

[TRIANAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ELEFThERIOS SOTERIOU,

Applicant,

and

1. THE GREEK COMMUNAL CHAMBER, AND/OR
2. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondents,

(Case No. 161/63).

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

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ELEFThERIOS
SOTERIOU
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1. THE GREEK COMMUNAL CHAMBER AND/OR
2. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER

Elementary Education—Schoolteachers—Retirement from service on attaining the age of fifty-five—The Elementary Education Law, Cap. 166, section 53(1)—Administrative discretion to extend service until the age of sixty—Proviso (c) to the said sub-section (1) of section 53—Generous policy initiated on this point since about May 1959—Continued thereafter and affirmed by the Qualifications of Teachers and Masters Regulations, 1961 (Regulations No. 1 of 1961, made by the Greek Communal Chamber), regulation 8—Until the repeal of the said regulation 8 by section 33(1) of the Teachers of Communal Elementary Schools Law, 1963, (Law No. 7 of 1963, enacted by the Greek Communal Chamber and promulgated on the 5th July, 1963)—Regulation 8 (supra) laying down the age of retirement from service at sixty cannot be treated as repealing section 53(1) of Cap. 166, supra—It only regulates the discretionary powers relating to the extension of service and constitutes merely a policy directive to the appropriate authority to use its discretion under the said proviso (c) to section 53(1) of Cap. 166, so as to extend the service until the age of sixty, unless there exist reasons properly militating against such extension—Repeal of the said regulation 8 by Law 7 of 1963, supra—Effect of such repeal—Discretion under the said proviso (c) to section 53(1) of Cap. 166, supra, remained unaffected—Therefore, the decision to retire from service the applicant in this case is invalid, inter alia, as having been reached under a basic misconception of law, namely, that the enactment of the said Law No. 7 of 1963 by repealing regulation 8 (su-

1964
Nov. 7,
Dec. 12
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

pra) obstructed any further extension of the service of the applicant, then—a schoolteacher of fifty-six years of age, leaving no room for the exercise of the discretion under the proviso (c) of section 53(1) of Cap. 166, *supra*—Retirement of applicant annulled also as having been decided without due regard being had to most material considerations (*infra*)—And because immaterial criteria have been erroneously taken into account (*infra*)—See, also, under Administrative Law, herebelow.

Administrative Law—Act or decision under paragraph 1 of Article 146 of the Constitution—Retirement of a public officer from service due to age—Usually such retirement is effected by operation of the relevant Law and by routine application of that legislation (v. Rouhi and The Republic, 2 R.S.C.C. 84, at p. 87)—However, in the instant case, the retirement of applicant from service, in view of a number of special circumstances, called for administrative decisions thereon within the meaning of paragraph 1 of Article 146 of the Constitution—As to the validity of those decisions, see, herebelow under Administrative Law.

Administrative Law—Administrative decision—Invalidity—Basic misconception of law—Defective use of discretionary powers—Proper administration—Requirements of proper administration with regard to reversal of administrative policy on which the citizen had been induced to rely, he did rely and he did alter his social or financial position—In the instant case, the decision or decisions complained were annulled by the Court on the following grounds: (A) Decision declared invalid due to a basic misconception of law, this being that the appropriate authority in taking the decision complained of to retire applicant from service and not to extend his service, acted on the mistaken belief that due to the repeal of the said regulation 8 by Law No. 7 of 1963 (*supra*) there was no room left for any discretion in the matter—Whereas such discretion under the proviso (c) of section 53(1) of Cap. 166 remained unaffected by such repeal (*supra*)—(B) Defective use of discretion, in that material considerations had not been gone into, and an immaterial or extraneous factor was, on the contrary, taken into consideration adversely to the applicant—(C) No due regard had been paid to the requirements of proper administration, namely, to the possible prejudice which the applicant might suffer by his retirement as aforesaid due to a reversal of the previous

administrative policy initiated four years earlier and on which policy the applicant—as well as many other school-teachers—had been induced to rely, altering their social or financial position accordingly.

By this recourse the applicant complains, in effect, against the decision of the respondent to retire him from service as a schoolteacher, as from the 1st September, 1963, and, alternatively, against the failure to employ him as a schoolteacher in the permanent staff until his sixtieth year of age or, in any event, for the school-year 1963-1964 and/or subsequent years.

Section 53 of the Elementary Education Law, Cap. 166, provides:

“53(1) Every teacher on the Permanent Staff Register who attains the age of fifty-five years shall retire and cease to be a teacher on the Permanent Staff Register and the name of such teacher shall be removed from the Permanent Staff Register:

Provided that—(a).....(b).....(c) the Governor (now the appropriate Communal Chamber) may allow any teacher to remain in the service for such time, after attaining the age of fifty-five years, as to the Governor may seem fit”.

Regulation 8 of the Qualifications of Teachers and Masters Regulations, 1961, (Regulations No. 1/61), made by the Greek Communal Chamber, was held in this case to regulate the exercise of the discretion granted under proviso (c) to section 53(1)(supra) in the way of a directive to the appropriate authority to the effect that, in exercising its said discretion under section 53(1)(c), it should, as a rule, extend the service of schoolteachers until the age of sixty, unless there existed, in a particular case, reasons properly militating to the contrary. In fact regulation 8 (*supra*), as construed by the Court, was re-affirming a similar policy already initiated as from about May, 1959, by the then Greek Board of Education. This policy continued to be applied right up to the moment sometime in 1963 when, a surplus of elementary schoolteachers having arisen in the meantime, Law No. 7/63 of the 5th July, 1963, was enacted by the Greek Communal Chamber, repealing by its section 33, *inter alia*, regulation 8 of the

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5
—

ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

said Regulations No. 1/61, in so far as it related to school-teachers.

