[VASSILIADES P., TRIANTAFYLLIDES & JOSEPHIDES JJ.]

COSTAS TSAKISTOS,

Appellant-Plaintiff,

v.

1. THE ATTORNEY-GENERAL OF THE REPUBLIC
2. THE ATTORNEY-GENERAL OF THE REPUBLIC AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondents-Defendants.

(*Civil Appeal No.* 4741).

Damages or compensation under Article 146.6. *of the Constitution—School-teacher in Greek Communal Schools of Elementary Education—Termination of services of—Annulled as a result of the teacher's successful recourse under Article* 146.1 *of the Constitution—Assessment of damages under the provisions of Article* 146.6 *of the Constitution—Need not be made with mathematical accuracy—However, the trial Court in the present case ought to have taken into account in assessing damages a loss,* inter alia, *of* £80 *sustained by the appellant by way of reduction of the lump sum gratuity he received on retirement—Such failure on the part of the trial Court renders the amount of* £400 *damages awarded wrong in principle—And the Court of Appeal will interfere therewith by increasing the amount to* £500 *with costs.*

Elementary Education—Termination of services of school-teacher—Successful recourse under Article 146.1 *of the Constitution—Action in the civil Courts (in this case in the District Court of Nicosia) for damages or just compensation under the provisions of Article* 146.6 *of the Constitution—Amount of damages awarded by the trial Court increased by* £100 *as being wrong in principle—Appellant's school-teacher's effort to minimize damage praised and taken into account in his favour—Especially in view of the undue delay of the responsible education authorities in dealing with the situation created as a result of the successful outcome of the appellant's recourse against the termination of his service aforesaid.*

Recourse under Article 146.1 *of the Constitution—Annulment of the act or decision concerned—Damages or compensation payable to*

the successful applicant—Action in the civil Courts—Assessment—Article 146.6 *of the Constitution—See also hereabove.*

In this case the appellant appeals against the amount of damages (£400) awarded to him under Article 146.6. of the Constitution by the District Court of Nicosia in civil action No. 3863/66. (Note: The judgment of the District Court is published in this Part post at pp. 359-68). By his action the appellant-plaintiff was claiming damages under Article 146.6 (*supra*) in view of the successful outcome of his recourse No. 173/63 under that Article against the termination of his services as a school-teacher in the Greek Communal Schools of Elementary Education. Paragraph 6 of Article 146 of the Constitution reads as follows:—

> "6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a Court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the Court or to be granted such other just and equitable remedy as such Court is empowered to grant."

The history of the events as a result of which such recourse came to be made is fully set out in the very elaborate and meticulously considered judgment of the trial Court (set out in full at pp. 359-68 post).

Allowing the appeal and increasing by £100 the damages awarded by the trial Court, the Supreme Court:—

Held, (1). In this case the trial Court took into account that the appellant was entitled to damages equal to a school-teacher's salary for a year *viz.* £702 minus his earnings during the year amounting to £300. It is to be observed that the trial Court based itself on the correct criteria in approaching the question of the assessment of damages under Article 146.6 of the Constitution.

(2) It is to be stressed, as being a factor in favour of the appellant, that though the responsible education authorities did unduly delay dealing with the situation created after the successful outcome of the appellant's recourse, and, though, moreover

he was not given employment by the Government in the meantime, nevertheless he, himself, tried his best to minimize his loss, by seeking and eventually finding other employment as a result of which the appellant earned £300 which were deducted by the trial Court from the amount of a year's salary otherwise found to be due to the appellant.

(3) The trial Court found, also, that the appellant lost through the termination of his services, about £80 by way of reduction of the lump sum which he received by way of gratuity on retirement, and about £2 per month by way of reduction of his pension; but the trial Court somehow, did not award the appellant any damages in respect of these matters. Though we do agree with the trial Court that in a case such as the present one the calculation of the amount of damages need not have been made with mathematical exactitude, we do think that it was proper to take into account in assessing the damages the aforesaid £80 as well as the said reduction of pension, especially as the appellant has done his utmost to minimize otherwise the damage suffered by him.

(4) We have, therefore, reached the conclusion that a sufficient case has been made out by the appellant to necessitate interference with the amount of damages awarded as being wrong in principle; and in the circumstances, such amount should be increased from £400 to £500 with costs.

