

1984 September 21

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL SERGIS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE,

Respondent.

(Case No. 290/83).

Pensions (Amendment) (No. 2) Law, 1981 (Law No. 39/81) and Pensions (Secondary School Teachers) (Amendment) Law, 1981 (Law 40/81)—Interest under section 5(5) of the latter Law—Approval of rate of, by Minister of Finance—Discretion of Minister not restricted to the approval of any particular rate of interest—Interest claimed by Minister in this case simple interest and was not interest upon moneys recovered by way of interest.

Interest Law, Cap. 150—Does not prohibit the recovery of interest upon interest—It forbids recovery of interest exceeding 9% per annum.

The applicants qualified as entitled officers under the provisions of the Compensation Entitled Officers Law, 1962 (Law 52/62) and, received in that capacity a gratuity after exercising the option provided for in section 4 of the Law. Some time in 1963 or later the applicants received the benefits to which they were entitled to and for which they had opted under the provisions of Law 52/62. In 1981 legislation was enacted (see Laws 39/81 and 40/81) which entitled Government servants with interrupted service to add up for pension purposes all the years of their service, provided they returned benefits received from Government upon leaving the service in the first place. The return of these benefits was regulated by the provisions of section 5(5) of the law. The money to be refunded because

of the exercise of the option, would carry simple interest from the date of the receipt of the money at a rate to be fixed by the Minister of Finance. In exercise of the powers vested in him by the aforementioned provision of the law, the Minister settled the rate at 6 1/2%. Thus the applicants were required to refund the moneys received under the provisions of Law 52/62, plus 6 1/2% payable for part of the period that elapsed since 1963 in a manner ensuring that interest would not exceed the amount of compensation, repayable by instalments stipulated for in the decision of the Minister. The applicants objected to the rate of interest and secondly to the charge of interest on that part of the compensation they received intended to compensate for the delay in the payment of the gratuity; and hence this recourse.

Counsel for the applicants mainly contended: 15

- (a) That it was impermissible for the Minister to demand the payment of interest at a rate exceeding the legal interest of 4% payable under section 33(2) of the Courts of Justice Law, 1960 (Law 14/60).
- (b) That the Minister transcended his discretion by levying compound interest, whereas section 5(5) of the Law permits only recovery of simple interest. 20
- (c) That the Minister had no right to claim interest on moneys received by way of interest under the provisions of Law 52/62. 25

Held, (1) that the law does not restrict the exercise of the discretion of the Minister, under section 5(5) of Law 40/81, to the approval of any particular rate of interest; and that certainly it does not tie his discretion to the approval of any particular rate of interest; accordingly contention (a) must fail. 30

(2) That the interest claimed was nothing other than simple interest; accordingly contention (b) must fail.

(3) That the decision of the Minister does not raise a question of charging interest upon moneys recovered by way of interest; and that accordingly, contention (c) must also fail. 35

Held, further that the Interest Law does not prohibit the recovery of interest upon interest. It forbids recovery of in-

interest exceeding 9% p.a. Consequently, if the interest claimed does not exceed per year the rate of 9% on the capital sum, the provisions of the Interest Law are not infringed.

Cases referred to:

- 5 *Papaxenophontos and Others v. Republic* (1982) 3 C.L.R. 1037.

Recourse.

Recourse against the decision of the respondent requiring applicants to pay interest at the rate of 6 1/2 % on the moneys they received under the provisions of the Compensation Entitled Officers Law, 1962 (Law No. 52/62) and were later required to refund under the provisions of Law No. 40 of 1981.

A.S. Angelides for the applicants.

M. Photiou, for the respondent.

Cur. adv. vult.

- 15 PIKIS J. read the following judgment. The applicants qualified as entitled officers under the provisions of the Compensation Entitled Officers Law 1962* and, received in that capacity a gratuity after exercising the option provided for in section 4 of the Law. The right to retirement compensation of educationalists who severed links with government because of the assignment of educational matters to the competence of the Communal Chamber was safeguarded by Article 192.4 of the Constitution. These rights were regulated by the provisions of the aforementioned law. A period of time necessarily elapsed before it became possible to pay compensation to them. To compensate them for the delay section 4(4) of the above law provided for the payment of interest calculated at the rate of 4%. Some time in 1963 or later the applicants received the benefits to which they were entitled to and for which they had
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- In 1981 legislation was enacted amending the Pension Laws applicable to civil servants and educationalists designed to make possible, subject to certain conditions the addition of past years in the computation of pension in cases of interrupted service (see Laws 39/81 and 40/81). The Law, notably Law 40/81, expressly exempted from the provisions of the Law en-
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* Law 52/62.

titled officers who were compensated under the provisions of Law 52/62. Their exclusion from the benefits of the law was declared unconstitutional in *Papaxenophontos & Others v. The Republic* (1982) 3 C.L.R. 1037. It was held, no valid reasons existed for differentiating between civil servants with interrupted service on the one hand and entitled officers under the provisions of Law 52/62 on the other. With the obliteration of section 5(7) of Law 40/81, the applicants became, like other government employees with interrupted service entitled to the benefits of the law.

