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IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANTELIS SKOURIDES,

Applicant,

and

1. THE REPUBLIC, THROUGH THE MINISTER OF FINANCE,
2. THE GREEK COMMUNAL CHAMBER, THROUGH THE OFFICE OF GREEK EDUCATION,

and/or

3. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondents.

(Case No. 214/63)

PANTELIS SKOURIDES *and* 1. THE REPUBLIC THROUGH THE MINISTER OF FINANCE 2. THE GREEK COMMUNAL CHAMBER THROUGH THE OFFICE OF GREEK EDUCATION, *and/or* 3. THE REPUBLIC THROUGH THE ATTORNEY-GENERAL AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER

Administrative Law—Pension and gratuity—Elementary Education Laws 1933 *to* 1937, *sections* 43 *and* 44 *of the* 1933 *Law (Law* 18 *of* 1933*), Elementary Education (Amendment) Laws* 1944 *and* 1947 *(Laws* 3 *of* 1944 *and* 13 *of* 1947*), and the Elementary Education (Amendment Law* 1954 *(Law* 12 *of* 1954*), section* 15, *(now section* 63(2) *of the Elementary Education Law, Cap.* 166*)—Applicant's recourse against decision to pay him, on retirement, a gratuity, and not a pension or a reduced pension and gratuity—Authorities did not act in a manner which has misled applicant as to his rights in any respect—Proper application of the law.*

Administrative Law—Composite administrative action—Decision to grant applicant a gratuity, taken in 1963, *and the relevant events which occurred in* 1966, *in connection with applicant's election relating to the question of his retirement and benefits, do not form, "a composite administrative action" as it is understood in Administrative Law.*

Constitutional Law—Constitution of Cyprus, Article 146*—Allegedly misleading conduct of authorities on the question of applicant's option whether to remain a person entitled to gratuity or to be transferred to the pensionable staff, of which applicant complained, constitutes administrative*

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action outside the competence of this Court under Article 146 which does not extend to matters before Independence.

Applicant complains in effect, against the decision to pay him, on retirement, a gratuity only, and not a pension or a reduced pension and gratuity.

Held, I. On the merits.

(a) By the Circular dated 5th October, 1955, of the then Education office Applicant was invited to take the opportunity of revoking his previous elections—in accordance with section 15 of Law 12/54, now section 63(2) of Cap. 166—and the authorities appear to have responded to his reaction in a manner fully within the ambits laid down by the legislation in force and the proper limits of their relevant discretion. This is quite obvious on the face of the correspondence exchanged at the time; it was just not possible for Applicant to retire as pensionable at the age of 60, instead of at the age of 55.

(b) The authorities did not act in a manner which has misled Applicant as to his rights, in any respect.

(c) Even if, however, I could have found any merit in Applicant's case, he could not have received redress by means of this recourse, because the allegedly misleading conduct of the authorities, of which he has complained, constitutes administrative action which is outside the competence of this Court under Article 146, which does not extend to matters before the 16th August, 1960.

Mustafa and the Republic, 1 R.S.C.C., p. 44, followed.

II. As regards costs:

I have decided not to make any order as to costs, bearing especially in mind that the gratuity due to Applicant by the Greek Communal Chamber was not paid until very belatedly during these proceedings.

Order. This recourse fails.

Application dismissed.

Cases referred to:

Mustafa and The Republic, 1 R.S.C.C. p. 44;

Loukas and The Republic, (reported in this Part at p.65 ante) distinguished.

Recourse.

Recourse against the decision of the Respondents to pay applicant on retirement, a gratuity only, and not a pension or a reduced pension and gratuity.

L.N. Clerides for the Applicant.

L.G. Loucaides, Counsel of the Republic, for the Respondents.

Cur. adv. vult.

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The facts of the Case sufficiently appear in the following judgment delivered by:—

TRIANTAFYLLIDES, J.: In this Case the Applicant complains, in effect, against the decision to pay him, on retirement, a gratuity only, and not a pension or a reduced pension and gratuity. A further complaint of his that the Greek Communal Chamber had not paid him any gratuity at all has been remedied through the payment to him of such gratuity while these proceedings were pending.

