

CASES
DECIDED BY
THE SUPREME COURT OF CYPRUS
IN ITS REVISIONAL JURISDICTION AND IN
ITS REVISIONAL APPELLATE JURISDICTION.

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS PAPALEONTIOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 43/65).

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Public Service—Public Officers—Pension and gratuity—Unestablished officer—Gratuity on retirement—Refusal of the Respondent Council of Ministers to grant to Applicant an ex-gratia pension—A perfectly valid decision—Not established that Respondent acted in any way in abuse or excess of powers—Nor has it been established that such refusal amounts to a discrimination or unequal treatment contrary to Articles 6 and 28 of the Constitution.

Pension and Gratuity—See above.

Public Officers—Unestablished—Gratuity on retirement—Refusal to grant ex-gratia pension—See above under Public Service.

Administrative Law—Decision not taken in abuse or excess of powers—See above under Public Service—Cfr., also, herebelow, under Constitutional Law.

Constitutional Law—Discrimination—Unequal treatment—Articles 6

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and 28 of the Constitution—No question of unequal treatment or adverse discrimination arises in this case—In view of the obvious intrinsic material differences between the case of the Applicant and the other case relied upon by him in support of his allegation that he had been the victim of discrimination and unequal treatment—Mikrommatis and The Republic 2, R.S.C.C. 125, at p. 131, applied.

Discrimination—See above under Constitutional Law.

Unequal treatment—See above under Constitutional Law.

The Applicant retired from service as a Foreman, Village Roads, unestablished, on the 31st August, 1960 at the age of sixty years. On retirement he was granted a gratuity. A subsequent petition of his for an *ex-gratia* pension was finally turned down by the Council of Ministers. By his recourse under Article 146 of the Constitution the Applicant challenges the decision whereby the Respondent Council of Ministers refused his application for an *ex-gratia* pension as aforesaid. The complaint of the Applicant is that, in being refused an *ex-gratia* pension, he is the victim of discrimination and unequal treatment, contrary to Articles 6 and 28 of the Constitution, inasmuch as such an *ex-gratia* pension was granted to a certain E. Papadopoulos who, allegedly, stands on the same footing as the Applicant in all material respects.

Article 6 of the Constitution provides:

“Subject to the express provisions of this Constitution no law or decision of the House of Representatives or of any of the Communal Chambers, and no act or decision of any organ, authority or person in the Republic exercising executive power or administrative functions, shall discriminate against any of the two Communities or any person as a person or by virtue of being a member of a Community”.

Article 28, paragraphs 1 and 2 read as follows:

“1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect

discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution”.

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The Court, in dismissing the application:

Held, (1) the approach on the part of the Respondents to the cases of the Applicant and the said Papadopoulos is factually and legally correct; no misconception of any kind is involved at all.

(2) (a) Moreover, I am satisfied that, in the circumstances, it was reasonably possible and proper to differentiate between the two cases in question in view of their obvious intrinsic material differences and, therefore, in the light of *Mikrommatis and The Republic* (2 R.S.C.C. 125, at p. 131) no question of unequal treatment or discrimination does arise, as complained by the Applicant.

(b) The most basic difference between the two cases is that the Applicant never had come anywhere near becoming pensionable before the age of 55 years, whereas the said Papadopoulos did have the chance to become pensionable before the said age, but was refused establishment due to error on the part of the Administration; thus, in the case of the latter a moral liability has arisen which was remedied by means of an *ex-gratia* pension; on the other hand no question of such liability existed in relation to the Applicant.

(3) Nor has it been established, in the least, to my satisfaction, that the Council of Ministers has acted in any way in abuse or excess of powers in deciding to refuse the application of the Applicant for an *ex-gratia* pension.

Application dismissed.
No order as to costs.

Cases referred to:

Mikrommatis and The Republic 2 R.S.C.C. 125, at p. 131, applied.

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Recourse.

Recourse against the decision of the Respondent refusing Applicant an *ex-gratia* pension.

L. Clerides for the Applicant.

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

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLIDIS, J.: By this recourse the Applicant challenges a decision of the Respondent Council of Ministers, refusing him an *ex-gratia* pension. The said decision is dated the 10th December, 1964, (see *exhibit 2*) and it was communicated to the Applicant by means of a letter dated the 19th December, 1964 (see *exhibit 1*).

