IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DORA TSAGARIDOU AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF FINANCE AND ANOTHER,

Respondents.

(*Cases Nos.* 296/68, 297/68, 298/68).

Income Tax—Assessment—Profits or gains accruing from office or employment—Gratuity—Payments received by employees on termination of their permanent employment, due to marriage—Payments made by the employers merely by way of practice and without there being any express condition or term of service to that effect—Said employees on relinquishing their permanent status were immediately re-employed as temporary employees with the same salary but without the appropriate increments and other financial advantages pertaining to the permanent status—Said gratuity liable to income tax—Because they were not made by way of testimonial or present—Intended, in the circumstances, to be special emoluments destined to alleviate the said employees' plight when they were placed in a less advantageous position as aforesaid—Coussoumides *v.* The Republic (1966) 3 *C.L.R.* 1 distinguished.

Income Tax—Income—Whether particular receipt is taxable depends essentially and primarily on the particular circumstances of each individual case.

Income Tax—Gratuity—Voluntary payment—To holder of office or employment on termination of his service—Whether taxable—Principles and tests applicable.

Gratuity—Gratuity paid to employee by the employer on termination of the former's employment—Whether taxable—Principles and tests applicable.

In these three cases the Applicants complain against income tax assessments whereby each one has been called upon to

pay income tax in relation to a sum of money (£302, £342 and £150, respectively), received by them in the way of gratuity, when their permanent employment with the General Insurance Company of Cyprus Ltd. was terminated on account of the marriage of each one of them. It is common ground that under the relevant conditions of service then in force a female employee had to leave the service not later than two years after her engagement to marry or on getting married; on leaving the service as aforesaid the female employee concerned was paid by the employers a gratuity calculated on the basis of a month's salary for every year of service, but not exceeding, in any event a total of thirteen months' salaries. It is common ground also that this payment of gratuity was made by way of practice and without there being in existence any express condition of service to that effect.

At the material time there had arisen between the trade union to which the Applicants belonged and their employers an industrial dispute concerning, *inter alia*, the requirement that female personnel should leave the service on engagement or marriage as aforesaid; so pending the settlement of the dispute the Applicants, as well as others who had to relinquish their permanent employment status due to marriage, were re-employed immediately as temporary employees on a month to month basis, receiving the same total yearly emoluments which they would have been receiving if they had continued serving as permanent employees, but they ceased receiving any increments in their respective salary scales; also they lost the right to be members of the Staff Providend Fund or of the Staff Medical Fund, in which only permanent employees could participate.

Dismissing the recourses the Court:-

Held, (1). What has to be decided in the present cases, and in all cases of a similar nature is governed by a principle which is stated as follows in Halsbury's Laws of England 3rd ed. Vol. 20, p. 322 paragraph 592: "A voluntary payment to the holder of an office or employment is a profit of the office or employment if it accrues to the holder in virtue of his office or employment, notwithstanding that there may not be any legal obligation to make the payment. The circumstances under which the payment to the holder was made must all be taken into account".

(2) *In this respect it has to be examined whether the payment* concerned is, as put by Rowlatt, J. in *Reed* v. *Seymous,* 11 T.C. 630 (and affirmed by Viscount Cave at p. 646 of the report of that case):—"Is it in the nature of a personal gift, or is it remuneration?" It is quite often rather difficult to apply this simple test to the facts of a particular situation "the difficulty being to draw the line between what is a mere present or testimonial on the one hand and what must be regarded as a perquisite or profit of the office on the other". (See *Denny* v. *Reed,* 18 T.C. 254 at p. 258 per Finlay, J.).

(3) In the light of the foregoing and having in mind that the right decision depends, essentially and primarily, on the particular circumstances of each individual case, I have reached the conclusion that the gratuities in question in the instant cases were paid to the Applicants by way of gains or profits accruing to them from their offices or employment in the sense that they were intended to be special emoluments destined to alleviate their plight when they were placed in a less advantageous position through their having relinquished, due to marriage, their permanent status, and, then, been, immediately, re-appointed on only a temporary basis. In my mind there is no doubt that each Applicant received the gratuity concerned in virtue of her office or employment and not merely because she happened to be in service of her employers when she got married (*Coussoumides* v. *The Republic* (1966) 3 C.L.R. 1 *distinguished*).

Application dismissed; no order as to costs.

