

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NIKI IOANNOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1 THE MINISTER OF FINANCE,

2. THE MINISTER OF EDUCATION,

*Respondents.*

(Case No 88/66).

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*Public Officer and Public Service—Female officer (Applicant) serving under Government in a Provident Fund post (Assistant School Clerk) before Independence (viz 16 August 1960), and under the Greek Communal Chamber thereafter by virtue of Article 192 4 of the Constitution—Having opted for such service under that paragraph 4 (see post in the judgment)—Her said services under the Greek Communal Chamber terminated on July 9, 1961, under General Order II/1 45(1) on her reaching “an advanced stage of pregnancy”—Deposit and bonuses amounting to £104 060 mils standing to her credit on said date in the Provident Fund paid out to her on her said retirement—Such Provident Fund was established under the Government Employees Provident Fund Law, Cap 308—Applicant re-employed subsequently (August 14, 1963) as a typist under the Greek Communal Chamber—Transferred thereafter to the service of the Republic by virtue of the provisions of section 16(1) of the Transfer of the Exercise of the Powers (or Competences) of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law No 12 of 1965)—On her said re-employment on August 1963 under the then Greek Communal Chamber Applicant was not entitled to have her previous service “recognised” or taken into consideration in connection with any retirement benefit for which she might become eligible thereafter in view of General Order II/1 45(1)(v)—Therefore she did not have any such right when she returned to the service of the Government of the Republic under said Law No 12 of 1965 supra—And she had no option to exercise under the proviso to section 16(3) of the said Law No 12 of 1965 supra—*

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*Cf. General Order II/1.45(1)(b); General Order III/1.49(2);  
General Order II/1.1 and 21.*

*Transfer of the Exercise of the Powers (or Competences) of the Greek  
Communal Chamber and the Ministry of Education Law, 1965  
(Law No. 12 of 1965) section 16(1)(2)(3)(6).*

*Greek Communal Chamber—Transfer of Competences—See above.  
See also decision of the said Chamber published in the Official  
Gazette of the Republic dated September 14, 1960 Part III,  
p. 6 paragraph 6—See, also, herebelow.*

*Public Officers—In the Public Service immediately before Independ-  
ence—Position of those public officers whose post came on In-  
dependence under the Greek (or Turkish) Communal Chamber—  
Article 192 paragraph 4, of the Constitution.*

Immediately before Independence (viz. August 16, 1960) the Applicant lady was in the service of the Government of Cyprus holding the post of Assistant School Clerk in which she had been employed since July 15, 1957. On Independence that post came under the Greek Communal Chamber and under Article 192, paragraph 4, of the Constitution she acquired a conditional option of service under that body. Having duly opted for such service she became entitled to the benefits provided in that paragraph (see the material part of that paragraph *post* in the judgment).

Her pre-independence post having been a “permanent Provident Fund” post she had been making deposits in the Provident Fund established under the Government Employees Provident Fund Law, Cap. 308 and the Government had been paying into that Fund equal amounts (known as “bonuses”) to her credit; and on July 10, 1961 the sum of £104.060 mils, representing the total of those deposits and bonuses, was received by her on her retirement from the service of the Greek Communal Chamber on July 9, 1961. This was a compulsory retirement under General Order II/1.45(1) on her reaching “an advanced stage of pregnancy”.

Subsequently the Applicant has been re-employed by the Greek Communal Chamber as a typist as from August 14, 1963. On this re-employment the Applicant did not acquire any right or claim to have her previous service recognized or taken into account in connection with any retirement benefit for which she might become eligible thereafter, in view of