Appeal allowed

Cases referred to in the judgment of the District Court (see post pp. 359-68):

Soteriou and the Greek Communal Chamber and Another (1965) 3 C.L.R. 334; (1966) 3 C.L.R. 83;

Pantelis Petrides v. *The Greek Communal Chamber* (1965) 1 C.L.R. 39;

The Attorney-General v. *Andreas Markoullides and Another* (1966) 1 C.L.R. 242.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Nicosia (Mavrommatis & Stylianides D.JJ.) dated the 22nd May, 1968 (Action No. 3883/66) whereby he was awarded the amount of £400 as damages, due to the successful outcome of a recourse made by him, under Article 146.1 of the constitution, against the termination of his services as a school-teacher.

C. Myrianthis with *A. Paikkos*, for the appellant.

G. Tornaritis, for the respondents.

The following judgments were delivered:

VASSILIADES, P.: I shall ask Mr. Justice Triantafyllides to deliver the first judgment.

TRIANTAFYLLIDES, J.: In this case the appellant appeals against the amount of damages (£400) awarded in his favour by the District Court in Nicosia in civil action No. 3863/66.*

By means of such action he had claimed damages, under Article 146.6 of the Constitution, in view of the successful outcome of recourse No. 173/63, made by him under Article 146.1 of the Constitution, against the termination of his services as a school-teacher.

The history of the events as a result of which such recourse came to be made is fully set out in the very elaborate and meticulously considered judgment of the trial Court and need not be reiterated herein; it is, also, to be observed that the trial Court, in its judgment, based itself on the correct criteria in approaching the question of the assessment of damages under Article 146.6.

In this case the trial Court took into account that the appellant was entitled to damages equal to a school-teacher's salary for a year, *viz.* £702, minus his earnings during that year, which amounted to about £300.

It is to be stressed, as being a factor in favour of the appellant, that though the responsible education authorities did unduly delay dealing with the situation created after the outcome of the appellant's recourse, and, though, moreover, he was not given employment by the Government in the meantime, nevertheless he, himself, tried his best to minimize his damage, by seeking, and eventually finding, other employment; as a result of this £300 were deducted, by the trial Court, from the amount of a year's salary otherwise found to be due to the appellant.

The trial Court did find, also, that the appellant lost, through the termination of his services, about £80 by way of a reduction

* Reported in this Part at pp. 359-68 *post*.

of the lump sum gratuity, which he received on retirement, and about £2 per month by way of reduction of his pension; but the trial Court, somehow, did not award the appellant any damages in respect of these matters.

Though I do agree with the trial Court that in a case such as the present one the calculation of the amount of the damages need not have been made with mathematical exactitude, I do think that it was proper to take into account, in assessing the damages due to the £80 which he lost out of his gratuity, as well as the reduction of his pension.

Especially, as the appellant has done his utmost to minimize, otherwise, the damage suffered by him.

So, I have reached the conclusion that a sufficient case has been made out, by the appellant, to necessitate interference with the amount of damages assessed by the trial Court, as being wrong in principle; and, in the circumstances, such amount should be increased from £400 to £500.

There should, also, be an order for the costs of the appeal, in favour of the appellant.

VASSILIADES, P.: I agree, and I only wish to add that while I associate myself with what has been said for the careful way in which the trial Court went so patiently and thoroughly into this case, I, also, share the view expressed regarding the credit which should go to the appellant for minimizing his loss.

JOSEPHIDES, J.: I concur with the reasons given by my brother Mr. Justice Triantafyllides and I associate myself, also, with the observations made by the learned President with regard to the judgment of the trial Court.

Appeal allowed with costs

JUDGMENT OF DISTRICT COURT

The judgment of the District Court of Nicosia composed of Mavrommatis and Stylianides D.JJ., delivered on the 22nd May, 1968, was as follows:-

"The present is one of the series of 23 actions which came to be known as "the teachers' actions", whereby the Plaintiff claims from the Defendant, who is the Attorney-General of

the Republic, damages and/or just and equitable compensation under Article 146.6 of the Constitution.

As we have already stated when dealing with the first action in this series, namely Action No. 3858/66, and for the reasons stated in the judgment in that action, to avoid repetition we propose to attach hereto that part of the aforesaid judgment in Action No. 3858/66 which deals with points of law and fact common to all the actions in the present series.

Vite attached part of judgment 3858/66 (Published below).

The Plaintiff in this action had his services terminated on the 31st August, 1963 whilst he was a school teacher with a salary of £702 per annum. On retirement he received £1612 cash, plus £32.920 mils per month as pension. He could have served for approximately another four years as he was born on the 22nd September 1906, whereupon he would have received a lump sum by approximately £80 larger, plus £2 per month more as pension. We feel that in the particular case of this teacher we have to express our appreciation for his efforts to undertake any employment as he has done to mitigate his loss, following the Greek saying " Ἔργον οὐδὲν ὄνειδος ". He has, during the four years of possible re-engagement, been employed at a salary fluctuating from £25-£30, doing all sorts of odd jobs. He is a married man with a wife and an under age daughter approaching marriageable age, therefore, his action in taking up any employment, indicated clearly that he was in more need of re-engagement than the average plaintiff in this series of actions. Therefore, in the light of the foregoing we think that just and equitable compensation in the present case would be an amount of £400.