The applicant, an elementary school teacher, reached the age of fifty-five on the 1st of March, 1962. By a declaration made by the applicant on the 31st October, 1961, in response to a request made to him by the Greek Education Office in accordance with the then prevailing practice and policy as aforesaid, he opted to remain in regular service for the ensuing school-years 1962-1963, ending the 1st September, 1963. In view of the fact that the said regulation 8 and the administrative policy which led to its enactment, were then still in force, the aforesaid declaration by the applicant must be regarded not as a mere application or election on his part to serve for just another year only after attaining the age of fifty-five, but as his election to serve for the school-year 1962-1963, for the purposes of extension of his service until the age of sixty, as envisaged by the administrative policy and regulation 8 then in force; and in accordance with the practice adopted at the time, whereby extensions of service of those concerned until the age of sixty were not being granted at once, but from year to year.

On the 5th July, 1963, as already stated regulation 8 of the said Regulations No. 1/61 was repealed by section 33 of Law No. 7/63 of the Greek Communal Chamber. On the very same date the Director of the Greek Education Office addressed a letter to the applicant informing him that he would be pensioned off as from the end of the School-year 1962-1963, i.e. the 1st September, 1963, due to his having reached the age of retirement viz. 55 years. To a protest in writing by the applicant dated the 10th July, 1963, the Director replied by a letter dated the 13th July, 1963, stating that he had nothing to add to his previous letter and that in view of the Law (viz. Law 7/63, *supra*) which had been passed with regard to school-teachers, he would not be able to use his services for the ensuing school-year.

It is clear from the evidence that after the enactment of the said Law No. 7/63 the discretionary powers vested in the appropriate authority under Cap. 166, section 53(1)(c) (*supra*) have not been exercised in favour of extending the services of all school-teachers who were other-

wise to retire due to age, but they were exercised only in favour of those of the said school-teachers who, because of their till then length of service, would not have been entitled to full pension. On the other hand the Director of the Greek Education Office made it quite clear in his evidence that in giving on the 5th July, 1963, notice of retirement to the applicant as well as to the applicants in the other related pending Cases, the case of each teacher concerned was not considered individually in order to decide whether he would be retired or his services extended, on the merits, but action was taken on the basis of a general decision not to extend their services; so the personal circumstances of each of them were not examined.

In declaring the decision complained of null and void the learned Justice:-

Held, (1) regulation 8 of the Qualifications of Teachers and Masters Regulations, 1961, (Regulations No. 1/61), made by the Greek Communal Chamber, cannot be treated as validly repealing by way of express or implied amendment the provision in sub-section (1) of section 53 of the Elementary Education Law, Cap. 166, laying down the age of fifty-five years as the age of retirement for elementary schoolteachers. This regulation (now repealed by Law No. 7/63 of the 5th July, 1963) merely regulated the exercise of the discretion granted under proviso (c) to section 53(1) of Cap. 166 (*supra*) in relation to allowing a teacher to remain in the service after attaining the age of fifty-five years, with the result that in accordance with such directive the appropriate authority, exercising its discretion under section 53(1)(c), should, as a rule, extend the service of schoolteachers until the age of sixty, unless there existed, in a case, reasons properly militating to the contrary.

(2)(a) The applicant, who reached the age of fifty-five on the 1st March, 1962, was granted some time in October, 1961, an extension of service for the ensuing school-year 1962-1963, as one of the steps towards extending his service in accordance with the aforesaid policy and directive until the age of sixty, in the absence of reasons properly militating to the contrary, as aforesaid, and with a view to the question of a further extension for the ensuing school-year being dealt with, in the same context, at the proper time.

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1964
Nov 7
Dec 14
1965
Jan 21,
Mar 12, 26 27, 30
April 14
June, 1, 12, 15, 26
Oct 5, 6, 12
Nov 8, 10
1966
Feb 5
—

LLEFTHERIOS
SOTERIOU
and

1 THE GREEK
COMMUNAL
CHAMBER AND/OR
2 THE REPUBLIC
THROUGH THE
ATTORNEY-
GENERAL AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

(b) So, the applicant's retirement at the end of the school-year 1962-1963 (*viz* on the 1st September, 1963), could not be treated as retirement due to age by routine application of the relevant legislation *viz* section 53(1) of Cap 166 (*supra*), and without the need of any particular administrative decision on his case, as would be the case when, by operation of legislation, a public officer is retired (*vide Rouhi and The Republic*, 2 R S C C 84, at p 87) and as might have been the case had the applicant been retired when he became fifty-five years old (in March 1962, *supra*) without an extension having been granted to him pursuant to regulation 8 and the policy prevailing at the time

(c) Therefore a decision was called for as to what to do with applicant, who had his service extended for a year in the process of serving until the age of sixty, and whose future was affected by the reversal of the relevant policy and the repeal of the said regulation 8, in the meantime Applicant's case called for an administrative decision thereon, no less—to put it at its lowest—than the case of a school-teacher who had raised by a proper application the question of an extension of his service

(d) From the material available it appears that decisions culminating to the applicant's retirement were taken First, the generic decision not to extend, as a rule, any further the services of those over fifty-five years in the category of applicant, so as to accommodate the graduates of the Pedagogical Academies here and in Greece, and secondly, the specific action of applying such decision to individual cases, by retiring those who were entitled to full pension already, like the applicant, and allowing to remain in the service those who needed some further period of service with a view to becoming entitled to full pension In this extent applicant's case, and the cases of the other schoolteachers concerned, appear to have been dealt with under section 53(1) of Cap 166—and in this respect I agree with counsel for respondents

(3) I come next to examine the validity of the administrative action taken in retiring the applicant from the service as from the end of the school-year 1962-1963, *i.e.* the 1st September, 1963