The history of events in this Case is as follows:—

The Applicant after serving as an elementary school-teacher since September, 1924, was retired, at the age of 60 in August, 1963. (His contention that the official records regarding his age are incorrect and that he ought to be retired in 1966, is not part of this recourse).

Up to 1944 Applicant's service was governed by the provisions of the Elementary Education Laws 1933 to 1937 and under, particularly, sections 43 and 44 of the 1933 Law (18/33) he was due to retire at the age of 60 and he was to receive a gratuity on retirement.

Then followed the Elementary Education (Amendment) Laws 1944 and 1947 (3/44 and 13/47). Applicant elected (vide *exhibits* 1 *and* 2) *not* to be affected by the amendments thus introduced—as it was his right to do—and, therefore, his service continued to be governed, as regards retirement, by the aforesaid provisions of Law 18/33.

One of the results of the above-mentioned amending legislation was the fixing of the 55th year of age as the retirement

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age for schoolteachers and the provision for pension, or reduced pension and gratuity, for schoolteachers retiring at 55.

Then in 1954 the Elementary Education (Amendment) Law 1954 (12/54) was enacted giving the opportunity to schoolteachers to revoke their previous elections concerning retirement—such as those made by Applicant in 1944 and 1947—with the leave of the then colonial Governor, (vide section 15 of Law 12/54; the relevant provision is now a proviso to section 63(2) of the Elementary Education Law, Cap. 166).

After the enactment of the said Law the then Education Office addressed, on the 5th October, 1955, a circular to schoolteachers, who like Applicant had elected to receive only a gratuity on retirement, informing them of the possibility of applying to the Governor—under the new legislation, (vide *exhibit* 5).

Applicant on the 21st October, 1955, replied (vide *exhibit* 6) asking for the Governor's approval to retire at the age of 60 and, at the same time, with reduced pension and gratuity.

On the 12th April, 1956, the then Director of Education replied to Applicant (vide *exhibit* 7) explaining to him that he could only retire on a pensionable basis at the age of 55, and not 60, and he asked Applicant to let the Education Office know immediately whether he still wanted to be transferred to the pensionable staff. As Applicant did not reply, a further letter was addressed to him on the 8th May, 1956, reminding him that he was expected to reply (vide *exhibit* 8).

On the 14th May, 1956, Applicant wrote back (vide *exhibit* 9) insisting that he should be allowed to retire at the age of 60, with reduced pension and gratuity.

On the 23rd May, 1956, the then Director of Education wrote back (vide *exhibit* 3) asking Applicant to elect finally whether he wished to retire at the age of 60 and receive only gratuity, or to retire at the age of 55 and receive a pension, or to retire at the age of 55 and receive reduced pension and gratuity; he was informed, too, that he could not be allowed to retire at the age of 60, with pension or reduced pension and gratuity, or to delay his option until the age of 55. Applicant replied (vide *exhibit* 4) stating that he wished to

retire at the age of 60 with gratuity.

Then, when Applicant was approaching the age of retirement he wrote to the Education Office, on the 10th July, 1963, on the matter, and he was informed again that on the basis of his previous declarations he was only entitled to a gratuity on retirement; (vide letter of the 20th August, 1963, *exhibit* 10).

On the 4th October, 1963, the Minister of Finance, by command of the Council of Ministers—and this delegation of authority is not questioned in this recourse—approved on the basis of a minute of the Director of Personnel (vide *exhibit* 11) that Applicant be granted a gratuity only. In the said minute reference was made to the previous elections of Applicant, as aforesaid.

In this recourse the main argument of counsel for Applicant has been that *exhibit* 3, which caused the final election of Applicant in the matter, was misleading in that it did not present to him the correct legal position regarding his rights and that, therefore, Applicant was induced thereby to opt to retire with a gratuity only at the age of 60.