General Order II/1.45(1)(v). On the enactment on March 31, 1965 of Law 12 of 1965 (*supra*) the Applicant was transferred to the service of the Central Government of the Republic by virtue of section 16 of the said Law and, eventually she was emplaced in the post of Assistant Clerk, in the General Clerical Staff as from February 1, 1966. On February 28, 1966 the Applicant purporting to act under said section 16(3) and particularly the proviso thereto, returned the sum of £104.060 received by her on July 10, 1963 as aforesaid (*supra*) and claimed that for the purposes of retirement benefits the whole of her service from the beginning (i.e. July 15, 1957, *supra*) shall count as her period of service. By letter dated March 15, 1966 the Respondent returning to the Applicant the said sum of £104.060, rejected the claim of the Applicant stating *inter alia*, "..... your appointment in the Greek Communal Chamber appears as having commenced on August 14, 1963 (note: see *supra*). Because of this no question arises of an option by you for the return of the benefit.

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The Applicant by her recourse seeks now a declaration that the decision of the Respondent not to recognize her previous service in accordance with section 16(3) of the said Law No. 12 of 1965 is *null* and *void*.

So far as material section 16 of that Law reads:

"(1) .....every person who immediately before the date of the coming into operation of this law was in the service of the Chamber as a member of the staff of its offices is transferred, as from that date, to the service of the Republic and is thereafter placed by the appropriate authority of the Republic therein, as far as practicable in a post whose functions are comparable to the functions of the post held in the service of the Chamber:

Provided that every such person, until he is placed under this sub-section, continues to hold the post which he held immediately before the coming into operation of this Law.

(2) The service of every person under the Republic is on the same conditions of service as were applicable to him before that date.

.....  
(3) The service of every such person under the Republic is deemed to be an unbroken continuation of his service under the Chamber:

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Provided that every public officer having opted for service under the Chamber and received thereupon any gratuity on the ground of retirement, pension, additional grant or other similar benefit (hereafter called 'retirement benefit') with regard to a period of service before such option may within a month of the date of his placement under sub-s. (1), opt either for the return of the retirement benefit received, in which case for the purposes of retirement benefits the whole of his service from the beginning shall count as his period of service or not to return such retirement benefit, in which case for such purposes his period of service shall be regarded as beginning on the date of taking up work under the Chamber.

.....

(6) For the purposes of this section 'conditions of service' includes, subject to the necessary modifications in accordance with the structure created by this Law, the matters relating to salary, leave, dismissal, or retirement, and the benefits granted on retirement."

Dismissing the recourse the Court:—

*Held*, (1). I have come to the conclusion that the Applicant on her re-employment in August 1963 under the Greek Communal Chamber had no right to her previous service being "recognised" or taken into consideration in connection with any retirement benefit for which she might become eligible thereafter.

(2) Therefore she did not have any such right when she returned to the service of the central Government under section 16(1) of Law No. 12 of 1965 (*supra*).

(3) It follows that she had no option to exercise under the proviso to section 16(3) of that Law and hence the subject decision was a valid one and the application must fail.

*Recourse dismissed without costs.*

### **Recourse.**

Recourse against the validity of the decision of the Respondents not to recognise Applicant's previous service for the purpose of retirement benefits.

*A. Triantafyllides*, for the Applicant.

*G. Tornaritis*, for the Respondents.

*Cur. adv. vult.*

The following judgment\* was delivered by:-

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STAVRINIDES, J.: Immediately before Independence the Applicant was in the service of the Government of Cyprus, holding the post of Assistant School Clerk, in which she had been employed since July 15, 1957. On Independence that post came under the Greek Communal Chamber, and under Art. 192, para. 4, of the Constitution she acquired a conditional option of service under that body. Having opted for such service she became entitled, under that paragraph,

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“ to receive from the Republic any gratuity on the ground of retirement from the service, pension, additional grant or other similar benefit, to which she would be entitled in accordance with the law in force on the date immediately preceding the coming into operation of the Constitution and specifically in respect of a period of service before the said date, if this period by itself or together with any period of service under a Communal Chamber gave (her) the right, in accordance with that law, to the recovery of any such benefit.”

