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CHRISTAKIS PHILOKYPROU
and
THE REPUBLIC OF CYPRUS THROUGH
1. THE MINISTER OF FINANCE
2. THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTAKIS PHILOKYPROU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,
2. THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 240 /63).

Public Officers—Officers whose offices by operation of the Constitution came within the competence of a Communal Chamber—Safeguard of rights of under the Constitution—Constitution of Cyprus, Article 192.3 and 4—Applicant's possible rights under—Recourse against the termination of Applicant's service and against the consequential grant to him of a gratuity—On the material before the Court there is nothing to show that the question of Applicant's possible rights under Article 192 and in particular under paragraph 3 thereof has as yet been decided upon—Recourse fails both as premature and as not being, otherwise, well-founded.

Constitutional Law—Constitution of Cyprus, Article 192—Rights of officers whose offices by operation of the Constitution came within the competence of a Communal Chamber—Applicant's possible rights under Article 192 and in particular under paragraph 3 thereof—The Entitled Officers Compensation Law, 1962 (Law 52 of 1962) and the Pensions Law, Cap. 311, sections 6(f) and 7—Law 52/62 enacted by reference to Article 192.4 only.

The applicant in this case complains against the decision of the Public Service Commission taken on the 24th October, 1963, to retire him from the public service and against the decision of the Council of Ministers, communicated to the applicant on the 16th November, 1963, to pay him a gratuity on retirement under sections 6 (*f*) and 7 of the Pensions Law, instead of just compensation or pension under Article 192 of the Constitution.

Article 192 of the Constitution provides:-

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"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.....

3. Where any holder of an office mentioned in paragraphs 1 and 2 of this Article is not appointed in the public service of the Republic he shall be entitled, subject to the terms and conditions of service applicable to him, to just compensation or pension on abolition of office terms out of the funds of the Republic whichever is more advantageous to him.

4. Subject to paragraph 5 of this Article any holder of an office mentioned in paragraphs 1 and 2 of this Article whose office comes, by the operation of this Constitution, within the competence of a Communal Chamber, may, if he so desires, waive his rights under paragraph 3 of this Article and choose to serve under such Communal Chamber and in such a case such holder of such office shall be entitled to receive from the Republic any retirement pension, gratuity or other like benefit to which he would have been entitled under the law in force immediately before the date of the coming into operation of this Constitution in repect of the period of his service before such date if such period by itself or together with any period of service under such Communal Chamber, would, under such law, have entitled him to any such benefit.

5. Any teacher who, immediately before the date of the coming into operation of this Constitution, was a serving teacher and was in receipt of remuneration out of the public funds of the Colony of Cyprus and whose office comes, by the operation of this Constitution, within the competence of a Communal Chamber shall be entitled to receive from the Republic any retirement pension, gratuity or other like benefit to which he would have been entitled under the law in force before the date of the coming into operation of this Constitution in respect of the period of his service

before such date if such period by itself or together with any period of service under such Communal Chamber would, under such law, have entitled him to any such benefit".

The facts of this case are fully set out in the judgment of the Court.

Held, (1) I have gone through the history of events, though, as it will appear later, some of these are not directly relevant to the actual outcome of this case—because such history, when viewed upon as a whole, does show clearly that, due to the interruption and change of applicant's career in the public service by means of the scholarship which was granted to him, his case presents special features putting it in a class of its own in more than one respect.

(2)(*a*) Applicant not being a "teacher" in the sense of paragraph 5 of Article 192 of the Constitution, *(supra)*, or a "holder of an office.....whose office comes, by the operation of the Constitution, within the competence of a Communal Chamber.....", in the sense of paragraph 4 of the said Article (*supra*), the only provision which may be relevant for applicant's case is paragraph 3 of Article 192 *(supra)*.

(*b*) It follows that applicant is not an "entitled pensionable officer" within the ambit of the Entitled Officers Compensation Law, 1962, (Law No. 52 of 1962) which is applicable only to the cases of public officers whose offices came by operation of the Constitution within the competence of a Communal Chamber and covered by the provision of paragraph 4 of Article 192 of the Constitution *(supra)*.

(c) Paragraph 3 of Article 192 does not apply only to those public officers whose office came, by operation of the Constitution, under a Communal Chamber, and to which paragraph 4 of Article 192 particularly applies (vide *Suleiman and the Republic* 2 R.S.C.C. 93 at p. 96); therefore, the mere fact that an officer does not come within the provisions of the aforesaid Law No. 52 of 1962 *(supra)* —which in effect applies only to those officers who come within paragraph 4 of Article 192—does not automatically put an end to the possibility of such officer having a valid claim under paragraph 3 of Article 192 of the Constitution.