Cases referred to:

Coussoumides v. *The Republic* (1966) 3 C.L.R. 1;

Denny v. *Reed,* 18 T.C. 254;

Reed v. *Seymour,* 11 T.C. 625 at pp. 630 and 646;

Weston v. *Hearn,* 25 T.C. 425 at p. 428;

Laidler v. *Perry,* 42 T.C. 351 at p. 366;

Moorhouse v. *Dooland,* 36 T.C. 1, at p. 15.

Recourse.

Recourse against income tax assessments, by means of which each one of the Applicants has been called upon to pay income tax in relation to a sum of money they received when their

permanent employment by the General Insurance Company of Cyprus Ltd., was terminated an account of their marriage.

M. Christophides, for the Applicants.

Chr. Paschalides, for the Respondents.

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, J.: In these cases, which have been heard together in view of common legal and factual issues, the Applicants complain against income tax assessments by means of which each one has been called upon to pay income tax in relation to a sum of money received by her when her permanent employment by the General Insurance Company of Cyprus, Ltd.—a subsidiary of the Bank of Cyprus, Ltd.—was terminated on account of her marriage.

The *sub judice* decisions were communicated to the Applicants by letters dated the 8th June, 1968 (*exhibits* 1(*A*), 1(*B*) and 1(*C*), respectively).

On the basis of the evidence adduced in these proceedings—oral and documentary—the salient facts appear to be as follows:-

The termination of the permanent employment of each one of the Applicants took place as a result of the then in force conditions of service of the employees of the Bank of Cyprus, Ltd. (see a circular dated the 16th January, 1960, *exhibit* 6); by virtue of such conditions a female employee who became engaged had to leave the service not later than two years after her engagement or on getting married.

According to the evidence of Mr. A. Menelaou, the Personnel Officer in the service of the Bank of Cyprus, Ltd., the same conditions of service were applicable all along to female employees of both the Bank of Cyprus, Ltd. and of The General Insurance Company of Cyprus, Ltd.

A female employee who had to leave the service due to her engagement or marriage was paid a gratuity calculated on the basis of a month's salary for every year of service, but not exceeding, in any event, a total of thirteen months' salaries. This was done by way of practice and without there being in

existence any express condition of service to that effect. The Applicant in 296/68 received, thus, £302.190 mils, the Applicant in 297/68 received £342.934 mils and the Applicant in 298/68 received £150. All the Applicants received, also, on losing their permanent employment, what was due to them, at the time, out of the Staff Provident Fund.

At the material time there had arisen between the trade union to which the Applicants belonged and their employers an industrial dispute concerning, *inter alia*, the requirement that female personnel should leave the service on engagement or marriage; so pending the settlement of the dispute, the Applicants, as well as others who had to relinquish their permanent employee status due to marriage, were re-employed, immediately, as temporary employees, on a month to month basis.

While serving as temporary employees the Applicants were receiving the same total yearly emoluments which they would have been receiving if they had continued serving as permanent employees, but they ceased receiving any increments in their respective salary scales; also, they lost the right to be members of the Staff Provident Fund or of the Staff Medical Fund, in which only permanent personnel could participate.

In July, 1965, an agreement was reached regarding the aforementioned industrial dispute and, as a result thereof, the Applicants were re-appointed as permanent employees as from the 1st July, 1965. In the meantime the Applicant in 296/68 had served as a temporary employee as from the 27th June, 1965 (having lost her permanent status on the 26th June, 1965); the Applicant in 297/68 had served as a temporary employee as from the 2nd May, 1965 (having lost her permanent status on the 1st May, 1965); and the Applicant in 298/68 had served as a temporary employee as from the 8th October, 1963 (having lost her permanent status on the 7th October, 1963).

On becoming, once again, permanent employees, the Applicants were placed in the positions in their respective salary scales in which they would have found themselves to be in the ordinary course had they not had to resign and become temporary employees due to marriage. They were not, however, compensated for any loss in terms of salary through not being granted increments while they were temporary employees.

They were allowed to participate in the Provident Fund, but only as from their having been re-appointed as permanent personnel; and they were not made participants in the Staff Medical Fund.

On becoming permanent each Applicant was allowed to keep the amount which she had received by way of gratuity when she resigned in view of her marriage.

The Respondent Commissioner of Income Tax has treated the said gratuity as being part of the taxable income of each one of the Applicants.

