[ZEKIA, P., VASSILIADES, TRIANTAFYLLIDES, MUNIR, JOSEPHIDES, JJ.]

1965
Nov. 16,
1966
Feb. 24

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DR. YIANGOS FRANGIDES
and
THE REPUBLIC OF CYPRUS THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE PUBLIC SERVICE COMMISSION,
3. THE MINISTRY OF HEALTH.

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DR. YIANGOS FRANGIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH—

1. THE COUNCIL OF MINISTERS,
2. THE PUBLIC SERVICE COMMISSION,
3. THE MINISTRY OF HEALTH,

Respondents.

(Case No. 108/65).

Public Service—Public Officers—Rights existing prior to Independence (viz. 16th August, 1960)—Allowances—Acting allowance in respect of acting appointments—General Order II/3.6—Decision of the Council of Ministers to the effect that as from the 1st January, 1965, no acting allowance should be paid in accordance with the relevant General Orders—Applicant entitled to have General Order II/3.6 (supra) applied to his case, in view of the provisions of Article 192, paragraphs 1 and 7(5), of the Constitution—Notwithstanding the aforesaid decision of the Council of Ministers—Which decision to that extent i.e. in so far as it purports to be applied to the applicant's case is unconstitutional, in that it is repugnant to paragraph 1 of Article 192 of the Constitution.

See, also, under Constitutional Law herebelow.

Constitutional Law—Article 192, paragraphs 1 and 7(b), of the Constitution—Public Officers holding office in the public service immediately before the date of the coming into operation of the Constitution (such date being the 16th August, 1960)—Safeguard of such public officers "terms and conditions of service" after that date—"Terms and conditions of service", "remuneration" etc. etc. in paragraph 7(b) of Article 112 of the Constitution—Meaning and effect on the true construction thereof—Principles of construction applicable—In interpreting the expressions "remuneration" or "other like benefits" in paragraph 7(b) of Article 192 of the

Constitution one has to look at the Government General Orders and Circulars then in force (viz. on the 15th August, 1960)—And by "remuneration" we have to understand not only the isolated element of the salary payable to a given public officer—But, also, the whole complex of provisions governing his emoluments.

General Order II/3.6 (supra)—It is not relied on in the judgment in the instant case as legislation still in force generally, but as a provision forming part of the legal situation preserved by paragraph 1 of Article 192 of the Constitution—And it matters not in this respect that General Orders have, otherwise, not continued in force as legislation after the date of the coming into operation of the Constitution (viz. on and after the 16th August, 1960), by virtue of Article 188 of the Constitution.

See, also, under Public Service above.

In this case, the applicant challenges the decision to refuse him payment of an acting allowance in respect of his acting service as District Medical Officer, Larnaca, as from the 24th May, 1965. That decision is contained in a letter of the Director-General of the Ministry of Health, dated the 29th May, 1965. The applicant was at all material times before the 16th August, 1960, (date when the Constitution came into operation) a Medical Officer, Class I and he continued to remain in that office when he was appointed by the respondent Commission as Acting District Medical Officer, Larnaca, as from the 24th May, 1965. General Order II/3.6 provides for an acting allowance in the case of an acting appointment. It is common ground that the said decision to refuse to applicant the acting allowance was based on a circular dated the 17th March, 1964, and setting out a decision of the Council of Ministers to the effect that as from the 1st January, 1965, "in view of the present situation—

(*a*) no acting allowances should be paid in accordance with the relevant General Orders; and

(*b*) .....
The matter will be reviewed when the situation improves".

Article 192 of the Constitution provides:

"192.1. Save where other provision is made in this

Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date".

"2. .....

"7. For the purposes of this Article—

"(*a*) .....

"(*b*) 'terms and conditions of service' means, subject to the necessary adaptations under the provisions of this Constitution, remuneration, removal from service, retirement pensions, gratuities or other like benefits".

The Supreme Court, declaring the *sub judice* decision, contained in the said letter of the Director-General of the Ministry of Health dated the 29th May, 1965,—*null* and *void*:-

Held, (1) applicant is entitled, by virtue of Article 192, paragraph 1, of the Constitution (*supra*) to the same terms and conditions of service as were applicable to him as Medical Officer, Class I, before the 16th August, 1960, and such terms and conditions cannot be altered to his disadvantage during his continuance in the public service after that date.

(2)(*a*) One of such terms and conditions of service, as defined in paragraph 7(*b*) of Article 192 (*supra*), is the "remuneration" attaching to applicant's post; and by "remuneration" we have to understand not only the isolated element of the salary payable to applicant but also the whole complex of provisions governing his emoluments.

(*b*) Among the said provisions was General Order 11/3.6 providing for an acting allowance in the case of an acting appointment. In interpreting the expressions "remuneration" or "other like benefits" in the aforesaid paragraph 7(*b*) one has to look at the Government General Orders and Circulars then in force (*i.e.* the 15th August,

1960), as these included many of the terms and conditions of the public service. *Boyiatzis and the Republic* 1964 C.L.R. 367 at p. 374 per Josephides, J. applied.

