1988 October 31

(STYLIANIDES KOURRIS. & BOYADJIS JJ.)

ALOUET CLOTHING MANUFACTURERS LTD.,

Appellants-Respondents,

v.

ERINI ATHANASIOU AND ANOTHER,

Respondents-Applicants.

(Case Stated No. 254).

Termination of Employment Laws, 1967-1983 — The combined effect of section 7(1) and 3 — Temporary suspension of employment for an indefinite period by employers acting voluntarily — Conduct justifying employee to terminate his employment.

Termination of Employment Laws, 1967-1983 — Redundancy — Temporary suspension of employment for an indefinite period by employers due to financial difficulties — Employers refused to terminate contract on ground of redundancy and, moreover, their stand, all along, was that the employees left their service voluntarily — Trial Court rightly did not consider question of redundancy.

Master and servant — Employer suspending temporarily employment by a unilateral act due to financial difficulties — A breach of fundamental term of the contract of employment.

Appeal — Appeal by way of case stated — Not possible to challenge findings of fact

On 11.9.85 appellants, who were respondents' employers, suspended the latters' as well as other employees' employment with them «temporarily due to lack of funds».

On 10.10.85 appellants' manager told them that the company would resume work but he was not sure when this would happen The respondents considered themselves dismissed

On 17.10.85 the appellants informed the respondents as well as the other affected employees that the reasons for this suspension ceased to exist and that they would resume work as from 29.10.85.

The Industrial Disputes Court, having recited section 7(1) of the Law, concluded as follows

«On the aforementioned facts, the Court rules that the applicants terminated their employment with the company, lawfully, such termination being considered as termination of the employment made by the employer, envisaged in section 3 of the Law»

This is an appeal by way of case stated. The questions submitted for consideration are

1 Whether on the facts, as found, the Industrial Disputes Court rightly or wrongly construed section 7(1) of Laws 24/67-83, in conjunction with section 3 of the same Law

2 Whether the trial Court should have proceeded to examine whether the termination of the applicants' employment was due to redundancy within the ambit of the Law or not

Held (1) In an appeal by way of case stated it is not possible to challenge the findings of fact made by the trial Court

(2) (a) The words of sections 7(1) and 3 of the aforesaid law are clear and unambiguous Once the trial judge had found that (i) the employers had unilaterally suspended the operation of the contract of employment of the two applicants without payment to them of their wages, and (ii) the applicants never consented to such suspension, the judge was bound to find, as he did, i e that the employers' aforesaid conduct amounted to a breach of fundamental terms of the contract of employment of the applicants which entitled the latter to terminate the employment under section 7(1) of the Law and to pursue their right to compensation calculated in accordance with section 3 of the Law, in the same way, in which they would have been entitled to do, had their employment been terminated by their employers themselves for any reason other than the reasons set out in section 5 of the Law

(b) Neither the fact that the applicants were making enquiries as to whether or when they would return to work, nor the meeting they had on 10 10 1985 nor the fact that they considered themselves as having been dismissed from their employment after such meeting nor the fact that prior to 10.10.1985 the applicant in Application No. 465/85 found temporary employment elsewhere changes the situation or affects in any way their rights.

(3) The question of redundancy was never raised before the trial Court Appellants' version at the trial was always that they never terminated for any reason the applicants' employment. Furthermore, the employers' manager, at his meeting with the respondents on 10 10.1985, refused to terminate the latters'

employment as redundant so as to enable them to claim compensation from the Redundancy Fund. It follows that the answer to the second question is in the negative.

Appeal dismissed with costs.

Cases referred to:

Re HjiCostas (1984) 1 C.L.R. 513;

Stylianides v. Paschalidou (1985) 1 C.L.R. 49;

Re Louis Tourist Agency Ltd. (1988) 1 C.L.R. 454.

Case stated.

Case stated by the Chairman of the Industrial Disputes Court relative to his decision dated the 9th November, 1987 in proceedings under sections 7 and 3 of the Termination of Employment Laws 1967-1973 instituted by Erini Athanasiou against Alouet Clothing Manufacturers Ltd. whereby they were adjudged to pay to applicant compensation and wages.

P. Papageorghiou, for the appellants.

Ar. Georghiou, for the respondents.

Cur. adv. vult.

STYLIANIDES J.: The judgment of the Court will be delivered by Mr. Justice Boyadjis.