(A) It is, indeed, not easy at all to try to apply basic

principles of administrative law to administration which has been conducted, to a large extent, on a word of mouth basis, without any relevant minutes or other records. It is, however, the duty of the Court to decide this case upon the material available; and my first conclusion on the basis of such material is that the decision to retire applicant is invalid as having been reached under a basic misconception of law, namely, that the enactment of the Teachers of Communal Elementary Schools Law, 1963 (Greek Communal Law No. 7/63 of the 5th July, 1963), by repealing regulation 8 (*supra*), obstructed any further extension of the service of the applicant. The said Law No. 7/63 appears mistakenly to have been treated as restrictive of the relevant discretion under section 53(1)(c) of Cap. 166, (*supra*), whereas nothing of the sort has happened; the age limit of fifty-five years, which had existed all along, remained in force, as well as the discretion under proviso (c) to the aforesaid sub-section (1) of section 53 to extend the service until the age of sixty; only the aforesaid directive to extend, given as already stated, by regulation 8 (*supra*), was repealed by section 33 of the Law No. 7/63, but otherwise the relevant discretion under proviso (c) to section 53(1) of Cap. 166 (*supra*) remained unfettered. This misconception of law appears in the letter of the Director of the Greek Education Office, dated the 13th July, 1963, (*supra*) by which he informed the applicant that he was unable to use his services for the ensuing school-year 1963-1964 because of the Law which had been recently enacted, viz. Law No. 7/63 of the 5th July, 1963.

(B)(a) A second ground which leads one, again, to the conclusion that the retirement of the applicant, as decided upon, has to be annulled is the fact that such retirement was decided upon without paying due regard to most material considerations:

Such considerations which, in my opinion, should guide the exercise of the discretion under section 53 (1)(c) of Cap. 166 (*supra*), are the interests of education and the merits of the particular person involved; also, in a case such as the present one, any change in the financial and other personal circumstances of applicant, which had been brought about through applicant's reliance on the clear promise originally held out to him, that his services would be extended eventually until the age of sixty years, would

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and
1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

constitute a very material consideration.

(b) As it is well established, when the validity of the revocation of a previous administrative decision is examined by a Court of law, the possible prejudice suffered by a person, who has acted on the strength of such previous decision, is a very weighty consideration, so *a fortiori*, such prejudice, if any, should have been gone into in deciding whether to retire the applicant, consequent upon a complete reversal of the previous policy regarding extension of service of schoolteachers—and on which previous policy applicant had already been clearly induced to rely.

(c) Yet, as the Director of the Greek Education Office has clearly testified, the individual merits of applicant's case, including any relevant financial circumstances, were not gone into at all in reaching the decision to retire him. All that was considered and has led to non-extending his service further was the need to accommodate the new entrants into the teaching profession, in view of the financial, mainly, difficulties which existed at the time. Such need, however, should not, in my opinion, have been allowed to override the requirements of proper administration.

(d) I have, therefore, reached the conclusion that the relevant discretion under section 53(1)(c) of Cap. 166, *supra*, was exercised, in the case of applicant, in a most defective manner and the outcome thereof has to be annulled.

(C) A third ground for annulling the decision to retire the applicant is that the criterion adopted, of retiring those who were already entitled to full pension (and having attained fifty-five years), like applicant, and retaining in the service those who needed some further period of service for purposes of full pension, is, in my opinion, an extraneous consideration beyond the object of the provision such as section 53 (1)(c) of Cap. 166 (*supra*); so, it led to a defective exercise of the relevant discretion.

(4) For all the above reasons, I have come to the conclusion that the decision to retire applicant as from the end of the school-year 1962-1963 (i.e. from 1st September, 1963) and not to renew his service for at least the educational year 1963-1964, ought to be declared null and void

and of no effect whatsoever, and it is hereby so declared.

(5) It is quite clear that I have not held that applicant was entitled in law to serve until the age of sixty, in any case. All I have found at the end of these lengthy proceedings is that the manner in which he was retired was defective and the relevant decision, therefore, to be set aside.

Decision complained of declared null and void. No order as to costs.

Cases referred to:

Rouhi and The Republic, 2 R.S.C.C. 84, at p. 87, distinguished.

Per curiam: This Court is not going to go in this judgment into what is the proper course to be adopted administratively now that the decision to retire applicant as from the 1st September, has been set aside, in the manner this has been done in this judgment. It is now up to the appropriate authorities to deal with the matter in the light of this judgment. All relevant considerations, existing at the material time, will have to be weighed; and if any decision to be reached—and I am not in any way pointing out what decision should be reached—were to turn out to be other than the retirement of applicant as from the 1st September, 1963, but cannot be applied in favour of applicant in view of the changed circumstances since then, it will be up to the appropriate authorities to consider, in the first instance, what restitution, if any, is due to applicant..... Also the appropriate authorities would be well advised to keep full and proper records of whatever action is taken, giving also due reasons in relation thereto.

Recourse.

Recourse against the decision of the respondents concerning the date of applicant's retirement as a teacher.

Fr. Markides with *A. Triantafyllides*, for the Applicant.

G. Tornaritis, for the Respondents.

Cur. adv. vult.

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and

1. THE GREEK COMMUNAL CHAMBER AND/OR
2. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER

1964
 Nov 7,
 Dec 14
 1965
 Jan 21,
 Mar 12, 26, 27, 30
 April 14
 June, 1, 12, 15, 26
 Oct 5, 6, 12
 Nov 8, 10
 1966
 Feb 5

—
 ELEFTHERIOS
 SOTERIOU
and

1 THE GREEN
 COMMUNAL
 CHAMBER AND/OR
 2 THE REPUBLIC,
 THROUGH THE
 ATTORNEY-
 GENERAL AS
 SUCCESSOR TO
 THE GREEK
 COMMUNAL
 CHAMBER

The following judgment was delivered by—

TRIANTAFYLLOIDES, J.: By a Ruling* given in this Case on the 12th June, 1965—and which should be read together with this judgment—it was held that regulation 8 of the Qualifications of Teachers and Masters Regulations 1961 (Regulations 1/61), made by the Greek Communal Chamber, could not be treated as validly repealing by way of express or implied amendment the provision in sub-section (1) of section 53, of the Elementary Education Law, Cap 166, laying down the age of fifty-five years as the age of retirement for elementary school-teachers; it was held, however, that it regulated the exercise of the discretion granted under proviso (c) to section 53(1), in relation to allowing a teacher to remain in the service after attaining the age of fifty-five years, with the result that the appropriate authority, in exercising its discretion under sub-section 53(1) (c), should, as a rule, extend the service of schoolteachers until the age of sixty, unless there existed, in a case, reasons properly militating to the contrary.

