


any proposed amendment to every other party."

Paragraph (1) of Rule 23 makes it clear that, subject to paragraph (2), an applicant may rely only on the grounds and relief set out in the statement grounding the application for leave to apply for Judicial Review. So, apart from the exception in paragraph (2), the Applicant is confined to the grounds and relief set out in his original statement. But the exception provided for in paragraph (2) only enables the Court to allow an applicant to amend "on the hearing of the motion or summons". The Court has no jurisdiction to amend at an earlier stage. The definition of "pleading" in Order 125 does not include a statement grounding an application for Judicial Review so the jurisdiction given to the Court under Order 28 to amend pleadings does not extend to such a statement. Accordingly, the Court cannot make any amendment prior to the hearing and it follows that this Motion must be dismissed.

The Applicant will, however, be entitled on the hearing of the application to apply to the Court to amend the statement since he has complied with Rule 23 (3) of Order 84 by giving notice on the 26th January 1990 of his intention to do so. Whether the application will be granted or refused will be for the Judge hearing the case to decide. I express no opinion on it.



19. 2. 1990

(6) Motion dated the 22nd day of December 1989 seeking further and better particulars of matters stated in certain Affidavits. Under the Rules of the Superior Courts there is no right to such particulars and accordingly this Motion is refused.

(7) Notice of Motion dated the 8th January 1990 seeking an Order pursuant to Order 84 Rule 23 (2) of the Rules of the Superior Courts allowing the Applicant to amend his statement by specifying additional grounds of relief and to use the further Affidavits sworn by the Applicant on the 25th May 1989 and the 19th July 1989.

It seems to me that this Motion is misconceived. Rule 23 of Order 84 is as follows:

"23 (1) A copy of the statement in support of an application for leave under rule 20, together with a copy of the verifying affidavit must be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may, on the hearing of the motion or summons, allow the applicant or the respondent to amend his statement, whether by specifying different or additional grounds of relief or opposition or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant or respondent intends to apply for leave to amend his statement, or to use further affidavits he shall give notice of his intention and of

in the preceding paragraph. The documents are the same documents in respect of which in the first Motion the Applicant claimed to have privilege disallowed. So precisely the same issue is being raised a second time. As the matter has been dealt with in the first Motion, I will make no Order in respect of it on this Motion.

- (4) An Order giving the Applicant leave to deliver Interrogatories.

This case is already burdened by an excess of irrelevant evidence and I am not prepared to add to it. I refuse leave to deliver the Interrogatories.

(5) Motion dated the 20th December 1989 seeking particulars. The particulars sought are contained in two documents; firstly, a handwritten document dated the 14th December 1989, and secondly, a typewritten document dated the 20th December 1989. I will deal with them separately.

- (1) Handwritten document dated the 14th December 1989.
The Applicant is entitled to all of the particulars sought in this document.
- (2) Typewritten document dated the 20th December 1989.
The Applicant is entitled to the following particulars only:
Statement dated the 22nd October 1987.
Under paragraph 2: the particulars sought in subparagraphs (b) and (c).
Under paragraph 3: the particulars sought at paragraph (a) and the following part of paragraph (b):
"Of "consideration" name the person alleged to have considered the alleged reports and representations".

I allow two weeks from the date of this Judgment for the delivery of the particulars.

Nos. 110, 139, 140, 142 and 144, the last four being notes or minutes of which the Applicant himself was the author. So, I direct that the Applicant be permitted to inspect and take copies of these five documents also, but of no others.

(3) The third Motion, also an appeal from an Order of the Master of the High Court, seeks discovery of such documents as relate to matters set out in 15 numbered paragraphs. This Motion is refused in its entirety as I am satisfied that none of the matters in respect of which discovery is sought is relevant to the issues in the case.

(4) The fourth Motion, once again an appeal from an Order of the Master of the High Court, seeks four separate Orders:

- (1) An Order under Order 31 Rule 18 (1) for the inspection of certain documents. The Applicant already has copies of all the documents in question. They are exhibits in his Affidavits. Sub-Rule (2) of Rule 18 provides that "an order shall not be made under this rule if and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs". I am satisfied that the Order sought is not necessary for disposing fairly of this case and accordingly I refuse it.
- (2) An Order that the Respondents be directed to say whether they have certain documents in their possession or power. The documents referred to are documents listed in the Second Schedule of Mr. Bennett's Affidavit of Discovery, so the Applicant has already been informed that they are in the possession of the Respondents. This Order is also refused.
- (3) An Order for the inspection of the documents referred to

documents which came into existence in connection with this appeal. With some doubt I have come to the conclusion that document B. 13 should not be made available."

The facts of the present case are, however, very different from that case. There a member of the public was seeking discovery whereas here it is one of the Minister's own civil servants. It seems to me that it would be contrary to the interests of the administration of justice that he should be precluded from seeing any relevant document concerning himself. Also, I consider that to exclude these documents would be inconsistent with the decision of Lardner J., to refuse privilege to the three reports of Messrs. O'Farrell, Slavin and the Controller which, whether marked Confidential or not, would clearly have come into that category.