(3) But on the material before me, I can see nothing to show that the question of applicant's possible rights under paragraph 3 of Article 192 of the Constitution has as yet been decided upon.

(4) It follows that this recourse, to the extent to which it purports to treat the termination of applicant's service, and the consequential decision to pay him a gratuity, as being contrary to Article 192 of the Constitution, in that they amount to a refusal to grant applicant any rights he may have under paragraph 3 of Article 192 of the Constitution is premature, because the relevant claim of applicant has not yet been properly decided upon, as such, by the appropriate authorities.

(5) In so far as this recourse attacks the validity of the abovementioned administrative action, which was taken in relation to applicant, as being otherwise contrary to Article 192 of the Constitution, I cannot see any ground entitling applicant to succeed. As already held his case is not within paragraph 4 of Article 192 of the Constitution. Also, the termination of his services was not, in my opinion, excluded by paragraph 3 of the said Article 192; on the contrary such paragraph does contemplate the possibility of a previously serving public officer not being "appointed" in the public service of the Republic and, in my view, the term "appointed" used in Article 192, paragraph 3, is wide enough to include a case of termination of service of an officer due to the impact of the new constitutional arrangements on the existing structure of the public service.

(6) In view of the above, this recourse fails both as premature and as not being, otherwise, well-founded.

Application dismissed.
No order as to costs.

Cases referred to:

Suleiman and The Republic, 2 R.S.C.C. p. 93 at p. 96;

Pikis and the Republic (1965)3 C.L.R. 131 at p. 149.

Recourse.

Recourse against the decision of the Respondents to retire

Applicant from the public service and pay him a gratuity only, on retirement, instead of "just compensation or pension".

A. Triantafyllides for the Applicant.

L. Loucaides, counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:—

TRIANTAFYLLIDES, J.: The Applicant in this Case complains against the decision to retire him from the public service and pay him a gratuity only on retirement, instead of "just compensation or pension".

The decision to retire Applicant was taken on the 24th October, 1963 (see the relevant minutes *exhibit 12)* by the Public Service Commission, and was communicated to Applicant by letter of the Chairman of such Commission dated 4th November, 1963 *(exhibit 3).*

The decision to pay him a gratuity was taken by the Council of Ministers and communicated to Applicant by letter of the Director of the Personnel Department, in the Ministry of Finance, dated the 16th November, 1963 *(exhibit 4).*

The salient facts leading up to Applicant's retirement, as I find them to be on the material before the Court, are as follows:—

In 1956 Applicant, who was at the time a Clerk, 2nd grade, in the clerical staff, went to the United Kingdom on a Government scholarship, in order to study mechanical engineering; it is common ground that on his return Applicant was destined to be appointed as a member of the educational services, which at the time were under the Government of the then colony of Cyprus. The scholarship agreement, entered into by the Government with Applicant in this Case, is not before the Court, but the practically identical in all essential terms agreement entered into with Applicant in Case 242/63 (with which this Case has been heard together) has been produced by way of specimen agreement *(exhibit 7).*

Applicant returned to Cyprus in July, 1960, having duly completed his said studies.

On the 12th July, 1960, Applicant was informed in writing

by the then Ag. Chief Establishment Officer that he was being posted in the Greek Education Office as from that date *(exhibit 5)*.

Though Applicant was to be paid his salary as Clerk, 2nd grade, in actual fact—and this is not disputed—he never worked in a clerical capacity in the Education Office, but he was employed immediately as a member of the staff of the Technical School, Nicosia.

On the 5th August, 1960, Applicant was offered temporary appointment as a specialist mechanic "in the Technical Schools" *(exhibit 8)*, which he accepted.

Such appointment was given to Applicant by the Greek Education Office, before the coming into existence of the Republic of Cyprus on the 16th August, 1960; the relevant contract, however, was signed after the said date *(exhibit 8(a))*.

On the 31st August, 1962, Applicant was given, and he accepted, a new appointment as a Technologist with effect from the 1st September, 1962 *(exhibit 10)*. Such appointment was a permanent one; Applicant remained posted at the Technical School, Nicosia, where he had been serving as a member of the teaching staff all along since 1960.