In the result we give judgment for the Plaintiff for £400.— with costs on that scale to be assessed by the Registrar, District Court in the light of what we have said in Action No. 3858/66".

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The judgment in Action No. 3858/66 referred to above reads as follows:

"The present is the first of the series of 23 actions which came to be known to us as "the teachers' actions", whereby the Plaintiffs claim from the Defendant who is the Attorney-General of the Republic damages and/or just and equitable compensation under Article 146.6 of the Constitution.

All the aforesaid actions were originally consolidated on application by the parties but were, before the resumption of the hearing, deconsolidated as no longer involving any common points of law or fact. Now that we have completed the hearing of each and every one of these actions separately, we are in doubt as regards the wisdom for the decision and consequent application for deconsolidation. As a matter of fact it was agreed by the parties in order to save time and expense to consider the evidence adduced by the defence in the present action as well as the final addresses of parties in the same action, as evidence and addresses in each and every one of the 23 actions. For the same reasons and to avoid repetition and undue waste of time, we propose to deal in the present action with all points of fact or law common to all 23 actions (and they cover most of the field of each action with, mainly, as exception the personal circumstances of each teacher) and attach the relevant part of the present judgment which covers all the aforesaid to the judgment in each action in the series.

The facts of the present case (which are also relevant in all other cases) over which there is little, if any, dispute, are briefly as follows:—

The Plaintiffs in the present actions were teachers for a considerable time and were due for retirement either at 55 or after a short extension on the 31st August, 1963 by virtue of the provisions of the Elementary Education Law, Cap. 166.

The then Greek Communal Chamber at the material time took a decision to retire all these teachers and not to extend the services of anyone of them and against that decision the teachers filed recourses in the Supreme Court which annulled each and every one of these decisions. Vide *E. Soteriou* v. *Gr. Comm. Chamber and another*, (1965) 3 C.L.R. 334; (1966) 3 C.L.R. 83.

Although there is no specific evidence on the point, yet taking into consideration the date of birth of each teacher, the date that they entered the Government Service as such and the date on which they were retired, it is clear to us from reading the relevant law, that they themselves opted to retire at the age of 55 when such option was given to the teachers upon the reduction of the retiring age from 60 to 55 in respect of all civil servants, including teachers.

By virtue of the provisions of section 53(1)(c) of Cap. 166, the Governor (for whom in 1963 one should read the Chairman

of the Communal Chamber and as from 1.4.65 the Council of Ministers) may allow any teacher to remain in the service for such time, after attaining the age of 55, as the Governor may seem fit. The Communal Chamber, which was the Educational Authority after the establishment of the Republic of Cyprus and until the aforesaid date, promulgated a number of Regulations including the series under the title 1/61. Regulation No. 8 of the aforesaid Regulations provided that the teachers would retire at the age of 60 instead of 55. It is the view of this Court (the view of the Supreme Court Judge who tried the teachers' recourses) that this Regulation could not amend the Law, namely the aforesaid section of the Elementary Education Law, Cap. 166, but in fact it amounted to a directive for the exercise of 'the Governor's discretion' as aforesaid. It is significant that the aforesaid Regulation No. 8 was abolished on the 5th July, 1963 by Communal Law No. 7/63.

As stated, all the teachers were notified on the 5th July, 1963 by a stereotyped letter that they would retire on the 31st August, 1963, that is to say in accordance with their own original option. This decision was attacked by the teachers and in the result the decision was annulled by the Supreme Court on the following grounds:—

(A) 'That the discretion was not exercised properly and according to the law, mainly because there was a misconception of law.

(B) That such retirement was decided upon without paying due regard to most material considerations. These considerations are set out in the judgment and are the interest of education and the merits of the particular person involved, including any change in the financial and other personal circumstances of the applicant which had been brought about through Plaintiff's reliance on the clear promise originally held out to him that his service would be extended eventually until the age of 60, and that the decision was based on extraneous consideration of retiring those teachers who were already entitled to full pension'.

The Supreme Court, the decision of which under Article 146 of the Constitution is binding on this Court, further had this to say:—

'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 retired in the circumstances of this 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.

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'.