It has been his view—as set out in *exhibits* 1(*A*), 1(*B*) *and* 1(*C*) and as expounded in argument during the hearing of these cases—that the gratuities thus received by the Applicants were profits or gains which accrued to the Applicants by virtue of their office or employment.

On the other hand, counsel for the Applicants has submitted that the said gratuities were paid to the Applicants in view of the—due to their marriages—termination of their services as permanent employees and he stressed that they were so paid to them without any obligation of their employers, under the conditions of service of the Applicants; he has argued that the factor of the termination of the services of the Applicants as permanent employees could not be deprived of its effect on the nature of the gratuities by the mere fact that they were subsequently re-employed in a temporary capacity.

I have been referred by counsel, during argument, to, *inter alia*, the case of *Coussoumides* v. *The Republic* (1966) 3 C.L.R. 1, to Halsbury's Laws of England, 3rd ed., vol. 20, p. 322, para. 592, to Simon on Income Tax (1964/1965), vol. 3, p. 94 et seq. and to the English cases of *Denny* v. *Reed*, 18 T.C. 254, *Weston* v. *Hearn*, 25 T.C. 425, and *Laidler* v. *Perry*, 42 T.C. 351.

It has often been stated that the decision, in cases such as the present, regarding whether or not a particular receipt is taxable, depends, essentially and primarily, on the particular circumstances of each individual case; and that principles laid down in other cases can be relied upon only as useful guides for the purpose of arriving at a correct conclusion.

It is in this way that I have approached the cases cited to me by counsel.

Let me begin by saying that, in my opinion, the *Coussoumides* case (*supra*) is clearly distinguishable from the present case: The legal principles referred to therein are, of course, relevant to the issue before me but the outcome of the *Coussoumides* case depended on facts totally different from those with which I am faced in these proceedings.

What has to be decided in the present cases, and in all cases of a similar nature, is governed by a principle which is stated as follows in Halsbury's Laws of England, 3rd ed., vol. 20, p. 322, para. 592: "A voluntary payment to the holder of an office or employment is a profit of the office or employment if it accrues to the holder in virtue of his office or employment, notwithstanding that there may not be any legal obligation to make the payment. The circumstances under which the payment to the holder was made must all be taken into account".

In this respect it has to be examined whether the payment concerned is, as put by Rowlatt, J. in *Reed* v. *Seymour*, 11 T.C. 630 (and affirmed by Viscount Cave, at p. 646 of the report of that case):- "Is it in the nature of a personal gift, or is it remuneration?" This test has been cited with approval in, *inter alia*, *Weston* v. *Hearn* (*supra*) at p. 428, in *Moorhouse* v. *Dooland*, 36 T.C. 1, at p. 15, and in *Laidler* v. *Perry* (*supra*) at p. 366.

It is quite often rather difficult to apply this simple test to the facts of a particular situation: Finlay, J., in *Denny* v. *Reed* (*supra*), after referring to, *inter alia*, *Reed* v. *Seymour* (*supra*), said (at p. 258):- "A survey of those cases shows that questions of considerable difficulty may arise in cases of this sort, the difficulty being to draw the line between what is a mere present or testimonial on the one hand and what must be regarded as a perquisite or profit of the office on the other".

In the light of the foregoing, and on the basis of all the material before me in these cases, I have reached the conclusion that the gratuities in question were paid to the Applicants by way of gains or profits accruing to them from their offices or employment, in the sense that they were intended to be special emoluments destined to alleviate their plight, when they were placed in a less advantageous position, through their having relinquished, due to marriage, their permanent status, and, then, been, immediately, re-appointed on only a temporary basis.

In my mind there is no doubt that each Applicant received the gratuity concerned by virtue of her office or employment and not merely because she happened to be in the service of The General Insurance Company of Cyprus Ltd. when she got married.

It is perfectly clear from the evidence given by the aforementioned Mr. Menelaou—who was called as a witness by counsel for Applicants—that the gratuities were not paid to the Applicants by way of presents on the occasion of their being engaged or married, and that there was not in existence any practice to make such presents.

In these circumstances I find that I cannot interfere with the *sub judice* decision of the Respondent Commissioner of Income Tax, as applied to the case of each of the Applicants; it was a decision to which he could have reasonably come in the light of the particular circumstances of the matter.

I have, therefore, decided to dismiss these recourses.

As, however, they have been brought by way of deciding an arguable point, I am not prepared to make any order of costs against the Applicants.

Applications dismissed;
no order as to costs.