This Case had been heard until the delivery of the said Ruling together with a number of similar Cases, against the same Respondents, involving legal issues common to all, viz Cases 162/63-183/63, 185/63-188/63, 190/63, 191/63, 195/63, 197/63 and 198/63, and such Ruling was, therefore, treated as being applicable to all the aforementioned Cases too

At the end of its Ruling, the Court stated the following with regard to future proceedings in this Case, and the other related Cases.—

“A lot of evidence has been received in an effort to discover whether or not the retirement of Applicant on the 31st August, 1963, or his non-employment thereafter, was due to an administrative decision applicable in general to a class of schoolteachers, such as this Applicant and the other Applicants. But it does appear, from the personal files of all Applicants that their cases are not identical in material respects

“I have, therefore, to deal with the merits of each Case separately, starting with the present one, and to decide, depending on when the relevant decision to retire or not to re-employ each Applicant has been

*Ruling reported in (1965) 3 C L R p 334

taken—whether before or after the enactment of regulation 8 or before or after its repeal”—

on the 5th July, 1963, by the Teachers of Communal Elementary Schools Law, 1963 (Greek Communal Law 7/63)—

“depending on the circumstances in which such decision was taken, and the reasons relied upon for taking it, and on any other pertinent consideration, whether or not the relevant discretion has been properly exercised and the administrative action involved should be confirmed or annulled.

It has been submitted that Applicant in this Case, and Applicants in the other Cases heard with it, have been influenced into financial commitments under the impression that they were going to serve until they reached the age of 60. This is a consideration which may be found to be relevant, in the circumstances of this Case, or of any other of the related Cases, to the propriety of the exercise of the discretion concerned”.

The hearing of this Case was resumed on the 5th October 1965, and continued until the 10th November, 1965.

As agreed between counsel, and approved by the Court, the hearing of this Case and the other related Cases proceeded together, as in the past.

Practically all Applicants gave evidence at the resumed hearing, stating their personal circumstances, as affected by the act of their retirement, and particularly the financial obligations which they undertook on the strength of the expectation of service until the age of sixty; counsel for Respondents called as a witness Mr. Cleanthis Georghiades who, at all material times, has been the Director of the Greek Education Office, under the Greek Communal Chamber.

In this recourse, by his motion for relief, the Applicant complains, in effect, against the decision to retire him from service as a schoolteacher, as from the 1st September, 1963, and, alternatively, against the failure to employ him as a schoolteacher until the sixtieth year of his age or, in any event, for the school-year 1963-1964 and/or subsequent years.

In trying to form a correct picture of what took place in the matter of the retirement of Applicant, I have found quite helpful the evidence of Dr. Constantinos Spyridakis, who at

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFThERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

all material times was the President of the Greek Communal Chamber, and the evidence of Mr. Cleanthis Georghiades, who gave evidence, as above, at the resumed hearing of this Case, after the Ruling of the 12th June, 1965—whereas, Dr. Spyridakis has given evidence during the hearing of this Case before the said Ruling. I do accept the evidence of both these two witnesses as truthful evidence.

Dr. Spyridakis has testified, *inter alia*, that after the enactment of regulation 8, of Regulations 1/61, the practice was continued of asking schoolteachers (and we are concerned in these proceedings with elementary schoolteachers only) whether they were willing to serve after the fifty-fifth year of their age, in accordance with a policy already initiated as from about May, 1959, by the then Greek Board of Education.

Those willing to serve were then considered and extensions were granted, from year to year, on the basis of the educational ability of each one of them.

He produced specimen forms which the schoolteachers concerned were asked to fill in making their election; one such form is *exhibit 21* in these proceedings.

He stated, further, that when, under the Constitution, certain powers of the British Colonial Governor devolved on to the Greek Communal Chamber—under Article 188—the Chamber decided that some of these powers should be exercised by its President, including the powers vested in the Governor under section 53(1) (c) of Cap. 166.

He stated that at the end of the school-year 1962-1963, and after the enactment of Law 7/63, he did not exercise the discretionary powers vested in him under section 53, in favour of extending the services of all schoolteachers who were otherwise to stop serving due to age, but he did exercise them in favour of those of the said schoolteachers who, because of their till then length of service, would not have been entitled to full pension. He said that in all cases in which he did or did not extend the services of schoolteachers he had acted on the basis of the recommendations of the Greek Education Office.

He stated, also, that at the material time the question of extending or not the services of schoolteachers had become primarily a financial problem, due to the lack of the funds

needed for the creation of sufficient organic posts, and it was only from a secondary point of view a question of the abilities of those concerned and of the interests of education.

Mr. Georghiadès has testified that, whereas before 1963 there was a shortage of schoolteachers and those reaching the age of fifty-five had their services extended, in 1963 there arose a surplus of schoolteachers and the question had to be examined whether to extend the services of those who had reached the age of fifty-five years or whether to appoint the graduates from the Paedagogical Academy in Cyprus, and similar Academies in Greece, who were much more than the posts available.

He said that the matter was being handled at the time by the Greek Education Office and it was felt that it had to appoint first those graduating from the Paedagogical Academies.

He stated that the financial obligations of the schoolteachers who would have to be retired, and which they had undertaken in the meantime, were not taken into account, but that some of such schoolteachers who needed some more period of service for full pension purposes were granted extensions.