It is the duty of the Defendant under Article 146 para. 5 of the Constitution to give effect to a judgment of the Supreme Court issued under para. 4 of the aforesaid Article. Following the successful recourses of the teachers, counsel who was acting for them addressed to the Ministry of Education the letters dated 15th April, 1966, 20th April, 1966 and 9th May, 1966, whereby the Ministry was requested to inform them whether they were willing to satisfy the teachers or to enter into negotiations for the same purpose. To these letters a reply was received by the counsel acting for the Plaintiffs informing the teachers that their cases were under consideration and that a reply would be given by the end of June. By a letter of the Minister of Education dated 9th July, 1966 the Plaintiffs were informed

that an appointment was arranged for the 18th July, 1966 for the Director of the Ministry of Education to meet the teachers and consider their cases.

Each teacher gave evidence on oath and the only witness called by the defence was Dr. Constantinos Spyridakis, the present Minister of Education, who was also at all material times the Chairman of the new defunct Communal Chamber.

Now, in accordance with the evidence of Dr. Spyridakis following a decision of the Supreme Court, the Ministerial Council set up a committee consisting of three Ministers and the Attorney-General, to examine the teachers' cases and *make recommendations*. We have underlined the words "make recommendations" because apparently the duties of this Committee or Sub-Committee were only of an advisory nature and therefore they could not take any decisions as no such power was ever delegated to them. For the benefit of that Committee a list of the teachers affected was prepared and a copy thereof was produced in evidence as Exhibit 2. This exhibit gives the average of the marks of each of the entitled teachers under the relevant column. Dr. Spyridakis went further to say that there was an abundance of teachers at the material time and, therefore, their re-engagement was neither imperative nor advisable in the circumstances. To this part of the Minister's evidence one may be tempted to reply by referring to their own proposal for the en block extension of the services of the teachers on a contractual basis in full satisfaction of their claims. This offer for extension was the next (perhaps the only) step taken by the aforesaid Committee in view of "the fact that some of these teachers might have suffered hardship or financial loss and to mitigate that loss". These are the very words used by Dr. Spyridakis when giving evidence. In fact no actual decision was ever taken by the Ministerial Council to extend the services of the teachers and what they in fact decided was to empower the Committee to sound the teachers as to whether they were prepared to accept the suggestion. (Vide Exhibits No. 3A and 3B).

The Director-General of the Ministry of Education undertook the task of sounding the Plaintiffs and find out whether they were prepared to accept the suggested "exploratory offer" as aforesaid and the reply which he received was negative and thereupon counsel acting for the teachers wrote the letter to the Ministry which is dated 24th August, 1966 and marked Exhibit 1G in the present proceedings.

The next step taken by the Government side in the present proceedings was the reconvening of the Committee of Ministers which decided not to extend the services of any of the teachers "on the strength of their merits as per 1963". This decision was apparently taken on the 30th October, 1963 and we say apparently because we were never referred to any documents containing these decisions let alone any publication thereof in the Gazette, a fact which is not surprising in view of the fact that it was not, as the evidence goes, a decision by the Ministerial Council but a decision by a Committee of Ministers, including the Attorney-General. We have the following to remark about the mode that this decision was taken:—

A. They failed to make any inquiries as to the financial repercussions that their decisions would have on each teacher as an individual.

B. None of the teachers was informed that their marks were such as to amount to an impediment in the consideration of their cases.

C. They failed to keep a proper record of their deliberations despite the Supreme Court's reference to the necessity of keeping such a record which should have contained all reasons for any decision to be taken. Perhaps it may be significant to state that even the number of teachers is not given correctly in some of the exhibits. Another significant difference exists between the exhibits and the evidence of Dr. Spyridakis. Whereas by exhibits 3A and 3B all the teachers were to be offered one year's re-engagement in full satisfaction, yet Dr. Spyridakis said on oath that this applied to those who had not completed their 60th year when the offer was made.

We now turn to the legal aspect of the case. The relevant Article of the Constitution which governs the present case is Article 146 paras. 5 and 6. It reads as follows:—

'5. Any decision given under paragraph 4 of this Article shall be binding on all Courts and all organs or authorities in the Republic and *shall be given effect to and acted upon by the organ* or authority or person concerned.

6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have

been made shall be entitled if his claim is not met to his satisfaction by the organ, authority or person concerned to institute legal proceedings in a Court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the Court or to be granted such other just and equitable remedy as such Court is empowered to grant'.

Further, it is now well settled, as decided in the case of *Pantelis Petrides* v. *The Greek Communal Chamber* (1965) 1 C.L.R. 39 that the District Court is the appropriate Court before which proceedings of this nature should be instituted.