Her pre-independence post having been a “permanent Provident Fund post”, she had been making deposits in the Provident Fund established under the Government Employees Provident Fund Law, Cap. 308, and the Government had been paying into that Fund equal amounts (known as “bonuses”) to her credit; and on July 10, 1961, the sum of £104.060 mils, representing the total of those deposits and bonuses, was received by her.

She worked for the Greek Communal Chamber (hereafter “the Chamber”) in a clerical capacity from Independence until June 6, 1961, when she was granted leave of absence “on the ground of having reached an advanced stage of pregnancy”. Three days later the Director of the Office of Greek Education wrote to her a letter (blue 32 in the Applicant’s personal file, *exh. 7*) which reads:

“ With reference to your absence on account of child-birth I inform you that you are entitled to thirty-four days’ leave of absence. Your leave begins from June 6, and ends on July 9, 1961, inclusive.

In accordance with the regulations on the expiry of

\* For final decision on appeal see (1970) 12 J.S.C. 1222 to be published in due course in (1970) 3 C.L.R.

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your leave your services as typist will be deemed to have been terminated.”

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Clearly the intention and effect of the latter paragraph was her compulsory retirement from the service of the Chamber. She did not challenge that, but on June 27, 1962, she brought proceedings against the Chamber by way of application to the Supreme Constitutional Court (142 of 1962) for a

“declarations that the decision of (the Chamber)..... that (she) will be re-appointed to the service of the Chamber only in case a vacancy exists, is *null and void* and of no effect whatsoever” (*exh.* 4).

On August 13, 1963, Mr. Triantafyllides and Mr. Tornaritis, the respective counsel for the Applicant and the Respondent herein, appeared for the Applicant and the Respondent respectively in that case before a rapporteur of that Court, and the rapporteur made a minute which reads:

“Mr. Tornaritis states that Respondent undertakes to re-employ Applicant as from August 14, 1963, on a monthly basis at a salary scale of £264-£426, as a typist. Her original starting salary being, in view of her previous service, £318 per annum plus cost of living allowance.

Mr. Triantafyllides states that in view of the above statement, he asks for leave to withdraw the present recourse.

Rapporteur: In the light of the above statements, leave is granted for the case to be withdrawn.”

The events that happened between the grant to the Applicant of leave of absence on June 6, 1961, and her application to that Court are thus stated in the rapporteur’s “Statement of the Case” (*exh.* 4):

“By a letter of the Director of Greek Education dated June 9, 1961....., Applicant was retired from the service of Respondent as from the expiration of her leave i.e. July 9, 1961, in accordance with General Order II/1.45(1)(i).

By a letter dated July 6, 1961....., the Head of Technical and Agricultural Education informed the Director of Greek Education that Applicant had returned

to her post, after giving birth to a child, and had resumed regular work as from July 3, 1961. At about July 11, 1961, Applicant had again left her post due to serious illness and stayed away for about three months. After recovery, Applicant visited the Head of Technical and Agricultural Education and the Accountant of the Greek Communal Chamber, to whom she complained that she was not paid either for the three months she was away or at least for the days she was at work. The Accountant of the Greek Communal Chamber told Applicant that he had no instructions to pay her, as she was not entitled to any pay, because she was not reappointed after she was retired on July 9, 1961. After this conversation, Applicant did not go back to her work and she did not take any other step for her reappointment.....

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On February 12, 1962, the Public Service Commission issued a circular....., explaining that, according to a decision of the Council of Ministers, pensionable and Provident Fund female officers who have retired between August 16, 1960, and November 2, 1961, on the ground that they had reached an advanced stage of pregnancy, would be reinstated in their former posts.

By letter dated March 15, 1962....., addressed to the Administrative Officer of the Greek Communal Chamber, Applicant applied for reinstatement on the basis of the circular of the Public Service Commission.....

The said Administrative Officer replied by letter dated April 18, 1962....., informing Applicant that she would be reinstated as soon as a suitable vacancy occurred."