BOYADJIS J.: This is an appeal by way of Case Stated against the decision of the Industrial Disputes Court in Applications 464/85 and 465/85 which were tried together whereby the appellants-employers were adjudged to pay to the respondents-employees compensation under the combined effect of sections 7 and 3 of the Termination of Employment Law 1967-1983 and wages in lieu of notice under section 9(1)(c) of the Law.

The facts of the case as found by the Court are as follows:

The appellants, respondents in the aforesaid applications 464/85 and 465/85, are a company of limited liability. They carry on the business of manufacturers and sellers of ready made dresses. They own a factory in the Industrial Area of Engomi. For convenience purposes we shall hereinafter refer to them as «the employers».

The applicant in Application No. 464/85 was employed as a dress-maker by the employers in July 1976. Her wages for the purposes of the Law were £44.00 weekly.

The applicant in Application No. 465/85 was likewise employed by the employers as a dress-maker on 18.1.1982. Her wages for the purposes of the Law were £37.76 weekly.

The employers employ in the factory about 30 employees who are members of the Trade Unions of PEO and SEK.

The work of the applicants was very satisfactory; in fact they were considered by their employers as being amongst their best employees.

During several past years, the employers happened to suspend the work during certain periods which were agreed with the employees or their Trade Unions always in accordance with the collective agreement in force.

When the applicants went to their work on 11.9.1985, they saw on the factory' s notice board a notice dated 9.9.1985 whereby the employers informed their employees that due to lack of funds (bank facilities) necessary for the performance of their orders and the continuance of the work of the industry, they suspended temporarily the employment of their employees as from 12.9.1985. The names of both applicants were included in the list of employees whose employment was thus suspended. Copy of this notice was sent to the District Labour Office and to the Trade Unions concerned.

As the affected employees, including the two applicants, did not intend to accept the employers' unilateral decision to suspend their employment for an indefinite period, a decision taken notwithstanding the fact that their employment had already been suspended earlier in the year for the full period of ten days provided for in the collective agreement, the matter was reported to a certain G. Stavrou, an official of PEO Trade Union, who stated that, though the trade Union as such would not agree to the proposed suspension, he left the matter entirely to the affected employees to decide whether to accept or reject the new suspension.

The manager of the employers told the affected employees that they could apply to the Labour Office for unemployment benefit during the period of the suspension of their employment.

Subsequently to the above, the applicants made enquiries with their employers through the phone as to the time they were expected to resume their employment, but the employers would not give a definite answer. On about 10.10.1985, the applicants visited the office of Mr. G. Olympios, the manager of the company, in order to be informed of what was going to happen and whether, in case the employers would not be able to resume work, arrangements would be made for the satisfaction of their claims arising out of the termination of their employment.

The stand taken by the manager was that he was expecting that the company would resume work but he was not sure when this would happen. The applicants remarked that in such a case their employment should be terminated and that they should receive compensation from the Redundancy Fund, but the manager, on the one hand, would not terminate their employment because, being such good workers, he was needing their services and, on the other hand, he asked them to sign a declaration which he had prepared to the effect that, in case they receive no compensation from the Redundancy Fund, they would have no claim for compensation against the employers.

The applicants refused to sign the declaration and considered themselves as having been dismissed from their work. From that date onwards, the applicant in Application No. 464/85, applied and succeeded to obtain other employment as a sales assistant at a monthly salary of only £110.00.

After her employment was suspended indefinitely by the company, the applicant in Application No. 465/85 was temporarily employed by APOLLON company, she, a poor refugee with two children, being unable to remain indefinitely without employment and consequently without the means of life. Notwithstanding this, she visited the manager's office on 10.10.1985 together with the other applicants and the Trade Union Official.

Though the employers had terminated the employment of the applicants, on 17.10.1985 they addressed a letter to all the employees informing them that the reasons for the temporary suspension of the work had been overcome, that the company would resume work on 29.10.1985 and that they were all expected to present themselves for work on the aforesaid day.

As it appears from the Case Stated, the submission of the applicants was that they lawfully terminated their employment with the company under section 7 of the Termination of Employment Law No. 24 of 1967 as amended. On the other hand, the submission of the employers was that they did not terminate the employment of the applicants who left their employment voluntarily having found better employment elsewhere.

The Industrial Disputes Court expessed the view that the question which posed before it for determination was whether the employment of the applicants was terminated by the company or whether they left their employment voluntarily.