(2) The second Motion is an appeal against another Order of the Master of the High Court of the same date refusing the relief sought in a Motion dated the 27th October 1989. Two Orders were sought in this Motion. The first was identical with the relief sought in the first Motion, which I have just dealt with, and so it is not necessary to make any Order in regard to it. The second sought to have privilege disallowed in respect of the balance of the documents in the second part of the Schedule in Mr. Bennett's Affidavit of Discovery. I have not been given copies of these documents but they are described very fully in the Schedule and, with only a few exceptions, the date of each document is given so that I am in a position to decide on their relevance. Apart from the documents which, when dealing with the first Motion, I have already directed should be made available for inspection, I am satisfied that the only other documents which are relevant are

power for determination. In a particular case the court may be able to determine this matter having regard to the evidence available on the subject and without examining the document in question, but in other cases it may be necessary, as the court may think, to produce the document to the court itself for the purpose of inspecting it and making the decision having regard to the conflicting claims made with reference to the document."

I am satisfied that the following documents are relevant and that it would not be adverse to the public interest to permit their inspection, and I accordingly disallow the privilege claimed in respect of them:

Documents No. 146, 157, 109, 108, 107, 145, 103, 141, 101, and 156.

I had some hesitation in regard to Nos. 157 (a letter from the Controller to the Secretary of the Department, marked Confidential) and Nos. 141 and 101 (letters from the Controller to Mr. Bennett, also marked Confidential) because in his Judgment in Geraghty .v. Minister for Local Government 1975 I.R. 300 Kenny J., said in regard to one of the documents he had to consider: (page 306)

"Document B. 13 is a document prepared by the officer who heard similar appeals. It is a document which is obviously intended to be confidential and is written by one civil servant to another. It may have been a factor which influenced the final decision but I think that the principle that confidential communications between public servants should be protected, particularly when the relevant Minister has given a certificate, prevails over the interest of the plaintiff in seeing all the

applications before me.

What I have to deal with are seven separate Motions. In doing so I hope to add as little as possible to the mass of material already accumulated in the case.

(1) Motion by way of Appeal against the Order of the Master of the High Court made on the 14th November 1989 refusing an Order for inspection of certain documents referred to in the second part of the Schedule to Mr. Bennett's Affidavit of Discovery. In effect this was an application that the Respondents should not be entitled to claim privilege in respect of the documents referred to. I have read all the documents in question and considered both their relevance and the Respondents' claim that their disclosure would be contrary to public policy and detrimental to the public interest and service. I have also had regard to the principles laid down by Walsh J., in Murphy .v. Corporation of Dublin 1972 I.R. 215 at 234-235:

"Where documents come into existence in the course of the carrying out of the executive powers of the State, their production may be adverse to the public interest in one sphere of government in particular circumstances. On the other hand, their non-production may be adverse to the public interest in the administration of justice. As such documents may be anywhere in the range from the trivial to the vitally important, somebody or some authority must decide which course is calculated to do the least injury to the public interest, namely, the production of the document or the possibility of the denial of right in the administration of justice. It is self evident that this is a matter which falls into the sphere of the judicial

By Notice of Motion dated the 4th day of September 1987, the return date for which was the 12th October 1987, the Applicant gave notice of his intention to apply to the Court for the said Orders of Certiorari and Mandamus. The application was based on the undated and unsigned statement grounding the original application and the Applicant's Affidavit sworn on the 28th day of July 1987.

Since the issue of that Notice of Motion the case has grown to wholly unwarranted proportions. After four Affidavits had been filed on behalf of the Respondents, the Applicant obtained an Order for Discovery on the 7th December 1987. The Affidavit of Discovery was made by Paul Bennett, the Personnel Officer of the Department of Industry and Commerce on the 28th day of January 1988. The Applicant then brought an application for further and better discovery. This was heard by Lardner J., and in a reserved Judgment delivered on the 11th day of March 1988 he held that the Respondents could not claim privilege in respect of three reports which had been before the Chief Medical Officer of the Department when he gave the advice that resulted in the Applicant being placed on compulsory sick leave. An appeal was lodged against this decision but subsequently withdrawn.

On the 25th day of May 1989 the Applicant filed an Affidavit containing 41 pages. This was answered by a brief Affidavit from Mr. Bennett, and the Applicant then filed a further Affidavit of 22 pages. Both these Affidavits were filed after the Applicant had ceased to have a Solicitor acting for him. To what extent the material contained in these Affidavits is relevant is a matter which will have to be decided by the Judge before whom the application finally comes for decision: it is not something that I have to decide on the

THE HIGH COURT
JUDICIAL REVIEW

No. 251 of 1987

BETWEEN

MICHAEL AHERN

APPLICANT

AND

THE MINISTER FOR INDUSTRY AND COMMERCE,
THE CONTROLLER OF PATENTS, DESIGNS AND TRADE MARKS,
THE MINISTER FOR FINANCE, IRELAND AND THE ATTORNEY GENERAL

RESPONDENTS

Judgment of Mr. Justice Blayney delivered the 19th day of
February 1990.

The Applicant is a Senior Examiner in the Patents Office. By Order of MacKenzie J., made on the 31st July 1987, he has given leave to apply for an Order of Certiorari to quash the Order of the Minister for Industry and Commerce, evidenced by a minute of the 6th February 1987, purporting to place the Applicant on sick leave, and an Order of Mandamus directing the Minister for Industry and Commerce to cause the Personnel Officer of his Department to state in writing to the Applicant that the Applicant was not on sick leave or compulsory sick leave during the period from the 6th day of February 1987 to the 5th day of May 1987 and that the Applicant's absence from duty during the said period was authorised absence from duty.