

[ZEKIA, P., VASSILIADES, TRIANTAFYLLOIDES, MUNIR,
JOSEPHIDES, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

MATHEOS KYRIAKOULLIS,

Applicant,

and

1. THE REPUBLIC OF CYPRUS THROUGH—
 - (a) THE COUNCIL OF MINISTERS,
 - (b) THE CHIEF ESTABLISHMENT OFFICER OF
THE MINISTRY OF FINANCE
2. THE GREEK COMMUNAL CHAMBER THROUGH
THE OFFICE OF THE GREEK EDUCATION,

Respondents,

*(Case No. 93/62 consolidated with
Case No. 110/63)*

*Administrative Law—Pension and gratuity—Elementary school-
teacher, service of before and after 15.8.60—Erroneous com-
putation of pension payable in respect of such service—Service
must be considered as a continuous one and computation ought
to be made as a whole and not by means of two separate com-
putations—Calculation of pension to be made on the basis
of the Elementary Education Law Cap. 166, section 46 i.e.
the Law in force at the time of retirement of schoolteacher.*

The Applicant in these two consolidated Cases seeks the annulment of two separate computations of his pension communicated to him, respectively, by letter of the Chief Establishment Officer dated 20th January, 1962, in respect of his service up to the 15th August, 1960, and by the Chief Accountant of the Greek Communal Chamber, by letter dated the 25th April, 1963, in respect of his service since the 16th August, 1960, and until his retirement in December, 1961.

Held, I (a) the two computations, which are the subject-matters of these recourses, have proceeded upon the erroneous view that they ought to have been made as two separate and independent of each other administrative acts and, for this reason, they are to be annulled as being wrong in form, from a procedural point of view. They

1965
Febr. 9, 16

—
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are also to be annulled as being wrong in substance, to the extent to which they do not treat the service of Applicant as a continuous one, before and after the 16th August, 1960, and are not based, in accordance with Cap. 166, on Applicant's pensionable emoluments on the date of his retirement—irrespective, of course, of the apportionment of the liability to contribute for the payment of Applicant's pension.

(b) In the circumstances, as the whole matter of Applicant's pension will have to be gone into again by the appropriate authorities it is not necessary for this Court to decide upon the issue of the apportionment of the liability to contribute for the payment of the pension of Applicant—an issue on which, also, the parties requested the Court not to adjudicate upon now—or upon any other issue raised in these recourses.

II. On the question of costs, the Court decides that in the light of all relevant considerations, Applicant is entitled to £60, towards his costs, two-thirds of which must be borne by Respondent 2 (The Greek Communal Chamber), as it is such Respondent which had the ultimate responsibility to see that Applicant received his pension properly.

*Computations complained of
declared null and void.*

Recourse.

Recourse against the decisions of the respondents concerning two separate computations of applicant's pension.

A. Triantafyllides for the Applicant.

Criton G. Tornaritis, Attorney-General of the Republic, with *K.C. Talarides*, Counsel of the Republic, for respondent No. 1.

G. Tornaritis, for respondent No. 2.

Cur. adv. vult.

ZEKIA, P.: The judgment will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J.: The Applicant in these two consolidated Cases seeks the annulment of two separate computations of his pension communicated to him, respectively, by letter of the Chief Establishment Officer dated 20th January,

1962, in respect of his service up to the 15th August, 1960, and by the Chief Accountant of the Greek Communal Chamber, by letter dated the 25th April, 1963, in respect of his service since the 16th August, 1960, and until his retirement in December, 1961.

The Court has had the benefit of learned argument advanced by counsel for Applicant and counsel for the two Respondents, as well as of the valuable assistance rendered by the Attorney-General, who attended today's hearing for the purpose.

On the basis of the submissions made, it is no longer in issue that the service of Applicant, who, being a teacher, was not given the option of deciding not to continue to serve under the Greek Communal Chamber after the 16th August, 1960, — whereas such option was given, by virtue of paragraph 4 of Article 192, to other officers whose offices came under a Communal Chamber - must be considered as a continuous service, before and after the said date, and that his pension should be calculated on the basis of the Law in force at the time of his retirement, which is the Elementary Education Law, Cap. 166, section 46 in particular. Such Law has continued in force by virtue of Article 188(1) and has not been amended or repealed in this respect by the Greek Communal Chamber.

It is, further, not disputed that, in view of the continuity of service, the computation of the pension due to Applicant should have been made as one whole, and not by means of two separate watertight computations. In other words, the Applicant is entitled to receive his pension, properly computed under Cap. 166, through the Greek Communal Chamber, and the liability in respect thereto will be a matter of apportionment between the funds of the Greek Communal Chamber and the Consolidated Fund of the Republic (on which pensions due by the Republic, such as those under paragraph 5 of Article 192, are a charge).

The two computations, therefore, which are the subject-matters of these recourses, have proceeded upon the erroneous view that they ought to have been made as two separate and independent of each other administrative acts and, for this reason, they are to be annulled as being wrong in form, from a procedural point of view. They are also to be annulled as being wrong in substance, to the extent to which they do

1965 -
Febr. 9, 16

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not treat the service of Applicant as a continuous one, before and after the 16th August, 1960, and are not based, in accordance with Cap. 166, on Applicant's pensionable emoluments on the date of his retirement — irrespective, of course, of the apportionment of the liability to contribute for the payment of Applicant's pension.

In the circumstances, as the whole matter of Applicant's pension will have to be gone into again by the appropriate authorities it is not necessary for this Court to decide upon the issue of the apportionment of the liability to contribute for the payment of the pension of Applicant — an issue on which, also, the parties requested the Court not to adjudicate upon now — or upon any other issue raised in these recourses.

On the question of costs, the Court decides that in the light of all relevant considerations, Applicant is entitled to £60, towards his costs, two-thirds of which must be borne by Respondent 2 (the Greek Communal Chamber), as it is such Respondent which had the ultimate responsibility to see that Applicant received his pension properly.

*Computations complained of
declared null and void. Order
for costs as aforesaid.*