He said that he addressed identical cyclostyled letters to the Applicant in this Case, and to the other Applicants in the related Cases, all dated the 5th July, 1963, informing them that they were being retired; this was simultaneous in time with the promulgation of Law 7/63. He testified that, after Law 7/63 had repealed regulation 8, which had extended the service of schoolteachers up to the age of sixty, section 53 of Cap. 166, which laid down the fifty-fifth year of age as the age of retirement, had to be applied; he added that he had been given instructions to apply Law 7/63 and that it was he who took the relevant decisions for the purpose.

He stated, further, that, possibly, he received instructions, as above, as soon as Law 7/63 had been enacted by the Chamber—even before it was published—and that he received such instructions from the then Administrative Officer of the Chamber, Mr. Adamides, who told him that Law 7/63 should be applied in all cases of retiring schoolteachers.

This witness made it quite clear that in giving, on the 5th July, 1963, notice of retirement to the Applicant in this Case,

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5
—
ELEFThERIOS
SOTERIOU
and
1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

and to the Applicants in the other related Cases, the case of each person concerned was not studied individually, in order to decide whether he would be retired or his services extended, on the merits, but action was taken on the basis of a general decision not to extend their services; so the personal circumstances of each of them were not examined.

It is convenient next to deal, in some detail, with some administrative steps taken in Applicant's case:—

The personal file of Applicant is *exhibit 24* in these proceedings.

It is not in dispute that Applicant, an elementary school-teacher, reached the age of fifty-five on the 1st March, 1962, and that, on the basis of the legislation governing his service, he was due to retire on becoming fifty-five years old.

On the 21st October, 1961, the Head of the Department of Elementary Education, in the Greek Education Office, addressed to Applicant a notice stating that, in accordance with the relevant records, he would become fifty-five years old on the 1st March, 1962, and requesting Applicant to fill in, in duplicate, a cyclostyled declaration form which was enclosed therewith. Such notice is blue 211 in *exhibit 24* and the two copies of the said declaration, as filled in by Applicant, are blue 212 in the same exhibit; they are dated the 31st October, 1961.

Such declaration contained four parts: Under part (a) Applicant could have declared that he wished to be pensioned off on the 1st March, 1962; under part (b) Applicant could have declared that he wished to be pensioned off on the 1st March, 1962, but to be allowed to continue on a temporary basis, at the same post and with the same rank, until the end of the school-year 1961-1962; under part (c) Applicant could have declared that he asked to remain in the service, in the permanent staff, until the end of the school-year 1961-1962—(as per section 53(1) (a) of Cap. 166); lastly, under part (d) Applicant could have declared that he wished to remain in the service as a member of the permanent staff for also the ensuing school-year 1962-63 (presumably as per section 53(1) (c) of Cap. 166 and regulation 8 of Regulations 1/61, which were in force at the time).

By a note at the bottom of such form, Applicant was requested to strike out such parts which did not coincide

with his preference in the matter.

Applicant struck out parts (a), (b) and (c), above, thus opting to remain in regular service as stated in part (d), above, for the ensuing school-year 1962-1963.

It is common ground that a school-year starts from the 1st of September in one year and lasts until the 31st of August in the ensuing year. So the school-year 1962-1963 would end on the 31st August, 1963.

The aforesaid form, *blue 212*, is in identical terms as *exhibit 21*, which was produced in evidence by Dr. Spyridakis, as having been sent to schoolteachers after the enactment of regulation 8 of Regulations 1/61.

No entry at all appears in the personal file of Applicant in relation to the action taken by the authorities on the strength of his aforesaid election, other than an endorsement "noted" on *blue 212* itself. The fact remains, however, that Applicant did not retire on the 1st March, 1962, but continued in service for the school-year 1962-1963, as he had requested. It must, therefore, be assumed that his service was treated as extended accordingly.

In the meantime a surplus of schoolteachers arose and, also, on the 5th July, 1963, Law 7/63 was promulgated; and, as already stated, that Law, by section 33, repealed, *inter alia*, regulation 8 of Regulations 1/61, in so far as it related to schoolteachers.

On the 5th July, 1963, the Director of the Greek Education Office, Mr. Cleanthis Georghiades, addressed a letter to Applicant, which is *blue 214* in *exhibit 24*, informing him that he would be pensioned off as from the 1st September, 1963, due to his having reached the age of retirement (the copy of this letter, in *exhibit 24*, is undated but, according to the evidence given by Applicant, the original was dated 5th July, 1963). This letter of the 5th July, 1963, is one of the identical letters addressed to affected schoolteachers on the same date, as explained by Mr. Georghiades in his evidence which has been referred to earlier.

On the 10th July, 1963, Applicant wrote back protesting against his retirement (*vide blue 216* in *exhibit 24*) and stating that when, many years ago, he had opted to retire at the age of fifty-five years, he had so opted on the assumption that he

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar.12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5
—

ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5
—

ELEFTHERIOS
SOTERIOU
and
1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

would receive a gratuity and pension on the basis of his salary at the date of retirement, but as the current policy of the Greek Communal Chamber did not safeguard his full rights regarding gratuity and pension, his past option had been abated; he reserved all his rights.

According to the relevant evidence this letter of the 10th July, 1963, was a form of protest prepared for all affected schoolteachers, by P.O.E.D., their professional organization. The matter of pension and gratuity raised therein is not involved at all in these proceedings; it is not connected with the sub judice issues. Also, the option mentioned by Applicant in the said letter has nothing to do with his declaration, blue 212, made in October, 1961, but it is a much older and irrelevant one.

On the 13th July, 1963, the Director of the Greek Education Office replied (*vide* blue 217 in *exhibit 24*) stating that he had nothing to add to his letter, by which he had informed Applicant that, in view of the Law which had been published with regard to schoolteachers, he would not be able to use his services for the ensuing school-year.