This is not so, in my opinion: By the circular (*exhibit* 5) Applicant was invited to take the opportunity of revoking his previous elections—in accordance with section 15 of Law 12/54, now section 63(2) of Cap. 166—and the authorities appear to have responded to his reaction in a manner fully within the ambits laid down by the legislation in force and the proper limits of their relevant discretion. This is quite obvious on the face of the correspondence exchanged at the time, which has been referred to already in this judgment; it was just not possible for Applicant to retire as pensionable at the age of 60, instead of at the age of 55.

Counsel for Applicant has complained, also, that it was not pointed out to Applicant that he could opt to retire with pension and gratuity at the age of 55 and that there was the possibility of applying for an extension of service after the age of 55 under the provision which is now section 53 of Cap. 166. This is quite so, but I do not think that the authorities had a duty at the time to point out to Applicant his legal rights concerning extension of service. It was a matter legally unconnected with the question of his option whether to remain a person entitled to gratuity or to be

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transferred to the pensionable staff. Regarding the possibility for an extension Applicant was expected to know the legislation governing the matter and he could also obtain legal advice if necessary.

I do not think that the authorities acted in a manner which has misled Applicant as to his rights, in any respect.

Even if, however, I could have found any merit in Applicant's case—as forcefully presented by his counsel—he could not have received redress by means of this recourse, because the allegedly misleading conduct of the authorities, of which he has complained, constitutes administrative action which is outside the competence of this Court under Article 146, which does not extend to matters before the 16th August, 1960 (vide *Mustafa and The Republic*, 1 R.S.C.C., p. 44).

It cannot be said, in my opinion, that, because the decision to grant Applicant a gratuity was taken in 1963 (vide *exhibit* 11), the relevant events in 1956 form, together with it, a continuing administrative process with which this Court has competence to deal. What took place in 1956 (vide *exhibits* 3 *to* 9) was over and done with long before 1960; Applicant had sought to revoke his previous elections, in the matter of his retirement, in a manner by which it was not found possible to accede to his wishes and eventually he reaffirmed such elections by means of *exhibit* 4.

The 1963 decision and the 1956 events do not form "a composite administrative action", as it is understood in Administrative Law, (e.g. when a decision is taken on the basis of a previous binding advisory opinion, vide Tsatsos on Recourse for Annulment, 2nd edition, p. 96). Therefore, it cannot be invalidated because of the said past events, in any case.

When the decision to pay Applicant a gratuity was actually taken, as such, in 1963, it was a decision giving effect to the rights of Applicant as they had crystallized already, in the light of the legislation in force and the particular facts of Applicant's case.

The mere fact that it was based on events which had shaped themselves in the past, does not render all such previous events subject to the competence of this Court—to which such decision is subject—if otherwise the said events are not subject to such competence.

Counsel for Applicant has not complained, against the decision to grant Applicant a gratuity only, on any further ground, except that Applicant has received discriminatory treatment in that he was not treated in the same manner as a certain Miss Palangi; but as it appears from the facts of the case of Miss Palangi, which have been stated by counsel for Respondent (vide pleading of the 7th December, 1964) and which have not been contradicted by Applicant's side—and they need not be repeated here—her case is entirely different to that of Applicant and cannot form, thus, the basis of a comparison for the purpose of supporting a complaint of discrimination.

Also, the context of the present Case is not at all similar to that of *Loukas and The Republic*, (reported in this Part at p. 65 *ante*) which has been quoted by counsel for Applicant; there the ground upon which the recourse succeeded was that one organ of the Republic acting under a misconception refused to consider the applicant in that case as being in a position to be promoted and such refusal thus prevented him, in the circumstances, from having his claim to promotion examined by the appropriate organ. In the present Case the appropriate organ has dealt with the case of Applicant as it presented itself in the light of its particular circumstances, applying properly, in my opinion, the law applicable to it and reaching the only result open to it on the basis of such law and circumstances.

For all the reasons, therefore, given in this judgment this recourse fails; I have decided, however, not to make any order as to costs, bearing especially in mind that the gratuity due to Applicant by the Greek Communal Chamber was not paid until very belatedly during these proceedings.

Application dismissed.
No order as to costs.