In the light of all the aforesaid two questions pause for an answer in disposing of the whole matter on its merits:—

A. Has the appropriate organ or authority of the Republic given effect to and acted upon the decision of the Supreme Court, and

B. If the answer to A. hereinabove is in the negative, then what is the amount of the just and equitable compensation payable in the circumstances.

At the expense of repetition, we shall again give in a nutshell the main facts on which we have to decide whether the Republic has given effect to the decision of the Supreme Court. They are as follows:—

Following the decision of the Supreme Court a special advisory Committee of Ministers and the Attorney-General was formed which had the benefit of the advice of the latter, but unfortunately the only thing that this Committee did was through the Director-General of the Ministry of Education to approach and contact all the teachers with a view to exploring the possibilities of their accepting the offer already referred to. This offer was not accepted. Much later, i.e. on the 30th October, 1966 a decision was taken to retire each and every one of the teachers. As far as this decision is concerned the following two points are significant:—

(a) That it was never communicated to the teachers who were indeed very surprised to hear about it for the first time when the Minister of Education was giving evidence on oath in Court. In the very brief indeed pleadings of the Defendants no such specific allegation is made.

(b) The decision was taken by the Committee of Ministers and not by the Ministerial Council which is the appropriate authority under the Law.

To our mind and irrespective of the validity of the decision of the Sub-Committee, their decision to retire the teachers does not amount to "giving effect" to the decision of the Supreme Court, as it was taken in complete disregard to the directives contained in that decision. 'All relevant considerations existing at the material time will have to be weighed'. These are the very words used in the Supreme Court's judgment and all that the respondents did upon the teachers' refusal to accept their suggestion of one year's contract was to retire them en block in view of their marks (which marks were, apparently, not such a decisive cause for the promotion or non promotion of even of some of these teachers whilst in the service). Financial commitments, retirement benefits and other considerations personal or otherwise were not taken into account. Marks are now in general disfavour even as far as pupils or students are concerned and other media are being considered for judging the abilities of even teenagers and therefore one should view with grave doubt the marks as almost the sole criterion for persons who are usually those awarding the marks, i.e. the teachers, for their re-engagement or otherwise. These doubts that we have always felt were enhanced if when we heard on oath certain of those teachers whose marks were given as being on the very low side.

In other words, the judgment of the Supreme Court was neither given effect to nor restitution was ever made to any of the teachers.

We now turn to the quantum of damages. Awarding damages under Article 146 of the Constitution is a task with which the District Courts are not as yet quite familiar and on the other hand there are not many decisions to which Courts of first instance can look for guidance. We are fully cognizant of the fact that the Common Law quantum of damages is not applicable and we also have in mind the decision of the Supreme Court in the following two cases: *Pantelis Petrides* v. *Communal Chamber*, *supra* and *Attorney-General* v. *Andreas Markoullides and Another*, (1966) 1 C.L.R. 242.

Having given the cases anxious consideration we have come to the conclusion that the following, *inter alia*, should be taken

into consideration in assessing the amount of just and equitable compensation:-

A. The fact that it was the teachers themselves who originally, during the Colonial Regime, opted to retire at 55 and not at 60 as they were entitled to and also the fact that none of them was entitled as of right or in law to serve until the age of 60.

B. There is no evidence that the Plaintiff in this action or indeed any of the Plaintiffs in the series of the "teachers' actions" has, as a result of the abolished Regulation already referred to, suffered any financial loss or had any financial commitments by relying on the aforesaid (now abolished) Regulation. Indeed apart from a passing reference to whether the teacher had unmarried children studying abroad there is no other evidence in this respect nor even any allegation that the decision for their children's further education had anything to do with their expectations for extension.

C. The time when each teacher would have retired had his service been extended and the relevant effect of his whole pension was also one of the factors taken into consideration.

D. Culpability of both sides, i.e. as far as the teachers are concerned 'A' hereinabove and the unsatisfactory and/or defective way in which the teachers were retired or were purported to be retired on both occasions as far as the Government side is concerned.

E. Whether any of the teachers took up any employment or was re-engaged 'considered to have been done in mitigation of damage', was also a factor to be reckoned with.

In general we took approximately one year's salary to be the just and equitable compensation for the average case with such additions or subtractions as would account for any of the factors already mentioned.

We do not think that in assessing the amount of just and equitable compensation we should make calculation mil by mil and shilling by shilling of what the earnings of this man would have been and compensate him accordingly having made the aforesaid allowances or deductions and also any of the usual deductions for lump sum or for contingencies. We are more inclined, as already stated, to give a global sum in which the deductions or additions, if any, would be again round and approximate figures, thus arriving at the fair and reasonable compensation".