

1986 November 11

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ZENON GEORGHIADES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 3/85).

*Acts or decisions in the sense of Article 146 of the Constitution
—Decision not of a final nature—Recourse dismissed on
this ground.*

5 The applicant retired from his post of Educational
Guidance and Counselling Officer in September, 1971.
His claim that the period he had served with the British
Military Service in Cyprus during the Second World War
be recognised as pensionable was rejected by letter dated
10 1.9.71 by the Minister of Finance. The applicant chal-
lenged the said decision by a recourse, which, however,
was dismissed.*

15 On 4.7.84 the applicant again brought up the question
of his pension. By letter dated 17.8.84 the applicant was
informed that his claim cannot be satisfied. The applicant
did not challenge this decision by a recourse to this
Court.

On 16.10.84 the applicant reverted to the matter and
in support of his claim forwarded to the respondent three
new documents. By letter dated 20.10.84 the applicant

* See *GeorghiaDES v. The Republic* (1979) 3 C.L.R. 146.

was informed, inter alia, that in order that his case may fall within the ambit of s. 17 of the Pension Law he must produce his military book in which his serial number, date of enlistment in the army, the rank under which he served and the date of his demobilization should be mentioned. 5

As a result the applicant filed this recourse. Till the day the recourse was filed, the applicant did not produce his said military book to the Ministry.

Held, dismissing the recourse: (1) The decision communicated to the respondent by the letter of 20.10.84 is not of a final nature, in view of what has been requested from the applicant as regards his military book. 10

(2) In the light of the aforesaid conclusion it is not necessary to examine the issue of res judicata or the question whether the sub judice decision is confirmatory in nature. 15

*Recourse dismissed.
Costs against applicant.*

Recourse. 20

Recourse against the refusal of the respondent to recognise the period from 1.9.1940 - 31.8.1943 during which applicant served in the British Forces in Cyprus as pensionable service.

A. Hadji Ioannou, for the applicant. 25

M. Photiou, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. By this recourse the applicant challenges the decision of the respondent, which was communicated to him by letter dated the 20th October, 1984, and by which the period from 1st September, 1940 to 31st August, 1943, during which he served in the British Forces in Cyprus, was not recognized as pensionable. 30

The applicant served as a teacher of the English language and Commercial subjects in the Greek Gymnasium of Paphos from 1935 till the 31st August, 1940, when he obtained leave without pay in order to join the British Military Services in Cyprus for service in the Inner Services Liaison Detachment Service until the 31st August, 1942. After that he resumed duties as an educationalist on a part time basis till the 31st August, 1943, and thereafter on a full time basis until September 1971 when he retired holding the post of Educational Guidance and Counselling Officer.

On his retirement, the Ministry of Finance, by letter dated the 1st September, 1971, rejected the claim of the applicant that the period between 1st September, 1940 to 31st August, 1942 ought to be considered as pensionable. The relevant parts of that letter read as follows:-

«'Ενετάλην υπό τοῦ Ὑπουργοῦ Οἰκονομικῶν ὅπως ἀναφερθῶ εἰς τήν ἐπιστολήν σας τῆς 13ης Μαΐου 1971, ἐν σχέσει πρός τήν συντάξιμον ὑπηρεσίαν σας, καί σᾶς πληροφορήσω ὡς ἀκολούθως:-

(a)

(β) Ἡ ὑπηρεσία σας ὑπό πολιτικὴν ιδιότητα (civilian) μετὰ τῶν στρατιωτικῶν ἀρχῶν τῆς Κύπρου κατὰ τὴν περὶ οὐδὸν 1940-1942 δὲν δύναται νὰ λογισθῆ ὡς συντάξιμος δυνάμει τῶν προρηθέντων Νόμων»

“I have been instructed by the Minister of Finance to refer to your letter of the 13th May, 1971, with regard to your pensionable service, and inform you as follows:-

(a)

(b) Your service in a civilian capacity with the military authorities of Cyprus during the period 1940-1942 cannot count as pensionable under the said Laws.”

As a result the applicant filed Recourse No. 444/71 claiming that the decision of the respondent to the effect that his period of service between 1940-1942 with the

British Military Authorities in a civilian capacity cannot be counted as a pensionable period is null and void. This recourse of the applicant was dismissed (see *Georghiades v. The Republic*, (1979) 3 C.L.R. 146) on the ground that there was no discrimination in the case of the applicant. The applicant did not appeal against the judgment given in the above recourse.

On the 4th July, 1984, the applicant sent a letter to the respondent by which he applied that his military service in the armed forces of Great Britain during the period in question be considered as pensionable. In support of his application he attached a letter from the British High Commission in Cyprus, dated the 9th May, 1984, and signed by the Defence, Naval, Military and Air Adviser, which reads as follows:-

"It is hereby certified that Doctor Zenon E. Georghiades served in a Military Unit of the British Forces and carried out duties of a military nature from 1 September 1940 to 31 August 1943."

In reply to applicant's application the Director of the Public Administration and Personnel Service, by letter dated the 17th August, 1984, informed the applicant that -

«... σύμφωνα με στοιχεία που υπάρχουν στον προσωπικό σας φάκελλο η υπηρεσία σας με τις στρατιωτικές αρχές της Κύπρου ήταν υπό πολιτική ιδιότητα (civilian). Επίσης, η υπηρεσία αυτή διάρκεσε από 1.9.1940 - 31.8.1942. Σύμφωνα με το άρθρο 17 του περί Συντάξεων Νόμου, το οποίο τροποποιήθηκε με το άρθρο 2 του περί Συντάξεων (Τροποποιητικού) Νόμου 2 του 1971, μόνο στρατιωτική υπηρεσία κατά το Β' Παγκόσμιο Πόλεμο λογίζεται συντάξιμη. Γι' αυτό λυπόμαστε γιατί, σύμφωνα με τις ισχύουσες νομοθετικές διατάξεις, το αίτημά σας δεν μπορεί να ικανοποιηθεί.»

("... in accordance with the material in your personal file your service with the military services of Cyprus was in a civilian capacity. Also, this service lasted from 1.9.1940 - 31.8.1942. In accordance with section 17 of the Pensions Law, which was amended by section 2 of the Pensions (Amendment) Law 2 of

1981, only military service during the Second World War is considered as pensionable. For this reason I regret that, in accordance with the existing legal provisions, your claim cannot be satisfied.”)

5 No recourse was filed against this decision of the respondent.

10 On the 16th October, 1984, the applicant wrote another letter to the respondent in connection with his claim for recognition of his military service for pension purposes. On this occasion and in support of his claim he attached to his letter three new documents, two from the British Ministry of Defence and another from the British High Commission. By this new application the applicant requested that in the light of the new material supplied to the respondent his application be reconsidered. These letters are dated the 27th May, 1982, the 30th June, 1983 and the 8th July, 1983. These letters were surely in his possession at the time he wrote his letter of the 4th July, 1984 to the respondents.

20 By his letter dated the 20th October, 1984, the Acting Director of the Public Administration and Personnel Service of the Ministry of Finance rejected the claim of the applicant and informed him as follows:-

25 «2. Επανεξετάσαμε το αίτημα σας υπό το φως των νέων στοιχείων που μας υποβάλατε, λυπούμαι όμως γιατί δεν μπορούμε να εγκρίνουμε το αίτημα σας για το λόγο ότι, σύμφωνα με τη βεβαίωση του Υπουργείου Αμύνης του Ηνωμένου Βασιλείου με ημερομηνία 27.5.1982, η υπηρεσία σας ήταν υπό πολιτική ιδιότητα και δεν είχατε οποιοδήποτε στρατιωτικό βαθμό. Το γεγονός ότι εκτελούσατε 'στρατιωτικά καθήκοντα', όπως αναφέρεται στην πιο πάνω βεβαίωση δεν διαφοροποιεί την κατάσταση. Για να λογισθεί η περίπτωση σας ότι εμπίπτει στις πρόνοιες του άρθρου 17 του περί Συντάξεων Νόμου πρέπει να μας παρουσιάσετε στρατολογικό βιβλιάριο στο οποίο να αναγράφεται ο αριθμός σας, η ημερομηνία κατατάξεως σας στο στρατό, ο βαθμός με τον οποίο υπηρετήσατε και η ημερομηνία απολύσεως σας.»

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“2. We have re-examined your claim in the light of the new material submitted by you, but I regret that we cannot approve your claim for the reason that, in accordance with the certificate of the Ministry of Defence of the United Kingdom dated 27.5.1982, your service was in a civilian capacity and you held no military rank. The fact that you were performing ‘military duties’, as mentioned in the aforesaid certificate does not alter the situation. In order that your case may fall within the provisions of section 17 of the Pensions Law you must produce your military book in which your serial number, date of enlistment in the army, the rank under which you served and the date of your demobilization, should be mentioned.”)

The applicant did not, to my knowledge, till the day this recourse was filed, produce to the Ministry of Finance his military book.

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As a result of the above decision of the respondent, the applicant filed the present recourse which is based on the following grounds of law:

1. The sub judice decision is contrary to the provisions of the Law, in particular section 17 of the Pensions Law, Cap. 311, as amended by section 2 of Law 2/81 and section 4(b) of Law 40/81, which amends section 6(1)(d) of the Pensions (Secondary School Teachers) Laws, 1967-1979. 25
2. The sub judice decision was taken in excess or abuse of powers, the respondent having wrongly interpreted and/or evaluated the material before him. 30
3. The sub judice decision was based on a misconception of facts.

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Counsel for the respondent raised the preliminary objections that there is a res judicata in the matter and that the sub judice decision is not an executory but a confirmatory one. In respect of the merits of the case, counsel based his opposition on the ground that the sub judice decision

was rightly taken after a due inquiry in the matter and in accordance with the provisions of the Law.

5 With regard to these preliminary objections counsel for the respondent submitted that the claim of the applicant was first rejected by the letter of the 1st September, 1971; that as a result of this decision the applicant filed Re-
10 course No. 444/71; that the claim of the applicant was dismissed by the judgment in the above recourse; and that the applicant, having admitted in the prayer of his said re-
15 course that his service in the armed forces was in a civilian capacity, is now precluded from arguing that his service was a military one. He further submitted that as the applicant was by the letter dated the 17th August, 1984, in-
formed of the decision of the respondent not to recognise his service in the armed forces as a military one (to which reference is made earlier) what transpired later was a confirmation of that decision.

Counsel for the applicant argued that the subject matter of this recourse was never raised in Recourse No. 444/71
20 which was grounded on discrimination arising from the application of section 17 of the Pensions Law, Cap. 311 and section 6(1)(d) of the Pensions (Secondary School Teachers) Laws 1967 - 1971. He further argued that the sub
25 judice decision was taken after a new inquiry was carried out on the basis of new facts submitted by the applicant, namely the three letters earlier referred to, and that the decision which was communicated to the applicant by the respondent's letter of the 20th October, 1984. is an executory one.

30 I have considered the submissions of counsel but in the light of the facts of the case I have come to the conclusion that the decision of the respondent which was conveyed to him by the letter of the Acting Director of the Public
35 Administration and Personnel Service of the Ministry of Finance, dated the 20th October, 1984, is not a final one in view of what is requested from the applicant in the last paragraph of that letter. This paragraph, in its English translation, reads:-

40 "In order that your case may fall within the provisions of section 17 of the Pensions Law you must pro-

duce your military book in which your serial number, date of enlistment in the army, the rank under which you served and the date of your demobilization, should be mentioned.”

What this sentence means to me is “give us the particulars we need and when we have them we shall finally decide whether the two years you served with the British Forces should be counted as pensionable.” 5

Having reached my above conclusions I consider that it is unnecessary for me to deal with the issue of whether the claim of the applicant is *res judicata*. 10

Although I am inclined to agree with counsel for the respondent that the alleged *sub judice* decision is a confirmatory one, I decided not to embark on this ground in view of my above finding. 15

In the result, this recourse is dismissed but in view of its circumstances, namely that this is not the first recourse that the applicant has filed on the same claim of his against the respondent, I have decided to award the costs of these proceedings against him. 20

Costs to be assessed by the Registrar in charge of the Registry entrusted with the filing of recourses.

Recourse dismissed with costs against applicant.