(3) General Order 11/3.6 (*supra*) was part of the terms and conditions of service of the applicant, safeguarded under Article 192, paragraph 1, of the Constitution, in the sense that it laid down, in effect, that so long as the applicant was occupying the post of Medical officer, Class I, he was eligible to an acting allowance in case of his being vested with the increased responsibilities involved in acting in a higher post.

(4) Thus the aforesaid provision was part of the terms and conditions of service of the substantive appointment of applicant. *Shener and the Republic,* 3 R.S.C.C. 138, *distinguished.*

(5) It follows that it was unconstitutional to refuse to applicant an acting allowance in respect of his acting appointment as District Medical Officer Larnaca with increased duties, on the ground that this was prohibited by the aforesaid decision of the Council of Ministers, because such decision by being applied to the case of the applicant altered the terms and conditions of service of the applicant to his disadvantage, which is contrary to paragraph 1 of Article 192 of the Constitution *(supra).* We are not annulling the said decision of the Council of Ministers as such; such decision may or may not be found to be a valid decision when applied to officers not protected by Article 192 of the Constitution; we are leaving the issue entirely open.

(6) For the above reasons, the sub judice said decision, contained in the letter of the Director-General of the Ministry of Health dated the 29th May, 1965, to refuse applicant an acting allowance is declared null and void and of no effect whatsoever.

Per curiam: For the purposes of this judgment, it matters not that the General Orders have, otherwise, not continued in force as legislation after the 16th August, 1960, by virtue of Article 188 of the Constitution (vide *Loizides and The Republic,* 1 R.S.C.C. 107), because in this judgment General Order 11/3.6 is not relied on as legislation still

in force generally, but as a provision forming part of the legal situation preserved by paragraph 1 of Article 192 of the Constitution, with regard to the applicant.

Cases referred to:

Boyiatzis and the Republic, 1964 C.L.R. 367 at p. 374 *followed;*

Shener and The Republic, 3 R.S.C.C. 138, *distinguished;*

Loizides and The Republic, 1 R.S.C.C. 107.

Recourse.

Recourse against the decision of the Respondents refusing to applicant payment of an acting allowance in respect of his acting service as District Medical Officer, Larnaca, as from the 24th May, 1965.

L. Clerides, for the Applicant.

K. Talarides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

ZEKIA, P.: The judgment of the Court will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J.: In this Case, the Applicant challenges the decision to refuse him payment of an acting allowance in respect of his acting service as District Medical Officer, Larnaca, as from the 24th May, 1965. Such decision is contained in a letter of the Director-General of the Ministry of Health, dated the 29th May, 1965.

During the hearing of the Case, counsel for Applicant abandoned two other claims for relief, the first alleging an omission by the Public Service Commission, Respondent 2, to appoint him to the post of Acting District Medical Officer, Larnaca, as from the 1st December, 1964, and the second, in the alternative, complaining against the decision of the said Respondent 2 to so appoint him, as above, as from the 24th May, 1965, instead of as from the 1st December, 1964.

In short, the facts of this Case are as follows:—

The Applicant, a Medical Officer, Class I, was transferred by the Respondent Commission, on the recommendation of the Director of the Department of Medical Services, from Famagusta to Larnaca, as Medical Officer in charge of Larnaca, with effect from the 1st December, 1964.

On the 8th May, 1965, the said Director recommended to the Commission that the Applicant be appointed to act as District Medical Officer. The Commission decided on the 24th May, 1965 to appoint Applicant in such capacity as from the 24th May, 1965.

Then, in answer to a claim by Applicant, there followed the aforementioned letter of the Director-General of the Ministry of Health, which has given rise to this recourse.

It is common ground that the decision to refuse to Applicant an acting allowance was based on a circular dated the 17th March, 1964, and setting out a decision of the Council of Ministers to the effect that, as from the 1st January, 1965—

"in view of the present situation—

(a) no acting allowances should be paid in accordance with the relevant General Orders; and

(b) .....

The matter will be reviewed when the situation improves".

Originally, and due to some vagueness in this respect of the letter of the Director-General of the Ministry of Health, dated 29th May, 1965, it was thought by counsel for Applicant that the relevant decision of the Council of Ministers was to be found in a circular dated 20th April, 1965, which had been communicated to Applicant in the usual course of administration on the 19th May, 1965. This misunderstanding was cleared up by the Opposition which disclosed that the action of the Director-General of the Ministry of Health, complained of by Applicant, was based on the aforesaid circular of the 17th March, 1964.

Consequently, at the hearing before us, counsel for Applicant applied to amend accordingly the relevant part of the motion for relief, and he was allowed to do so, because such amendment did not involve a new claim but only an amendment of the particulars of the claim of Applicant, in respect of the refusal to grant him an acting allowance, such claim

having, in substance, been raised by Applicant right from the start of these proceedings.

The amended motion for relief reads now as follows:

> "Applicant applies to the Court for a declaration that the decision contained in the letter of the Director-General of the Ministry of Health, dated 29th May, 1965, communicating to Applicant and applying a circular of Respondent 1 (the Council of Ministers) dated the 17th March, 1964, is *null* and *void* and of no effect whatsoever".