The 1981 legislation entitled Government servants with interrupted service to add up for pension purposes all the years of their service, provided they returned benefits received from Government upon leaving the service in the first place. In effect, the law gave officers with interrupted service an option exercisable in the manner envisaged by section 5(2) of the law to return benefits received and have their pension rights computed as if their service has been uninterrupted.

The return of these benefits was regulated by the provisions of section 5(5) of the law. The money to be refunded because of the exercise of the option, would carry simple interest from the date of the receipt of the money at a rate to be fixed by the Minister of Finance. It was a sensible provision considering applicants had the use of the money over many years and the inflationary trends noticeable over the last 20 years. In exercise of the powers vested in him by the aforesaid provision of the law, the Minister settled the rate at 6 1/2%. Thus the applicants were required to refund the moneys received under the provisions of Law 52/62 plus 6 1/2% payable for part of the period that elapsed since 1963 in a manner ensuring that interest would not exceed the amount of compensation repayable by instalments stipulated for in the decision of the Minister. The applicants objected to the rate of interest unjustifiably high in their view, and secondly to the charge of interest on that part of the compensation they received intended to compensate for the delay in the payment of the gratuity.

Counsel submitted it was impermissible for the Minister to demand the payment of interest at a rate exceeding 4% allegedly the prevalent rate. Apparently applicants take the

view that prevalent is the rate of legal interest laid down in the Courts of Justice Law; therefore, inasmuch as the legal interest payable under the provisions of the Courts of Justice Law 14/60 notably section 33(2) was 4% at the material time the Minister had no authority to demand anything above 4%. This view is, with respect to counsel for the applicants, plainly wrong. The law does not restrict the exercise of the discretion of the Minister under section 5(5) of Law 40/81 to the approval of any particular rate of interest; certainly it does not tie his discretion to the approval of a rate not exceeding legal interest. The submission made here for the applicants has no premise in law. Also it has no factual foundation either, for even if the discretion of the Minister is limited in the way suggested, there is no indication whatever that the prevalent rate of interest was the rate of legal interest. This submission must, therefore, necessarily be dismissed.

The second submission is two-fold: Firstly, it was argued, the Minister transcended his discretion by levying compound interest, whereas section 5(5) permits only recovery of simple interest. Like the previous submission it is ill-founded. The interest claimed 6 1/2% did not entail accretions at yearly or any rates. The compensation to be refunded was charged with 6 1/2% interest. Moreover, the interest claimed did not exceed the sum total of the compensation repayable. Whether the discretion of the Minister was limited by the provisions of section 3 of the Interest Law, Law 2/77, is a matter that does not arise for decision in this case. In my judgment the interest claimed was nothing other than simple interest.

Secondly, it was contended, the Minister had no right to claim interest on moneys received by way of interest under the provisions of Law 52/62. The argument is that the Interest Law prohibits the recovery of interest upon interest. To begin with, this submission is legally unfounded. The Interest Law does not prohibit the recovery of interest upon interest. It forbids recovery of interest exceeding 9% p.a. Consequently, if the interest claimed does not exceed per year the rate of 9% on the capital sum, the provisions of the Interest Law are not infringed. This is said parenthetically for the decision of the Minister does not raise a question of charging interest upon moneys recovered by way of interest. Section 5(2)(1) of Law

40/81 makes readiness to refund every amount received by way of gratuity under the provisions of section 4 of the basic law, that is 56/67, a condition precedent to receiving the benefits conferred by the law. Section 4 of the basic law was not geared to the provisions of Law 52/62 and the possibility of refund of moneys received under its provisions was not expressly contemplated. However, it is clear what the intention of the legislator was in enacting Law 40/81; to require the return of all benefits received by way of gratuity as a condition precedent to the enjoyment of the benefits conferred by the new legislation. It is, therefore, implicit from the provisions of the law that the return of all moneys received by way of gratuity under any law and an undertaking given to that end, is a prerequisite to the application of the provisions of Law 40/81. Nor do I accept the submission that moneys received under Law 52/62 represented anything other than a gratuity. The addition of 4% interest, under the provisions of Law 52/62, was meant to ensure that the compensation was equitable at the time of its receipt. Viewed from whichever angle, the moneys received by the applicants under Law 52/62 constituted compensation by way of gratuity under the provisions of the law and as such had to be refunded as a condition precedent to the exercise of a valid option under the provisions of Law 40/81. I conclude by holding there is no merit in the recourse. It is dismissed. Let there be no order as to costs.

*Recourse dismissed. No order
as to costs.*