The Applicant retired from service as a Foreman, Village Roads, unestablished, on the 31st August, 1960, at the age of sixty years. On retirement he was granted a gratuity. A subsequent petition of his for an *ex-gratia* pension was finally turned down by the Council of Ministers as aforesaid.

As held by an Interim Decision given in these proceedings on the 31st May, 1966*—the contents of which need not be repeated in extenso herein, but are being adopted hereby—the *sub judice* decision of the Council of Ministers is not merely confirmatory of a previous decision of the Council in the same matter, dated the 6th September, 1962, (see *exhibit 3*), and thus, it can properly be made, as being of an executory nature, the subject-matter of this recourse under Article 146. Moreover, it was held by the aforesaid Interim Decision that though the claim of the Applicant was for an *ex-gratia* pension, nevertheless, in the particular circumstances of this Case, he did have a right of recourse under Article 146.

The complaint of the Applicant is that, in being refused an *ex-gratia* pension, he is the victim of discrimination and unequal treatment, contrary to Articles 6 and 28 of the Constitution, inasmuch as an *ex-gratia* pension was granted to a certain E. Papadopoulos who, allegedly, stands on the same footing as the Applicant in all material respects.

*Vide (1966) 3 C.L.R. 557.

The reasons for the different treatment of Applicant and the said Papadopoulos, by the Council of Ministers, are set out in a letter of the Secretariat of the Council, addressed to counsel for Applicant and dated the 14th January, 1963, (see exhibit 8); as it appears from the personal file of the Applicant this letter was essential material on the basis of which the *sub judice* decision was reached (see reds 102-107 in exhibit 12); the main part of the said letter may usefully be repeated herein, giving, thus, also, a history of the relevant aspects of the cases of the Applicant and the said Papadopoulos:

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“The post of Foreman, Village Roads, held by Mr. Papaleontiou was temporary until the 31st December, 1952. As from the 1st January, 1953, the post was made permanent but non-pensionable. Mr. Papaleontiou did not wish to be established in it presumably because he was then nearly 53 years old and if he was established he would have to retire at the age of 55. By remaining unestablished he would be able to remain in the service, as in fact he did, until the 31st August, 1960, when he attained the age of 60. Even if he had been established in the post, he would not have acquired pensionable status but would have come under the Government Employees Provident Fund Law, Cap. 308. From the 1st January, 1959, a few pensionable posts of Foreman, 1st Grade, Village Roads, were created but Mr. Papaleontiou could not be appointed to one of these as he was already over 55 years old, in fact over 58.

On the other hand the post which Mr. Papadopoulos held (Chief Foreman, Village Roads) was permanent and pensionable. In 1954 Mr. Papadopoulos applied to be established in the post and although he was qualified to be appointed to it and if he had been appointed he would have qualified for a pension on attaining the age of 55, he was not recommended for appointment by the Commissioner, Famagusta, owing to a misunderstanding. When some years later the misunderstanding was brought to light, it was too late to establish him as he was already over 55. He was therefore promised that the question of granting him an *ex-gratia* pension in the special circumstances of his case would be considered at the time of his retirement. The question was considered accordingly and a pension was granted to him *ex-gratia*”.

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Having been through all the relevant material before the Court, I am quite satisfied that the above set out approach to the cases of the Applicant and Papadopoulos is factually and legally correct; no misconception, of any kind, is involved at all.

Moreover, I am satisfied that, in the circumstances, it was reasonably possible and proper to differentiate between the two cases in question in view of their obvious intrinsic material differences and, therefore, in the light of *Mikrommatis and The Republic*, (2 R.S.C.C. p. 125 at p. 131) no question of unequal treatment or discrimination does arise, as complained of by the Applicant. The most basic difference between the two cases is that the Applicant never had come anywhere near becoming pensionable before the age of 55 years, whereas Papadopoulos did have the chance to become pensionable before the said age, but was refused establishment due to error on the part of the Administration; thus, in the case of the latter a moral liability had arisen which was remedied by means of an *ex-gratia* pension; on the other hand no question of such liability existed in relation to the Applicant.

Nor has it been established, in the least, to my satisfaction that the Council of Ministers has acted in any way in abuse or excess of powers in deciding to refuse the application of the Applicant for an *ex-gratia* pension.

In the circumstances, this recourse fails and is dismissed; but I am making no Order as to costs.

*Application dismissed.
No order as to costs.*