No such previous letter of the Director appears to exist, other than the letter of the 5th July, 1963, (blue 214) notifying Applicant of his retirement; it was written on the same day when Law 7/63 was published in the official Gazette and —though the Director did not state at the time therein expressly what he stated later in his letter of the 13th July, 1963 —when one looks upon the matter in the light also of the evidence given before the Court by the Director there can be little doubt that the previous letter, mentioned by him on the 13th July, 1963, is his letter of the 5th July, 1963, and that what he stated on the 13th July, 1963, he had also in mind on the 5th July, 1963, even though he did not put it down in so many words then.

We come next to deal with some other aspects of the retirement of Applicant, as from the 1st September, 1963, by means of the letter of the 5th July, 1963, (blue 214 in *exhibit 24*).

It is useful, first, to bear in mind the state of the relevant legislation at the time:

With the repeal, on that very same date viz. the 5th July, 1963, by means of Law 7/63, of regulation 8 of Regulations 1/61, the situation had reverted to what it was before the

enactment of the said regulation 8; in other words, the power to extend the service of a schoolteacher under section 53(1) (c) of Cap. 166 remained, but the relevant discretion was to be exercised without being in force, any longer, the directive of regulation 8, to the effect that such service was to be extended until the age of sixty years unless there existed reasons properly militating to the contrary.

But, the repeal of regulation 8 by means of section 33 of Law 7/63, was all that such Law did; it did not go further, in any way, towards rendering necessary or obligatory not to extend the service of any schoolteacher after the age of fifty-five years, under section 53(1) (c). Having, merely, removed the directive of regulation 8, it, otherwise, left the matter of an extension under section 53(1) (c) a matter of discretion either way, as before the enactment of regulation 8.

What led to the repeal of regulation 8 was, in fact, a reversal of administrative policy in the matter, and such reversal was given legislative expression by means of the said repeal. It is quite clear on the basis of the material before me that the original policy decision to extend the services of schoolteachers until the age of sixty years, by using the powers under section 53(1) (c), was taken administratively and began being implemented before the enactment of regulation 8 in January, 1961; and regulation 8 was enacted in consequence of such policy. Later, however, it transpired that, for financial reasons, there were not sufficient organic posts to accommodate both the teachers whose services were being extended and the graduates of the Paedagogical Academies, so it was decided to give preference to the said graduates and not to extend the services of those reaching the age of retirement, except in the cases of those who were not still entitled to full pension. Thus, there took place a clear reversal of the previous administrative policy in the matter, which also, led to the repeal of regulation 8. It must not be lost sight of in this respect that the Greek Communal Chamber being a body vested with both executive and legislative powers, it could translate its administrative decisions into legislative action, and *vice versa*. The present instance is not a case where legislation has led to a change in administrative policy but, on the contrary, this is a case where change of policy led to necessary legislative action, *viz.* the repeal of regulation 8.

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

The change in administrative policy, and the consequent repeal of regulation 8, did not, however, obliterate what had been already done because of regulation 8 while it was in force. One of the things which took place during such time was the extension of the service of Applicant—under section 53(1) (c) and pursuant to regulation 8—for the school-year 1962-1963.

It is necessary, in this respect, to deal more particularly with the relevant declaration signed by the Applicant on the 31st October, 1961 (blue 212 in *exhibit 24*). That declaration cannot be treated as an isolated event; it has to be examined in the context of all the relevant circumstances and, also, of the legislation prevailing at the time; it was a declaration signed in response to a request to Applicant for the purpose, made to him by the Greek Education Office (*vide* blue 211 in *exhibit 24*), because, no doubt, of the fact that regulation 8, and the administrative policy which led to its enactment, were still in force then. It must be, therefore, regarded not as a mere application or election of Applicant to serve for just another year only, after his attaining the age of fifty-five years, but as his election to serve for the school-year 1962-1963, for the purposes of extension of his service until the age of sixty years, as envisaged by the administrative policy then in force and regulation 8; in accordance with the practice adopted at the time the extensions of service of those concerned—until the age of sixty years—were not being granted at once, but from year to year.

It is true that nothing is actually mentioned in the said declaration of Applicant, blue 212, about service until the age of sixty but, as already stated, this declaration is an act which has to be looked upon in its proper context.

As it has been pointed out earlier, no decision regarding the extension of the service of Applicant, on the strength of blue 212, appears to have been recorded, but there can be no doubt, from the fact that Applicant was allowed to serve till the end of the school-year 1962-1963, that such a decision was indeed reached, though it was not recorded.

It could only have been reached in the same context as that in which the declaration of Applicant had been made for the purpose. In other words, Applicant was granted an extension of service for the school-year 1962-1963, as one of the steps towards extending his service until the age of sixty

years—in the absence of reasons properly militating to the contrary—and with a view to the question of a further extension for the ensuing school-year being dealt with, in the same context, at the proper time.

So, at the end of the school-year 1962-1963 Applicant's retirement could not be treated as retirement due to age by routine application of the relevant legislation viz. section 53(1) of Cap. 166, and without the need of any particular administrative decision on his case, as would be the case when, by operation of legislation, a public officer is retired (*vide Rouhi and The Republic*, 2 R.S.C.C. p. 84 at p. 87) and as might have been the case had Applicant been retired when he became fifty-five years old, without an extension having been granted to him pursuant to regulation 8 and the policy prevailing at the time. A decision was called for as to what to do with Applicant, who had had his service extended for a year in the process of serving until the age of 60, and whose future was affected by the reversal, as explained earlier, of the relevant policy and the repeal of regulation 8, in the meantime.

Applicant's case called for an administrative decision thereon, no less—to put at its lowest—than the case of a school-teacher who had raised the question of an extension of his service. True enough, Applicant did not apply expressly for the extension of his service for the school-year 1963-1964, because, *inter alia*, he was not called upon to sign any relevant declaration form for the purpose, as it had been done in respect of the school-year 1962-1963. But having accepted to serve beyond the fifty-fifth year of his age, at a time when it was announced and legislated that schoolteachers would normally serve until the age of sixty years, he was certainly a person whose case needed consideration in the light of the reversal of relevant policy and the repeal of regulation 8 which had ensued in the meantime.