After reciting subsection (1)* of section 7 of the Law, the Court answered the above question in the following words:

> «On the aforementioned facts, the Court rules that the applicants terminated their employment with the company, lawfully, such termination being considered as termination of the employment made by the employer, envisaged in section 3 of the Law».

The Court then rejected the allegation of the company that the applicants left their employment voluntarily and, as no other reason had been set up, it proceeded to assess the amounts to which the applicants were entitled.

Translated in English, the reasoning for the aforesaid decision of the Industrial Disputes Court as it appears from its judgment and from the Case Stated was the following:

> «In its previous judgments the Court stressed that any unilateral and arbitrary action by either party in a contract of employment causing a breach of any material term thereof, gives the aggrieved party the right to repudiate the contract and claim the relief provided by the law.
>
> In the present applications, without any prior consultations with their employees, the employers caused a breach of their

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* *(1)-. 'Οταν ο εργοδοτούμενος νομίμως τερματίζει την απασχόληση του παρ' εργοδότη, λόγω της διαγωγής του εργοδότου, τότε ο τερματισμός ούτος θεωρείται ως τερματισμός υπό του εργοδότου υπό την έννοια του άρθρου 3».*

«7(1) When the employee legally terminates his employment by reason of his employer' conduct, such termination shall be considered as a termination by the employer in the sense of section 3».

obligation to offer work to the applicants or in lieu of such offer, in case they were temporarily unable to do so, to pay them their agreed wages. Before suspending their work, the employers ought to obtain the consent of their employees as they had correctly done in previous occasions. In cases where an employer wishing the alteration of material terms of the contract of employment, takes unilateral action to that effect without prior arrangements with his employee, the latter may, in the circumstances, treat such action as terminating his employment or as forcing him to submit lawfully his resignation. Surely, this should be judged in the light of the circumstances of each case.

The Court considers it expedient to repeat what was said in case No. 296/83, that it is unacceptable and unthinkable for the employer whenever it suits him and depending on the volume of his business at any given moment, to suspend the operation of the contract of employment with his employees, in the absence of an agreement to that effect in the contract of employment and in the absence of an ad hoc consent by the employees.»

Two questions were submitted for the decision of this Court by the learned President of the Industrial Disputes Court, at the instance of the appellants. They are the following:

1. Whether on the facts as found, the Industrial Disputes Court rightly or wrongly construed section 7(1) of Law 24/67-83, in conjunction with section 3 of the same Law.

2. Whether the trial Court should have proceeded to examine whether the termination of the applicants' employment was due to redundancy within the ambit of the Law or not.

Regarding the first question counsel for the applicants alleged that the trial Court made conflicting findings regarding the time when the applicants terminated their employment with the company and, whereas, from one paragraph of the judgment it may be deduced that the employment was terminated on 12.9.1985 when the suspension of the work commenced in accordance with the notice posted on the factory' s notice board by the company on 11.9.1985, in another part of the judgment it is stated that the applicants considered themselves as having been dismissed from their employment on or about 10.10.1985

following the failure of the meeting in the manager' s office held on the same day, in which they had taken part. Counsel further challenged the finding of the trial Court that the applicants were forced to terminate their employment due to the conduct of their employers, and at the initial stage of his address invited us to find, instead, what was his version at the trial, which the Tribunal had rejected, i.e. that the applicants had voluntarily terminated their employment for reasons unconnected with the employers' admitted conduct in suspending the works. At a subsequent stage of his address, however, Mr. Papageorghiou conceded that the Tribunal correctly found that the applicant in Application No. 464/85 had rightfully terminated her employment due to the aforesaid conduct of the employers but still invited us to find that she did so on 10.10.1985 instead of 12.9.1985 and that she had until then accepted the suspension of her employment which was at the beginning made unilaterally by the employers. Relying on the fact that sometime between 12.9.1985 and 10.10.1985 the applicant in Application No. 464/85 obtained temporary employment with Apollon company to meet her urgent needs, an employment which in his suggestion commenced on 16.9.1985 (no date is mentioned in the Court' s relevant finding), and making a differentiation in the position of the two applicants on account of this fact, counsel invited us to find, contrary to the findings of the trial Court, that up to 10.10.1985 this applicant had consented to the suspension of her employment and, therefore, her finding of other employment during this period, i.e. on 16.9.1985 amounted to a termination of her employment with the company decided by her voluntarily.