Beginning from the day following the appearance before the rapporteur to which I have referred, the Applicant resumed work for the Chamber, again in a clerical capacity; and she continued so working until the enactment of the Transfer of the Exercise of the Powers of the Greek Communal Chamber and Ministry of Education Law, 1965 (hereafter "the 1965 Law", by s. 3(1) of which the Chamber was, in effect, abolished. Section 16 of that Law, so far as relevant, reads:

"(1) .....every person who immediately before the date of the coming into operation of this Law was in the service of the Chamber as a member of the staff of its offices is transferred, as from that date, to the service of the

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Republic and is thereafter placed by the appropriate authority of the Republic therein, as far as practicable in a post whose functions are comparable to the functions of the post held in the service of the Chamber:

Provided that every such person; until he is placed under this sub-section, continues to hold the post which he held immediately before the coming into operation of this Law.

(2) The service of every person under the Republic is on the same conditions of service as were applicable to him before that date:

.....  
(3) The service of every such person under the Republic is deemed to be an unbroken continuation of his service under the Chamber:

Provided that every public officer having opted for service under the Chamber and received thereupon any gratuity on the ground of retirement, pension, additional grant or other similar benefit (hereafter called 'retirement benefit') with regard to a period of service before such option may within a month of the date of his placement under sub-s.(1), opt either for the return of the retirement benefit received, in which case for the purposes of retirement benefits the whole of his service from the beginning shall count as his period of service or not to return such retirement benefit, in which case for such purposes his period of service shall be regarded as beginning on the date of taking up work under the Chamber.

.....  
(6) For the purposes of this section 'conditions of service' includes, subject to the necessary modifications in accordance with the structure created by this Law, the matters relating to salary, leave, dismissal, or retirement, and the benefits granted on retirement."

Pursuant to the above sub-s.(1) the Public Service Commission on February 3, 1966, wrote to the Applicant a letter (*exh. 5*) which, so far as relevant, reads:

" I have been instructed to inform you that (the Commis-



sion) decided, on the authority of s. 16(1) of (the 1965 Law) to place you in the post of Assistant Clerk, in the General Clerical Staff, as from February 1, 1966.”

On the 28th of that month, i.e. within the period allowed by s. 16(3), the Applicant wrote to the Minister of Finance a letter (*exh. 2*) which, after referring to her placement, continues:

“ In virtue of the provisions of s. 16(3) of (the 1965 Law) I hereby return the gratuity that has been paid to me by the Republic.”

On the 15th of the following March a letter (*exh. 3*) was written to her on behalf of the Accountant-General which reads:

“ I refer to a letter from you dated February 28, 1966, and in reply I inform you that in accordance with particulars supplied by the Ministry of Education your appointment in the said Ministry (obviously meaning the Chamber, for that Ministry was only set up by the 1965 Law) appears as having commenced on August 14, 1963. Because of this in my opinion no question arises of an option by you for the return of the benefit received on your retirement from the public service on December 31, 1960, and recognition of the period of service before the date mentioned.

2. In view of the above the Bank of Cyprus cheque for £104.060 mils is returned. This sum represents your contributions, and also those of the Government to the Provident Fund down to December 31, 1960, and not a gratuity” (φιλοδώρημα).

The Applicant seeks

“ a declaration that the decision of the Respondents contained in *exhibit 3*.....not to recognize (her) previous service in accordance with s. 16(3) of (the 1965 Law) is *null* and *void* and of no effect whatsoever.”

The application is stated to be based on the following grounds of law:

“1. Applicant, by virtue of s. 16(3) of (the 1965 Law), is entitled, within one month from her emplacedment, to return the Provident Fund received by her when her service

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passed under (the Chamber), and have her previous service recognised for purposes of retirement benefit.