Let us now examine what actually was done by way of administrative action in retiring Applicant.

This is a quite difficult task, indeed, in the circumstances of this Case.

The Court, since the 14th December, 1964, has been pointing out that it had to be ascertained what specifically has been done in this matter; in the end, however, it has transpired

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and
1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU

and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

that it was not possible to place anything by way of written record before this Court except an undated copy of the letter of the 5th July, 1963, (*vide* blue 214 in *exhibit 24*), which was addressed to all school-teachers concerned.

I have no complaint at all, in this respect, against counsel for Respondents, who has done his best to assist the Court, in very difficult circumstances, by striving to piece together a picture of proper administrative action out of very scanty records indeed.

Of course, the evidence of Dr. Spyridakis and of Mr. Georghiades, which has already been referred to, has gone quite some way towards presenting the relevant picture, but the fact remains that there do not appear to exist written records of, *inter alia*, any decision of Dr. Spyridakis, as President of the Greek Communal Chamber, under section 53(1) (*c*), as to whether or not to extend the service of Applicant for the school-year 1963-1964, or of any recommendation made to him for the purpose—one way or the other—by the Greek Education Office, or of any policy decision not to extend the services of retiring schoolteachers—so as to make room for the incoming graduates of the Academies, or of any directive given by the Administrative Officer of the Greek Communal Chamber to the Director of the Greek Education Office—as he has testified—regarding the action to be taken, after the enactment of Law 7/63.

In any case, from the material available, it appears that decisions culminating to the retirement of Applicant *were* taken. First, the generic decision not to extend, as a rule, any further the services of those over fifty-five years old, such as Applicant, so as to accommodate the graduates of the Paedagogical Academies here and in Greece, and secondly, the specific action of applying such decision to individual cases, by retiring those who were entitled to full pension already, like Applicant, and allowing in the service those who needed some further period of service with a view to becoming entitled to full pension. This must be what Mr. Georghiades meant when he said while giving evidence that he “took the relevant decisions”. To this extent Applicant’s case, and the cases of the other schoolteachers concerned, appear to have been dealt with under section 53(1)(*c*)—and in this respect I do agree with counsel for Respondents who has submitted in his closing address that the retirement of,

inter alia, Applicant was dealt with under the said provision.

It was quite proper and necessary for the retirement of Applicant to have been dealt with under section 53(1) (c). Of course, it is not every case of a retiring schoolteacher that has to be dealt with under the said provision. Retirement on reaching the prescribed age may be effected by operation of law (*vide Rouhi and The Republic, supra*). But where there exist grounds for examining the question of retirement and deciding thereon, as *e.g.* when there is an application for extension of service or where there exists a situation such as that of Applicant—as it has been expounded upon earlier in this judgment—then a decision in the matter is called for.

We come next to examining the validity of the administrative action taken in retiring Applicant:

It is, indeed, not easy at all to try to apply basic principles of Administrative Law to administration which has been conducted, to a large extent, on a word of mouth basis, without any relevant minutes or other records.

It is, however, the duty of this Court to decide this Case on the material available; and my first conclusion on the basis of such material is that the decision to retire Applicant is invalid as having been reached under a basic misconception of law, namely, that the enactment of Law 7/63, by repealing regulation 8, obstructed any further extension of the service of Applicant.

It seems that because section 33 of Law 7/63 repealed the directive about retirement at the age of sixty years—given by regulation 8 of the Regulations 1/61—thus leaving the provision of section 53(1) of Cap. 166, about retirement at the age of fifty-five years, as the only provision governing the matter, it was mistakenly thought that Applicant, who was over fifty-five years old, *ought* to be retired. I am afraid that Law 7/63 was confused with the new policy which led to its enactment and, thus, Law 7/63 was erroneously treated as a directive for the non-extension of the services of retiring schoolteachers, in the same way—rightly though—in which regulation 8 was relied upon as a directive for the extension of such services; Law 7/63 appears mistakenly to have been treated as restrictive of the relevant discretion under section 53(1)(c) of Cap. 166, whereas nothing of the sort had happened; the age limit of fifty-five years, which had existed all

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and
1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

along remained in force, as well as the discretion under section 53(1) (c); only the directive to extend, given by regulation 8, was repealed and otherwise the relevant discretion remained unfettered.

The misconception of law appears in the letter of the Director of the Greek Education Office, dated 13th July, 1963, (*vide* blue 217 in *exhibit 24*) by which the Director informed Applicant that he was not able to use the services of Applicant for the ensuing school-year because of the Law which had been enacted—*i.e.* Law 7/63. This letter which was written in answer to the protest of Applicant against his retirement contains the only recorded reasons for the retirement of Applicant, as made by means of the letter of the Director of the 5th July, 1963 (*vide* blue 214 in *exhibit 24*).

My view about the Director having acted under a misconception of law, as above, is also borne out by the evidence which he has given before me and also by the replies he gave, in relation to Law 7/63, to other schoolteachers who were retired likewise on the 5th July, 1963 (*vide e.g.* blue 161 in *exhibit 38* and blue 137 in *exhibit 39*).

A second ground which leads me, again, to the conclusion that the retirement of Applicant, as decided upon, has to be annulled is the fact that such retirement was decided upon without paying due regard to most material considerations:

Such considerations which, in my opinion, should guide the exercise of the discretion under section 53(1) (c), are the interests of education and the merits of the particular person involved; also, in a case such as the present one, any change in the financial and other personal circumstances of Applicant, which had been brought about through Applicant's reliance on the clear promise originally held out to him, that his service would be extended eventually until the age of sixty years, would constitute a very material consideration too. As it is well established that, when the validity of the revocation of a previous administrative decision is examined by a Court of law, the possible prejudice suffered by a person, who has acted on the strength of such previous decision, is a very weighty consideration, so, a *fortiori*, such prejudice, if any, should have been gone into when deciding whether or not to retire Applicant, consequent upon a complete reversal of the previous policy regarding extension of service of school-teachers—and on which previous policy Applicant had al-

ready been clearly induced to rely.