As a result of the amendment of the motion for relief, the description of Respondent in the title of proceedings was also amended, in order to be in formal compliance with the substance of the proceedings, and it should now read as follows:

> "The Republic of Cyprus, through—
>
> 1. The Council of Ministers,
> 2. The Public Service Commission,
> 3. The Ministry of Health".

In this Case, we are going to limit ourselves to the particular circumstances of this Case, as it is not necessary to decide any general issue of constitutional or other principle which does not really arise in these proceedings.

So, though counsel for Respondents has himself voiced doubts as to whether a decision, such as the decision of the Council of Ministers in question, could be properly taken under the competence of the Council of Ministers by virtue of Article 54 of the Constitution, instead of the matter being legislated for, the Court will leave this question open and assume, for the purposes of this Case, that the said decision is a valid one from the point of view of competence.

Likewise, the Court will not proceed to examine whether or not such decision, by depriving a public officer, an employee, of extra remuneration in respect of increased responsibilities and duties, is a decision contrary to elsewhere accepted principles of proper administration and, therefore, taken in abuse of the relevant powers of the Council of Ministers.

The narrow issue to be determined in the present proceed-

ings is whether or not the decision contained in the letter of the Director-General of the 29th May, 1965, as based on the aforesaid circular of the Council of Ministers of the 17th March, 1964, is a valid decision, in view of the provisions of Article 192(1) of the Constitution; in other words whether or not in view of Article 192(1) the said decision of the Council of Ministers could be properly applied to the particular case of the acting appointment of this Applicant.

At the material—for the purposes of Article 192—time immediately before the 16th August, 1960, Applicant was a Medical Officer, Class I, *i.e.* he was occupying substantively the same post which he occupied when he was appointed by the Respondent Commission as Acting District Medical Officer Larnaca, as from the 24th May, 1965.

Applicant is entitled, by virtue of Article 192(1), to the same terms and conditions of service as were applicable to him as Medical Officer, Class I, before the 16th August, 1960, and such terms and conditions cannot be altered to his disadvantage during his continuance in the public service after that date.

One of such terms and conditions of service, as defined in paragraph *7(b)* of Article 192, is the "remuneration" attaching to Applicant's post; and by "remuneration" we have to understand not only the isolated element of the salary payable to Applicant but also the whole complex of provisions governing his emoluments.

Among the said provisions was General Order II/3.6 providing for an acting allowance in the case of an acting appointment.

In this respect it is useful to recall that Josephides, J., in delivering the judgment of this Court in *Boyiatzis and The Republic* (1964, C.L.R. 367 at p. 374) has correctly pointed out that ". . . . in interpreting the expressions 'remuneration' or 'other like benefits' one has to look at the Government General Orders and circulars then in force (*i.e.* the 15th August, 1960), as these included many of the terms and conditions of the public service".

General Order II/3.6 was part of the terms and conditions of service of Applicant, safeguarded under Article 192(1), in the sense that it laid down, in effect, that so long as Applicant was occupying the post of Medical Officer, Class I, he

was eligible to an acting allowance in case of his being vested with the increased responsibilities involved in acting in a higher post.

Thus, the aforesaid provision was part of the terms and conditions of service of the substantive appointment of Applicant; and on this point this Case is different from that of *Shener and The Republic* (3 R.S.C.C. p. 138) where it was merely held that, in the case of an acting appointment or appointment on secondment, Article 192 did not confer any greater security of tenure than the holder would otherwise have enjoyed.

In view of General Order II/3.6 being safeguarded for the benefit of Applicant by Article 192(1), we are of the opinion that it was unconstitutional to refuse to Applicant an acting allowance, in respect of his acting appointment to the post of District Medical Officer Larnaca with increased duties and responsibilities, on the ground that this was prohibited by the aforesaid decision of the Council of Ministers, because such decision by being applied to the case of Applicant it altered the terms and conditions of service of Applicant to his disadvantage, contrary to Article 192(1).

In our opinion, therefore, Applicant was entitled to have General Order II/3.6 applied to his case, in view of Article 192(1), notwithstanding any decision of the Council of Ministers to the contrary.

We are not annulling the said decision of the Council of Ministers as such; such decision may or may not be found to be a valid decision when applied to officers not protected by Article 192; we are leaving such issue entirely open.

For the purposes of this judgment, it matters not that the General Orders have, otherwise, not continued in force as legislation after the 16th August, 1960, by virtue of Article 188, *(vide Loizides and The Republic*, 1 R.S.C.C. p. 107), because in this judgment General Order II/3.6 is not relied upon as legislation still in force generally, but as a provision forming part of the legal situation preserved by Article 192, with regard to Applicant.

For the reasons given in this judgment the *sub judice* decision to refuse Applicant an acting allowance, as contained in the letter of the Director-General of the Ministry of Health,

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of the 29th May, 1965, is declared to be *null* and *void* and of no effect whatsoever; the matter has now to be reconsidered in the light of this judgment. £20.— costs in favour of Applicant.

Decision complained of declared null and void. Order for costs as aforesaid.