2. Applicant's service ought to have been considered continuous."

In the opposition all there is in the space reserved for a statement of the grounds of law on which it is based is this:

"The decision of the Respondents contained in *exhibit 3* .....not to recognise previous service of Applicant was properly made as the Applicant does not fall within the provisions of s. 16(3) of (the 1965 Law)."

Nor is there anything in the facts stated at p. 2 thereof to throw light on its legal basis.

From the foregoing it is apparent that both in the Applicant's prayer for relief and in the statement of the Respondent's "legal ground" of opposition thereto the expression "previous service" is used as meaning the Applicant's service as Assistant School Clerk from July 15, 1957, until Independence, together with her service under the Chamber prior to August 14, 1963, and I propose using it in that sense.

The gist of the Applicant's case is that, under the proviso to s. 16(3) of the 1965 Law, she was entitled to pay to the Republic the deposits and bonuses received by her as already stated "and have her previous service recognised for purposes of retirement benefit". In support of that proposition it was submitted, in effect, that (a) s. 16(3) does not require, as a condition of the exercise by a public officer of the option "to return" "the retirement benefit" received by him (or her) under Art. 192, para. 4 of the Constitution, that his (or her) service under the central government and the Chamber prior to the exercise of the option must be "unbroken", but if it does, (b) the Applicant's previous service and her service under the Chamber from August 14, 1963, was, legally, one "unbroken" period of service. So far as that sub-section was concerned, on behalf of the Respondent it was submitted, in effect, that the proviso postulates such a condition and that the Applicant's service under the Chamber was "broken" in consequence of her compulsory retirement in July, 1961.

It will have been noticed that the proviso in question can only come into play if a public officer, on opting for service

under the Chamber, received “any gratuity on the ground of retirement, pension, additional grant or other similar benefit”; that what the Applicant received on exercising that option was the deposits and bonuses referred to; and that in para. 2 of the letter written to her on behalf of the Accountant-General it is said that the sum of £104.060 mils was not a “φιλοδώρημα”, but the Applicant’s “contributions, and also those of the Government to the Provident Fund down to December 31, 1960”. As this view has not been supported before me, I confine myself to saying that in my opinion the deposits and bonuses were a “gratuity on the ground of retirement” or “other similar benefit” within the meaning of that proviso and therefore falls within the expression “retirement benefit” as used therein and “benefit on retirement” in sub-s. (6).

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No detailed argument was put forward, nor any decided case cited, on either side with regard to the meaning of the proviso, and I think there is no judicial decision on it. It is true that there is nothing in either the proviso to, or the substantive part of, sub-s. (3), about any service being “unbroken”. But the sub-section must be read together with the rest of the section. Now by the combined effect of sub-ss. (2) and (6) the Applicant’s position regarding entitlement to “retirement benefit” (which expression here and in what follows is used in the sense of that proviso) in respect of her previous service is the same as it was while she was in the service of the Chamber following her “re-employment” in accordance with the undertaking given to the rapporteur on August 13, 1963 (hereafter “her re-employment”). What was that position (hereafter “the position”)? By a decision published in the Official Gazette of the Republic dated September 14, 1960, Part III, p. 6, para. 6, the Chamber undertook

“ to safeguard and preserve the vested rights of the officers .....coming under it who until August 15, 1960, had been in the government service and been paid down to that day by the former government provided that for services rendered until August 15, 1960, the Republic of Cyprus will be responsible as regards the pension of these persons.”

As the Chamber had not, down to that date, passed any legislation dealing with the rights of such officers to retirement benefit, “vested rights” in that decision means the rights vested in the officers concerned before independence. Further, it

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never passed any legislation dealing with entitlement to such a benefit on re-employment after compulsory retirement. Accordingly the position was governed by “the law” (including in this expression “the terms and conditions of service”) that was applicable to officers in the service of the central government on August 15, 1960. As the Applicant’s pre-independence post of Assistant School Clerk was a “permanent Provident Fund post”, while she held that post she was an “established officer” (see, e.g., General Orders II/1.1 and 21). Now from blues in her personal file (*exh. 7*) it appears that she married some time in 1960. There is nothing to show whether that was before or after Independence. But whichever it was, the position was governed by General Order II/1.45(1), which, headed “Female established officers”, provided that

(i) A female officer who marries while in the service will be required to retire from the service when she reaches an advanced stage of pregnancy.