On the 14th February, 1963, counsel for Applicant wrote to the Director of Personnel, in the Ministry of Finance, with copy to the Public Service Commission, alleging that Article 192 of the Constitution was applicable to the case of Applicant and asking whether he was "appointed or was going to be appointed in the public service of the Republic"; in case of a negative answer, he asked to be informed what would be the amount of compensation to which Applicant was entitled under Article 192 of the Constitution *(exhibit 1)*.

On the 19th February, 1963, the Chairman of the Respondent Commission replied to counsel for Applicant *(exhibit 2)* stating that Applicant had ceased to be a member of the public service of the Republic, having accepted after the 16th August, 1960 appointment under the Greek Communal Chamber, and that there was no question of re-appointing him in the public service of the Republic; it was, also, stated in *exhibit 2*, that the question of whether or not paragraphs 3 and 4 of Article 192 of the Constitution could be applied to the case of Applicant was not a matter within the competence of the Commission.

On the 1st March, 1963, the Director of Personnel wrote to counsel for Applicant stating that as Applicant had already been informed, in November, 1962, he was not a person coming within the relevant definition in section 2 of the Entitled Officers Compensation Law, 1962 *(exhibit 15)*.

The said Law (Law 52/62) was enacted, obviously, in view of compensation provisions in Article 192.

Subsequently, on the 29th August, 1963, the Council of Ministers decided (see decision 3283, *exhibit 13)* that "the pensionable Government officers of the interchangeable staff, who accepted appointment under the Communal Chambers, should have their services terminated as from the dates of their transfer to the Communal Chambers, under sections 6*(f)* and 7 of the Pensions Law, Cap. 311".

This decision was forwarded on the 17th October, 1963 *(exhibit 14)* to the Chairman of the Public Service Commission, and, as a result, on the 24th October, 1963, the aforesaid decision of the Public Service Commission *(exhibit 12)* was taken terminating the appointment of Applicant in the public service with effect from the 1st September, 1960.

From all the material before the Court the Commission appears to have taken the view, all along, that Applicant, through having accepted to work under the Greek Communal Chamber, had, as a result, ceased to be in the public service of the Republic, (see the letter of the Commission, dated 19th February, 1963, *exhibit 2):* therefore, the Commission's aforesaid decision *(exhibit 12)* which was reached later, on the 24th October, 1963, is really the formal step by means of which such view of the Commission was translated into an act of the Commission regulating finally the position of Applicant in relation to the public service.

I have gone through the above history of events—though, as it will appear later, some of them are not directly relevant to the actual outcome of this Case—because such history, when viewed upon as a whole, does show clearly that, due to the interruption and change of Applicant's career in the public service by means of the scholarship which was granted to him, his case presents special features putting it in a class of its own in more than one respect.

The complaint of Applicant in this Case is that the decision of the Respondent Commission *(exhibit 12)*—and the con-

sequential decision granting him a gratuity, as communicated to him by the Ministry of Finance on the 16th November, 1963 (see *exhibit 4)*—are contrary to Article 192 of the Constitution.

Applicant does not seem to complain against the view taken by the Ministry of Finance, through the Director of Personnel (see *exhibit 15)* to the effect that Applicant is not an "entitled pensionable officer" within the ambit of the Entitled Officers Compensation Law, 1962 (Law 52/62). I might say at this stage, that bearing in mind the provisions of such Law, I am also inclined to think that the said view is a correct one, because Law 52/62 appears to make, only, provision for those public officers whose offices, by operation of the Constitution, came under the competence of a Communal Chamber, and in the present Case the substantive office held by Applicant, at the material time, viz. Clerk, 2nd grade, did not come, as such, by operation of the Constitution, under the competence of the Greek Communal Chamber; it follows, further, that paragraph 4 of Article 192 is not applicable to Applicant, either.

Applicant not being a "teacher" in the sense of Article 192 (5), the only provision of Article 192 which may be relevant to Applicant's case is paragraph 3 thereof, which reads as follows:—

> "Where any holder of an office mentioned in paragraphs 1 and 2 of this Article"—i.e. for the purposes of this Case a person holding an office in the public service immediately before the 16th August, 1960—"is not appointed in the public service of the Republic he shall be entitled, subject to the terms and conditions of service applicable to him, to just compensation or pension on abolition of office terms out of the funds of the Republic whichever is more advantageous to him".

