάμει της παραγράφου (1) του παρόντος Κανόνος γενομένης αιτήσεως.

(3) Ο εφεσιβάλλων δι' υπομνήματος διάδικος δέον όπως, εντός 3 ημερών από της λήξεως της εν τη παραγράφω (2) του παρόντος Κανόνος καθωρισμένης προθεσμίας, αποστείλη ή παραδώση τούτο εις τον Αρχιπρωτοκολλητήν του Ανωτάτου Δικαστηρίου, αποστείλη δε *άμα και γνωστοποίησιν προς τον* αντίδικον ή τους αντιδίκους, ομού μετ' αντιγράφου του υπομνήματος.

(4) Το Ανώτατον Δικαστήριον θα αποφασίση το νομικόν σημείον το εγειρόμενον υπό του υποβληθέντος δυνάμει του παρόντος Κανόνος υπομνήματος και θα επιστρέψη την υπόθεσιν εις τον Πρόεδρον, ομού μετά της επ' αυτού γνωμοδοτήσεώς του, ή θα εκδώση διάταγμα κατά το δοκούν.

(«Cased Stated.

17.-(1) Any party wishing to appeal against a judgment of the Industrial Disputes Court by way of case stated under section 12(2)(c) of the Annual Holidays with Pay Law, 1967, must, within twenty-one days of the date of judgment, file a

written application to the Registrar, stating, at the same time, the issues of law on which he bases his appeal.

(2) The case stated is prepared in accordance with Form 5. The President must sign and file it with the Registrar within 14 days of the date of receiving by the Registrar of the application made under paragraph (1) of the present Rule.

(3) The party appealing by way of case stated must, within 3 days from the expiration of the period defined in paragraph (2) of the present Rule, send it or deliver it to the Chief Registrar of the Supreme Court, and, at the same time, send a notification to his opponent or opponents, together with a copy of the case stated.

(4) The Supreme Court will decide the legal issue raised by the case stated submitted under the present Rule and will remit the case to the President, together with its opinion on it, or will issue any other order that it may deem fit.»)

From the provisions of the Law stated above and Rule 17, it is clear that recourse to the Supreme Court by way of case stated can only be made on a question of law and that a litigant has no right to appeal on findings of fact.

Was there any question of law raised by the present applicants before the President of the Court? As it appears from the documents before me, including the record of the decision of the President by which he ordered the reinstatement of the case, no question of law was raised before him and that he decided the reinstatement on mere facts. No allegation was made by the applicants that the President made an error in law in exercising his discretion to order the reinstatement.

Useful guidance on the issue can be drawn from the judgment of Lord Denning M.R. in *Tehrani and another v. Rostron*, [1971] 3 All E.R. 790, where it was held that -

« The provision of Sch 7, para 11(4) of the 1968 Act that the judgment of quarter sessions should be 'final' did not exclude a right of appeal from quarter sessions on a point of law, and an appeal could be by way of case stated, because recent authorities established the principle that when Parliament stated that an inferior court's decision was to be 'final', the impress of finality was given on condition that the decision was reached in accordance with law, and if a tribunal went

wrong in law and the error appeared on the face of the record, the High Court would interfere by certiorari or a declaration notwithstanding a provision as to finality».

This extract, also, answers the submission of counsel for the Court and the respondents.

In the result, I find that in the circumstances the President of the Court was right in refusing to state a case to the Supreme Court as no question of law arose before him.

The application is, therefore, dismissed with costs.

Application dismissed with costs.