

[L. LOIZOU, J.]

1972
July 31

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ROGIROS CHR.
MICHAELIDES

ROGIROS CHR. MICHAELIDES,

v.

REPUBLIC
(MINISTER
OF FINANCE)

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE.

Respondent.

(Case No. 18/69).

*Public Service and Public Officers—Revision of salaries—
Brought about by the Public Officers (Revision of Salaries
and Salary Scales) Law, 1968 (Law 106/1968)—Conversion
of salary—To be made on the date that Law came into
operation (viz. October 19, 1968) and not as claimed by
the respondent on the 1st January 1968, which was the
date of retrospective payment expressly provided under
the said Law—In so far as the material date of conversion
the aforesaid Law has no retrospective operation.*

*Revision of Salaries—The Public Officers (Revision of
Salaries and Salary Scales) Law, 1968 (Law No. 106/
1968), enacted on October 19, 1968—No retrospective
operation—See supra.*

*Statutes—Construction—Retrospective effect of statutes—
Principles applicable.*

The facts sufficiently appear in the judgment of the Court
annulling the *sub judice* decision of the respondents.

Cases referred to :

Lauri v. Renad [1892] 3 Ch. 402, at p. 421.

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Recourse.

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Recourse for a declaration that the decision of the respondent by which the applicant was placed on salary scale 27 instead of scale 28 is null and void

A. Hadjiloannou, for the applicant

A. Frangos, Senior Counsel of the Republic,
for the respondent.

Cur adv vult

The following judgment * was delivered by -

L. LOIZOU, J. . The applicant in the present case was the Director of the Department of Agriculture up to the 15th July, 1968, when he was appointed to the post of Director-General, Ministry of Agriculture

The salary scale of both posts was salary scale 'A' *ie* £1,752x60—£1,872x72—£2,160

On the 1st January, 1968, he was on the fourth step of the above scale *ie* he was drawing £1,944 and as from the 1st July which was his incremental date he moved to the next step *ie* £2,016 per annum Upon his appointment to the post of Director-General on the 15th July, 1968, he continued to receive the same salary and there was no change to his incremental date

When Law 106 of 1968 was enacted on the 19th October, 1968 salary scale 'A' in the case of the post of the Director of the Department of Agriculture was replaced by the new scale 27 *ie* £2,040x96—£2,712 whereas in the case of the Directors General it was replaced by the new scale 28 *ie* £2,256x120—£2,976

As stated earlier on the applicant was at the time on the 5th step of the old scale 'A' *ie* he was receiving

* For final judgment on appeal see (1975) 8 JSC 1149 to be published in due course in (1973) 3 C.L.R.

£2,016 per annum. After the enactment of the Law he was put on the equivalent step of scale 27 *i.e.* £2,424 and in view of the fact that this salary was higher than the initial salary of the post of Director-General (new scale 28) and in between steps 2 and 3 of that scale the respondent invoked the provisions of C.R. 37 with regard to the period after the date of his appointment to the latter post and changed applicant's incremental date from 1st July to 1st February so that on the 1st February, 1969, he would be receiving £2,496 on scale 28.

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The applicant by this recourse challenges the respondent's said decision and prays for a declaration that "the decision of the Minister of Finance by which the applicant was placed on salary scale 27 instead of scale 28 is null and void and of no effect as it was taken in contravention of the provisions of the law and/or in excess or abuse of powers or on a misconception of the real facts".

In the course of his address learned counsel clarified that his contention was that the applicant should have been placed on the new salary scale of the post of Director of Agriculture from the 1st January to the 15th July, 1968 *i.e.* he should be paid on the basis of £2,328 per annum and that thereafter, as from the date of his appointment to the post of Director-General on the appropriate step of the new salary scale 28 *i.e.* he should be paid on the basis of £2,736 per annum. The conversion of the salary, he submitted, should have been made on the date that the law came into effect *i.e.* on the 19th October, 1968, and not on the 1st January, 1968, which was the date of retrospective payment.

Learned counsel for the respondent, on the other part, submitted that the case of the applicant falls under section 3(2) of the Law by virtue of which the new scales came into force as from the 1st January, 1968, and all other scales should be converted as from that date. Learned counsel further submitted that by virtue of section 4(2) of the Law the Revision of Salaries Rules 1956 and particularly rule 3 thereof became applicable. Learned counsel was referring to the Memorandum which contained the directions given by the Governor of the then Colony

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of Cyprus, with the approval of the Secretary of State for the Colonies, how that revision of salaries should be applied and how the conversion to the new scales should be made (*exhibit 5*).