(ii) She will be allowed to take and will be paid for any vacation leave which she has earned.

(iii) She will be awarded pension or gratuity, as the case may be, in accordance with the provisions of the pensions legislation applicable to her; or if she is a Provident Fund Officer, she will be paid the deposit standing to her credit and bonus, if payable, under the provisions of the Government Employees Provident Fund Law.

(iv) If in due course she wishes to be considered for re-employment she must produce satisfactory evidence that she is physically fit to resume duty and that her child is being properly cared for.

(v) Her re-employment will be on the unestablished staff or in a temporary capacity and she will be eligible for a gratuity in respect of her further service in accordance with the regulations governing the payment of gratuities to unestablished or temporary officers.

(vi) On re-employment she may be permitted to enter the salary scale at a point corresponding to that which she had reached at the time of the termination of her services, and to receive any increase in salary and any

additional allowances which may have been authorised in the meantime for officers holding such appointments.”

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It was so governed in either case because, while as between the central government and its officers “service” in that provision always meant “service under the central government”, in its application, in virtue of the Chamber’s decision that I have quoted, to its officers, it meant “service under the Chamber”. In my judgment the words “in respect of her further service” in sub-para. (v) of the above Order sufficiently show that any gratuity that the Applicant might become eligible for after her re-employment would be calculated without reference to her previous service. But should there be any doubt on that score it should be dispelled by referring to General Order III/1.49(2), dealing with gratuities to unestablished and temporary officers, which provided that

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“Service for which gratuity may be granted must be unbroken except by periods of unemployment on account of shortage of work, but such periods of unemployment will be deducted from the total period of service in computing the gratuity.”

“Gratuity in respect of further service” being the only retirement benefit that the Applicant might become eligible for on her re-employment, it follows that, unless there is anything in sub-s. (3) to override or qualify the effect of sub-ss. (2) and (6), when the Applicant returned to the service of the central government under s. 16(1) of the 1965 Law she had no right to have her previous service taken into consideration in connection with any retirement benefit for which she might become eligible thereafter.

Is there anything in sub-s. (3) that made any difference? Clearly it is a merely consequential provision—one necessitated by sub-s. (1) in so far as it affected officers who, having served under the central government prior to Independence, returned to such service in virtue of sub-s. (1) after serving under the Chamber. Therefore there is a strong presumption that all it is concerned with is saving existing rights; and hence, there being nothing in it to the contrary, it must be interpreted subject to, and not as in any way overriding or qualifying the effect of, sub-ss. (2) and (6).

Reference was made at the hearing to a decision of the Council of Ministers mentioned in the Statement of the Case

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and in a circular of the Public Service Commission (*exh. 6*) to the effect that “pensionable and Provident Fund officers who have retired on grounds of pregnancy since August 16, 1960, will now be reinstated in their former posts and that unestablished/temporary officers so retired will be considered for re-employment and given priority over other candidates when filling vacancies in the posts they had held before their services were terminated”. Of this it is enough to say that, being of a decision taken after Independence, it did not apply to the Applicant under the decision of the Chamber previously quoted and therefore does not affect the issue.

For the above reasons I have come to the conclusion that on her re-employment the Applicant had no right to her previous service being “recognised” or taken into consideration in connection with any retirement benefit for which she might become eligible thereafter. Therefore she did not have any such right when she returned to the service of the central government under s. 16(1) of the 1965 Law. It follows that she had no option to exercise under the proviso to s. 16(3) of that Law and hence the subject decision was a valid one and the application must fail.

*Application dismissed without costs.*