

1987 February 14

[LORIS, J ]

IN THE MATTER OF AN APPLICATION BY ELBEE LTD  
FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS  
(Application No 10/87)

*Prerogative Orders—Mandamus—Leave to apply for—Principles applicable—  
Industrial Disputes Court—Appeal from a judgment of such Court—It can  
only be made by way of case stated on grounds involving a point of law only—  
Prima facie the questions sought by the applicants to be stated involved  
«questions of law»—Prima facie questions actually stated by the President of  
the said Court totally different from those he was requested to state—Leave  
to apply for an order of mandamus ordering the said Court to state the  
questions raised by the applicants granted* 5

The applicant, who was respondent in application 6/85 before the  
Industrial Disputes Court, appealed by way of case stated against the  
judgment delivered in the said application. As a result the President of the said  
Court stated three questions for consideration by the Supreme Court, but  
noted that such questions are allegedly totally different from those the Court  
was requested to state. As a result the present application for leave to move  
this Court for an order of mandamus ordering the Industrial Disputes Court to  
state the questions as filed by the applicants was filed 10  
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Held, *granting leave to apply for an order of mandamus* (1) An appeal from  
a judgment of the Industrial Disputes Court lies «on any ground involving a  
point of law only» and it is made by way of case stated (Section 12(13)(b)(ii)  
of the Annual Holidays with Pay Law, 1967 as set out by s 3 of Law 5/73) 20

(2) *The question in this case is whether the applicants have made out a  
sufficiently prima facie case justifying the granting of the leave applied for*

(3) Bearing in mind the notion of «question of law» the conclusion is that  
prima facie all the questions, which the applicants requested the President of  
the Industrial Disputes Court to state, are questions of law. Moreover, prima  
facie the questions actually stated by the President are totally different from  
those he was requested to state 25

(4) Consequently and in view of the fact that the applicant has no other  
remedy the leave applied for will be granted

*Application granted* 30

*Cases referred to*

*Bracegirdle v Oxley* [1947] 1 K B 349,

*In Re Hji Costas* (1984) 1 C L R 513

**Application.**

Application for leave to move the Court to issue an order of Mandamus ordering the Industrial Disputes Court to state questions for determination by the Supreme Court

*K Michaelides*, for the applicant

*Cur adv vult*

LORIS, J read the following decision The applicant in the present application is the respondent in Application No 6/85 filed before the Industrial Disputes Court

On 29.11 86 the Industrial Disputes Court delivered its reserved judgment in the aforesaid application copy of which is attached to the present one.

On 10 12 1986 an appeal by way of case stated was filed by the respondent, whereby the Industrial Disputes Court was requested to state the questions appearing in the Appendix attached to the present application, for determination by the Supreme Court

The appeal by way of case stated was submitted pursuant to the provisions of rule 17(2) of the Rules of Procedure 1968 (which have been retained and they are still applicable by virtue of the provisions of s 7 of Law 5/73) appearing in the Appendix of the Arbitration Tribunal Regulations 1968, which with the exception of their Appendix have been abolished by virtue of s 7 of Law 5/73

On 24 12 1986, the President of the Industrial Disputes Court stated for consideration by the Supreme Court three questions appearing at page 7 of the case stated (which is appended to the present application) under the heading 'Note by the President' the said questions stated are allegedly totally different from those the Court was requested to state

The applicant as a result filed the present application seeking leave to move this Court for the issue of an Order of Mandamus ordering the Industrial Disputes Court to state the questions appearing in the Appendix attached to the present application for determination by the Supreme Court

My task at this stage is confined in examining whether the material placed before me, makes out sufficiently a prima facie case justifying the granting of leave to the applicant in order to move this Court for the issue of an Order of Mandamus. 5

It is abundantly clear from the provisions of s.12(13)(b)(ii) of the Annual Holidays with Pay Law, 1967, as set out in section 3 of Law 5/73) that an appeal from a judgment of the Industrial Disputes Court lies «on any ground involving a point of law only» and it is made by may of case stated. 10

It is therefore pertinent at this stage to examine whether prima facie: (a) The questions appearing in the Appendix attached to the present application are referring 'to points of law only' as envisaged by s 12(13)(b)(ii) of Law 5/73. 15

(b) The three questions stated by the President of the Industrial Disputes Court, as stated above, are substantially those the court was requested to state or whether these are absolutely different, as alleged by the applicant. 20

Having examined the material before me, in the light of the able address of learned counsel appearing for the ex-parte applicant and bearing in mind the notion of «question of law» set out in the case-law cited and in particular the dicta in *Bracegirdle v. Oxley* [1947] 1 K B. 349 at pp.353 and 358, as well as the dicta in *Re HjiCostas* (1984) 1 C.L.R. 513 at p.519 (lines 16-28), which I adopt, I have reached the conclusion that prima facie all the questions appearing in the Appendix attached to the present application which the President of the Industrial Disputes Court was requested to state for determination by the Supreme Court are questions of law. 25 30

Furthermore, I hold the view, that mere comparison of these questions with the three questions stated by the Court indicates that prima facie the questions stated by the Court are absolutely different from those he was requested to state. 35

Consequently, and in view of the fact that the appellant has no other legal remedy, I have decided to grant leave to him in order to move this Court for the issue of Mandamus Order, as applied. 40

Such application to be filed within 14 days as from to-day.

*Application granted.*