Learned counsel for the appellants must have confused the concepts of an appeal by way of case stated with an ordinary appeal where the Supreme Court, sitting as appellate Court, is not bound by any findings of fact made by the trial Court, and which, therefore, may be challenged before it by the appellant (see section 25(3) of the Courts of Justice Law No. 14 of 1960 as amended), albeit with little chance of success unless unwarranted by the evidence adduced. If the appeal is by way of case stated findings of fact are not the subject of review. In re *HjiCostas* (1984) 1 C.L.R. 513, following the dismissal of his application by the Rent Tribunal to set aside a default judgment, the applicant had moved the Tribunal in the manner envisaged by the Rent Control Law 1983 to state a case for the decision of the Supreme Court. The application was refused by the Tribunal on the ground that the

point raised was not confined to pure questions of Law and as such could not be made the subject of a case stated under section 7 which provided that only a pure question of law can be stated to the Supreme Court by way of appeal. The applicant had then applied to the Supreme Court for leave to apply for order of certiorari to quash the aforesaid refusal of the Tribunal, in view of the fact that the statement of a case to the Supreme Court on a point of law is obligatory and does not depend on the exercise of any discretionary powers on the part of the Rent Tribunal The Supreme Court gave the applicant leave to apply for certiorari Relevant on the matter now under consideration in the present case is the following extract from the judgment of Pikis, J , at p 519 of the report

> «It appears to me that whenever an issue revolves round the application of the law to given facts, it raises a pure question of law So long as the facts to which the Court is required to apply the law are not called in question, the point is a legal one It merely raises questions bearing on the interpretation and the scope of the law Exploration of the ambit of the law is always a question of law »

(See also *Stratis Stylianides v Phaedra Paschalidou* (1985) 1 C L R 49, *In Re Louis Tourist Agency Ltd* Civil Application 116/88, judgment delivered on 26th July, not yet reported *)

What was said hereinabove concerning the inability and impropriety to challenge the findings of fact made by the Rent Tribunal on appeal by way of case stated under section 7 of the Rent Control Law (Law 23/83), applies with equal force in the present case where the appeal by way of case stated is being made under Rule 17 of the Rules of Procedure set out in the Appendix to the Arbitration Tribunal Regulations of 1968, which continues to be in force by virtue of section 7 of the Annual Holidays with Pay (Amendment) Law of 1973 (Law 5 of 1973) The aforesaid Rule 17 was made by the Council of Ministers with the prior advice of the Supreme Court under Section 12(2)(c) of the Annual Holidays with Pay Law, 1967, which reads as follows

> «12-(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 inviting only a question

* *Reported in (1988) 1 C L R 454*

of law, by way of case stated within twenty-one days of the date of the judgment».

Under paragraph (4) of the aforesaid Rule 17 the Supreme Court is conferred with power only to decide the legal point raised in the case stated and return the case to the President of the Industrial Disputes Court together with its opinion thereon. The Supreme Court is not vested with jurisdiction to make its own findings of fact either contrary or supplementary to those made by the Tribunal, as we have been invited to do by counsel for the appellant in the present case.

Section 7(1) of the Termination of Employment Law, 1967, the construction of which, as made by the trial Court in conjunction with section 3, is questioned in the first point stated in the present Case Stated, read as follows:

«7.-(1) Where an employee lawfully terminates his employment with an employer because of the conduct of the employer, then this termination shall be deemed to be termination by the employer within the meaning of section 3.»

* *3.-(1) Όταν, κατά ή μετά την έναρξιν της ισχύος του παρόντος άρθρου, ο εργοδότης τερματίζη δι' οιονδήποτε λόγον άλλον ή των εν τω άρθρω 5 εκτιθεμένων λόγων, την απασχόλησιν εργοδοτουμένου ο οποίος έχει απασχοληθή συνεχώς υπ' αυτού επί είκοσι εξ τουλάχιστον εβδομάδας, ο εργοδοτούμενος κέκτηται δικαίωμα εις αποζημίωσιν υπολογιζομένην συμφώνως προς τον Πρώτον Πίνακα:*

Νοείται ότι ο εργοδότης και ο εργοδοτούμενος δύνανται δι' εγγράφου συμβάσεως συναφθείσης κατά τον χρόνον της προσλήψεως του εργοδοτουμένου να παρατείνωσι την υπό του παρόντος άρθρου προβλεπομένην περίοδον συνεχούς απασχολήσεως μεχρις ανωτάτου ορίου εκατόν τεσσάρων εβδομάδων.