Paragraph 3 of Article 192 does not apply only to those public officers whose offices came, by operation of the Constitution, under a Communal Chamber, and to which paragraph 4 of Article 192 particularly applies (*vide Suleiman and The Republic*, 2 R.S.C.C. p. 93, p. 96); therefore, the mere fact that an officer does not come within the provisions of Law 52/62—which, in effect, applies only to those officers who come within paragraph 4 of Article 192—does not automatically put an end to the possibility of such officer having a

valid claim under paragraph 3 of Article 192.

Applicant has raised the question of his rights under Article 192 by means of *exhibit 1*, which was addressed by his counsel, as aforesaid, on the 14th February, 1963, to the Ministry of Finance, with copy to the Public Service Commission. There his claim under Article 192 was put as arising if Applicant was not to be a member of the public service; so, once, by *exhibit 12*, the Commission reached the conclusion that Applicant's service in the public service ought to be terminated then his claim under Article 192 clearly had to be dealt with by the appropriate authorities.

The Respondent Commission took the view—quite rightly —that this was not a matter within its competence (see *exhibit 2)*: the reply of the Ministry of Finance, *(exhibit 15)* does not appear to deal with this matter at all, because it only limits itself to the statement that Applicant is not an "entitled pensionable officer" in the sense of Law 52/62; in effect, it dealt, only, with the paragraph 4—of Article 192—aspect of the matter.

Nor can the generic decision of the Council of Ministers, *exhibit 13*, be deemed to be an individual decision on the merits of Applicant's rights, if any, under Article 192(3), especially as Applicant's case is a rather special one calling for a specific decision thereon.

Lastly, the decision to pay Applicant a gratuity is not, and cannot be treated as, a proper decision on the substance of Applicant's rights under Article 192—or as having been taken as a result of such a decision—because it is merely a consequence of the termination of Applicant's service, as decided upon by the Respondent Commission on the basis of the aforesaid generic decision of the Council of Ministers *(exhibit 13)*.

Thus, on the material before me, I can see nothing to show that the question of Applicant's possible rights under Article 192—and paragraph 3 thereof in particular—has as yet been decided upon.

From the above, it follows, that this recourse, to the extent to which it purports to treat the termination of Applicant's service, and the consequential decision to pay him a gratuity, as being contrary to Article 192, in that they amount to a refusal to grant Applicant any rights he may have under

Article 192(3), is premature, because the relevant claim of Applicant has not yet been properly decided upon, as such, by the appropriate authorities.

In so far as this recourse attacks the validity of the above-mentioned administrative action, which was taken in relation to Applicant, as being otherwise contrary to Article 192, I cannot see any ground entitling Applicant to succeed. As already held his case is not within paragraph 4 of Article 192. Also, the termination of his services was not, in my opinion, excluded by paragraph 3 of Article 192; on the contrary such paragraph does contemplate the possibility of a previously serving officer not being "appointed" in the public service of the Republic and, in my view, the term "appointed", as used in Article 192(3), is wide enough to include a case of termination of the service of an officer due to the impact of the new constitutional arrangements on the existing structure of the public service.

In view of the above this recourse, as made against the termination of Applicant's service (or Applicant's retirement, which comes to the same thing, in this Case) and against the consequential grant to him of a gratuity, has to fail and be dismissed both as premature and as not being, otherwise, well-founded.

There still remains, however, to be decided, by the Administration in the first instance (and so it will not be decided by this Court in this Case—because it is not the function of this Court to administer, see *Pikis and The Republic, (1965)* 3 C.L.R. p. 131 at p. 149) whether or not Applicant is a person who has not been "appointed" in the public service *in such circumstances* as to entitle him to "just compensation or pension" in the sense of paragraph 3 of Article 192; and should it be so found then, of course, the gratuity which Applicant has already received must be set off against any compensation or pension that he may stand to receive.

In this respect, the appropriate authorities will have to approach the matter in the light of all relevant circumstances and it might be, in my opinion, quite material for them to consider to what extent, in view of the whole history of events which were set in motion once Applicant was sent to the United Kingdom on scholarship, Applicant can be deemed to have taken up voluntarily, and of his own choice, employment under the Greek Communal Chamber, or whether or

not he has in fact never been given any choice in the matter, having not been ever offered an appointment in the public service of the Republic as an alternative to serving under the Greek Communal Chamber, after his return from abroad.

Regarding costs I have decided that in the circumstances there should be no order as to costs.

Application dismissed. No order as to costs.