It should be noted that the 1956 revision which came into force on the 1st January, 1956 had retrospective effect from the 1st July, 1955, and there was express provision in paragraph 3 of the Memorandum that "The conversion of every officer's salary will be made on the basis of the post he held on the 30th June, 1955". The said paragraph further provided that "Any officer promoted after that date will enter the revised scale of the post to which he is promoted in accordance with C.R. 37".

The conversion rules applicable in the 1956 revision were those adopted in the salaries revision of 1954 which again followed the methods used for revisions of salaries in the civil service of the United Kingdom.

In antithesis to the 1954 and 1956 revisions which were contained in Memoranda and were put into force by directions given by the Governor with the approval of the Secretary of State for the Colonies, the 1968 revision is governed by the provisions of Law 106 of 1968 which was enacted by the House of Representatives and was published in the Gazette on the 19th October, 1968.

Under the provisions of section 3 of the said law the new scales were substituted for the old scales as from the "appointed day". By virtue of section 2 "appointed day" means the 1st January, 1968. Section 3(2) of the law, which is admittedly applicable in the case of the applicant, reads as follows :

«3(2) Οι εις την δευτέραν στήλην του Πίνακος Β προνοούμενοι ἀριθμοὶ κλιμάκων καὶ αἱ εις τὴν τρίτην στήλην προνοούμεναι μισθοδοτικαὶ κλίμακες (ἐν τῷ παρόντι ἐδαφίῳ καὶ ἐν τῷ Πίνακι Β ἀναφερόμεναι ὡς ἡπαλαιαὶ κλίμακες) τῶν εις τὴν πρώτην στήλην ἀναφερομένων ἀνωτέρων δημοσίων θέσεων ἀντικαθίστανται διὰ τῶν εις τὴν τετάρτην καὶ πέμπτην στήλην προνοουμένων ἀριθμῶν νέων κλιμά-

κων καὶ διὰ τῶν νέων κλιμάκων (ἐν τῷ παρόντι ἑ-
δαφίῳ καὶ ἐν τῷ Πίνακι Β ἀναφερομένων ὡς ἴνεται
κλίμακες'), ἀντιστοίχως, καὶ ἀπὸ τῆς ὀρισθείσης ἡ-
μέρας ἢ καταβολῆ τῶν μισθῶν τῶν εἰρημένων θέ-
σεων θὰ γίνεται ἐπὶ τῇ βάσει τῶν νέων κλιμάκων».

(“The scale numbers provided in the second column of Schedule B and the salary scales provided in the third column (in this section and in Schedule B referred to as ‘old scales’) of the superior public posts mentioned in the first column are substituted by the new scale numbers provided for in the fourth and fifth columns and by the new scales (in this section and in Schedule B referred to as ‘new scales’) respectively, and with effect from the appointed day the payment of the salaries of the said posts will be effected on the basis of the new scales”).

The mere fact that the “appointed day” is antecedent to the enactment of the law does not make the law itself retrospective in the proper sense and, in my view, the law must be construed on this basis *i.e.* on the basis that it came into effect on the 19th October, 1968, but that the payment of the salaries should be on the basis of the new scales as from the 1st January, 1968. Lindley, L.J. in the course of his judgment in the case of *Lauri v. Renad* [1892] 3 Ch. 402 had this to say on the question of retrospective enactments (at p. 421):

“It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction; and the same rule involves another and subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary.”

Viewed in this light it seems to me that no question for the application of C.R. 37 arises in the present case because when the Law came into force the applicant was already holding the post of Director-General and under the express provisions of section 3(2) thereof he is, in my view, entitled as from the date of his appointment

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to that post *i.e.* as from the 15th July, 1968, to draw the salary on the basis of the new scale for that post *i.e.* scale 28 in the same way that for the period after the appointed day and prior to his appointment as Director-General he was put on the appropriate step of scale 27.

C.R. 37 sets out the rules applicable in cases of promotion of an officer to a post carrying salary on an incremental scale having regard to the increments he had earned in his old post and the salary scale of his new office; and in the present case the provisions thereof would be applicable if Law 106 of 1968, by virtue of which the post of Director-General was put on a higher salary scale than that of the Director of the Department of Agriculture, had come into effect prior to applicant's promotion to the former post.

But having come to the conclusion that the Law has no retrospective effect I must, for the reasons already stated, hold that the decision complained of is contrary to the provisions of section 3(2) of the Law and that it must, therefore, be declared null and void.

In view of the nature of the case I do not propose to make an order for costs.

*Sub judice decision annulled;
No order for costs.*