(2) Η αποζημίωσις εις την οποία δικαιούται ο εργοδοτούμενος συμφώνως προς το εδάφιον (1) καταβάλλεται υπό του εργοδότου καθ' ον τρόπον αύτη δεν υπερβαίνει τα ημερομίσθια του εργοδοτουμένου δι' εν έτος, και εκ του Ταμείου καθ' ον ποσόν αύτη υπερβαίνει τα ημερομίσθια του εργοδοτουμενου δι' εν έτος.»

Translated in English section 3 of the Law, as later amended reads as follows:

«3*-(1) where, on or after the day when this section shall come into operation, an employer terminates for any reason other than those set out in section 5 the employment of an employee who has been continuously employed by him for not less than twenty-six weeks, the employee shall have a

right to compensation calculated in accordance with the First Schedule:,

Provided that an employer and an employee may by agreement in writing made at the time the employee enters into the employment extend the period of continuous employment provided by this section to a maximun of one hundred and four weeks.

(2) The compensation to which the employee shall have a right in accordance with subsection (1) is payable by the employer to the extent that it does not exceed the wages of the employee for one year, and by the Fund to the extent that it exceeds the wages of the employee for one year.»

The words of both sections are clear and unambiguous. Counsel for appellant has not suggested that they are susceptible of any construction other than the one given to them by the trial Court judged from the way in which it applied both sections on the facts as it had found them. Once the trial judge had found that (i) the employers had unilaterally suspended the operation of the contract of employment of the two applicants without payment to them of their wages, and (ii) the applicants never consented to such suspension, the judge was bound to find, as he did, i.e. that the employers' aforesaid conduct amounted to a breach of fundamental terms of the contract of employment of the applicants which entitled the latter to terminate the employment under section 7(1) of the Law and to pursue their right to compensation calculated in accordance with section 3 of the Law, in the same way in which they would have been entitled to do had their employment been terminated by their employers themselves for any reason other than the reasons set out in section 5 of the Law.

The suspension of the employment of the applicants resulting from the conduct of the employers complained of commenced on 12.9.1985. Neither the fact that the applicants were making enquiries as to whether or when they would return to work, nor the meeting they had with their employers on 10.10.1985 in an effort to reach an amicable settlement of their claims, nor the fact that they considered themselves as having been dismissed from their employment after the meeting in the manager's office on 10.10.1985, nor the fact that prior to 10.10.1985 the applicant in Application No. 465/85 found temporary employment elsewhere,

changes the situation or affects in any way their right to claim the relief provided for in section 3 of the Law relying on the conduct of the employers to suspend their employment as from 12.9.1985.

Our answer, therefore, to the first question is that the Industrial Disputes Court rightly construed section 7(1) of Law No. 24/67-83, in conjunction with section 3 thereof.

With regard now to the second question stated in the present Case Stated, our answer to it is in the negative. Counsel for the appellant conceded that the question whether the employment of the applicants was terminated for reasons of redundancy under section 18 of the Law was never properly before the Industrial Disputes Court which was at no stage ever asked by either litigant to consider such a matter. In order to qualify as having been terminated under section 18, an employment must, in the first place, be terminated by the employer who must notify the Minister of any proposed redundancy under section 21 by giving as much advance notice as practicable, something that the employers in the present case have not done. On the contrary their version at the trial was always that they never terminated for any reason the applicant's employment who left their employment voluntarily for reasons of their own. Furthermore, the Court has made a finding that, although in view of the reason of lack of credit facilities alleged by the employers in their notice dated 11.9.1985 suspending the applicants' employment, the latter suggested to the employers' manager at their meeting of 10.10.1985 to terminate their employment as redundant so as to claim compensation from the Redundancy Fund, the manager refused to do so. In view of all the above the employers are now completely unjustified in their complaint against the omission of the Industrial Disputes Court to consider on its own motion, after their ruling that the termination of the applicants' employment fell under section 7(1), whether such termination fell under section 18, simply because it had before it the notice dated 11.9.1985 where an allegation was made as to the reason why the employers proposed to suspend the applicants' employment as from 12.9.1985 onwards, and despite the express refusal of the employers to consider terminating their employment as redundant as requested by the applicants on 10.10.1985.

What we stated hereinabove constitutes our answer to the two

questions posed and we remit the case back to the Industrial Disputes Court for the necessary action. In fact our answers amount to a confirmation of its decision.

For all the above reasons the appeal is dismissed with costs.

Appeal dismissed with costs.