Yet, as Mr. Georghiades has clearly testified, the individual merits of Applicant's case, including any relevant financial circumstances, were not gone into at all in reaching the decision to retire him. All that was considered and has led to non-extending his service further was the need to accommodate the new entrants into the teaching profession, in view of the financial, mainly, difficulties which existed at the time. Such need, however, should not, in my opinion, have been allowed to override the requirements of proper administration.

I have, therefore, reached the conclusion that the relevant discretion under section 53(1)(c), was exercised, in the case of Applicant, in a most defective manner and the outcome thereof has to be annulled.

A third ground for annulling the decision to retire Applicant is that the criterion adopted, of retiring those who were already entitled to full pension, like Applicant, and retaining in the service those who needed some further period of service for purposes of full pension, is, in my opinion, an extraneous consideration, beyond the object of a provision such as section 53(1)(c); so, it led to a defective exercise of the relevant discretion. The powers under section 53(1)(c) were not granted simply for the purpose of assisting schoolteachers to become entitled to full pensions, but to serve the interests of education and to be exercised on the basis of the merits of each schoolteacher concerned. The organic posts, which eventually were not filled by appointing new entrants in the teaching profession, and which were filled through extensions of service of schoolteachers not yet entitled to full pension, ought to have been filled—once they were filled by retiring schoolteachers—through extensions granted on the basis of the proper criteria under section 53(1)(c), as they have already been set out earlier in this judgment. If this had been done, then Applicant might have received an extension of his service, on the merits of his case, once such merits were duly considered.

For all the above reasons, I have come to the conclusion that the decision to retire Applicant as from the 1st September, 1963, and not to renew his service for, at least, the educational year 1963-1964, ought to be declared *null* and *void* and of no effect whatsoever, and it is hereby so declared.

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

—
ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5
—

ELEFTHERIOS
SOTERIOU
and

1. THE GREEK
COMMUNAL
CHAMBER AND/OR
2. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL, AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

It is, I hope, quite clear from the Ruling previously given in this Case and from this judgment, that I have not held that Applicant was entitled in law to serve until the age of 60, in any case. All I have found at the end of these lengthy proceedings is that the manner in which he was retired, in the circumstances of his case, was defective and the relevant decision has, therefore, to be set aside. I am not holding that he was *bound* to have his service extended for the ensuing school-year 1963-1964, in any case. All I am holding is that the manner in which the question of whether or not to retire him, or whether or not to extend his service for the ensuing school-year, was dealt with is defective and has led to an invalid decision.

In deciding this recourse in favour of Applicant, I have had to consider whether the letter of the 10th July, 1963, addressed by him to the Greek Education Office, in protest against his retirement (*vide* blue 216 in *exhibit 24*) could have been regarded as preventing him from succeeding in this Case, because he did not raise in such letter a claim to be retired at the age of sixty, on any ground related to his previous extension of service, as made under regulation 8, but relied on other grounds not involved in this recourse. As already stated, this letter was a form of protest prepared for use by affected schoolteachers, by their organization P.O.E.D. and cannot, therefore, be taken as incorporating the whole of the legal basis of Applicant's case against his retirement. So long as this letter cannot, in my opinion, be held to amount to anything near a waiver of any right which Applicant has in the matter, I do not think that the non-comprehensiveness of the protest, against an otherwise defective administrative decision, can help to save the validity of such decision, so long as such a protest was not an essential step towards attacking the validity of the said decision. I, therefore, do not find that the said letter constitutes an obstacle to Applicant's succeeding in this recourse.

This Court is not going to go, in this judgment, into what is the proper course to be adopted administratively now that the decision to retire Applicant as from the 1st September, 1963, has been set aside, in the manner in which this has been done in this judgment. It is now up to the appropriate authorities to deal with the matter in the light of this judgment. All relevant considerations, existing at the material time, will have to be weighed; and if any decision to be

reached—and I am not in any way pointing out what decision should be reached—were to turn out to be other than the retirement of Applicant as from the 1st September, 1963, but cannot be applied in favour of Applicant in view of the changed circumstances since then, it will be up to the appropriate authorities to consider, in the first instance, what restitution, if any, is due to Applicant. On the question, however, of restitution I think it is useful to point out that at the end of the school-year 1962-1963, and as from the 5th July, 1963, because of the repeal of regulation 8, no definite expectation could be said to exist any longer about serving until the age of sixty years and that which could have been decided under section 53(1) (c) of Cap. 166 would have been only an extension for such period as might have seemed fit.

Also, the appropriate authorities would be well advised to keep full and proper records of whatever action is taken, giving also due reasons in relation thereto.

Before concluding this judgment I would like to state that I have noted that Applicant in his motion for relief has also raised the question of an omission to extend his service after the end of the school-year 1962-1963, but I am of the opinion that no question of an omission could arise in the circumstances of this Case, once there has been a decision to retire him.

Regarding costs I have decided not to make any order as to costs in favour of Applicant, because Applicant in this Case has failed on his primary contention *viz.* that he was entitled as *of right to serve until the age of sixty years*, and has only succeeded on the ground that the relevant administrative action was invalid in view of the manner in which it was taken. I have also taken into account in not making an order of costs in favour of Applicant the fact that in his protest of the 10th July, 1963, he did not set out the grounds later put forward in the Application in this Case, thus not giving to the authorities concerned a full opportunity to review administratively his case, and avoid possibly these Court proceedings.

Decision complained of declared null and void. No order as to costs.

1964
Nov. 7,
Dec. 14
1965
Jan. 21,
Mar. 12, 26, 27, 30
April 14
June, 1, 12, 15, 26
Oct. 5, 6, 12
Nov. 8, 10
1966
Feb. 5

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ELEFTHERIOS
SOTERIOU
and

1. THE GREEK COMMUNAL CHAMBER AND/OR
2. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER