

[A. LOIZOU, J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

BEDROS SHAMASSIAN AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 493/71).

1973
June 16

—
BEDROS
SHAMASSIAN
AND OTHERS

v.

REPUBLIC
(MINISTER OF
FINANCE)

Public Officers—Additional increments—Grant of—Prohibited by decision of Council of Ministers—Minister of Finance authorised by subsequent decision to grant emplacement increments, in his discretion, to new entrants—Sub judge decision refusing additional increments to public officers already in the service and to new entrants—Validly taken both as to officers already in the service because of the said prohibition—And as to new entrants because the exercise of the Minister's discretion against such granting was consistent with the practice relating to similar cases.

Equality—Principle of equality safeguarded under Article 28 of the Constitution—The principle of equality does not convey the notion of exact arithmetical equality—But it safeguards only against arbitrary differentiations—And does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things—Such principle is violated if the distinction complained of has no objective and reasonable justification—Said principle not violated in the instant case by granting additional increments to other officers and refusing to grant such increments to the applicants because there are reasonable and objective distinctions between them.

Equality—Illegal act of the administration—Does not create an obligation on the administration to repeat it in another instance.

1973
June 16

BEDROS
SHAMASSIAN
AND OTHERS

v.

REPUBLIC
(MINISTER OF
FINANCE)

Reasoning of administrative decisions—Decision taken by the respondent Minister through agreeing to a proposal, supported by all relevant material, made to him by the Director - General of the Ministry—By so doing the Minister was adopting the reasoning to be found in the said proposal—Therefore, the said decision must be held as duly reasoned in itself and by reference to the reasoning of the preparatory acts for such final decision.

Words and Phrases—“Upon their appointment in the service” in Decision of the Council of Ministers No. 5361 of February 3, 1966—“Appointment” and “Promotion” in section 28 of the Public Service Law, 1967 (Law No. 33 of 1967)—Cf. section 31 of that Law.

The applicants public officers by their present recourse seek to challenge the validity of the decision of the respondent communicated to them by letter dated the 11th of October, 1971, not to grant them the additional increments they were claiming.

It has been argued by counsel for the applicants, *inter alia*, that the *sub judice* decision is contrary to the provisions of Article 28 of the Constitution safeguarding the principle of equality, in that it discriminates against the applicant vis-a-vis other public officers of equal standing and thus, violates their right of equal treatment safeguarded thereunder. The case of Mr. Markou, one of those “other public officers”, has this peculiarity: The officer concerned was granted additional increment through a mistake, although in fact, he was not entitled to such increment at all.

The learned Judge of the Supreme Court did not agree with the views advanced by counsel for the applicant and, after reviewing the facts, —

Held, (1) It is well settled that the principle of equality does not convey the notion of exact arithmetical equality, but it safeguards only against arbitrary differentiations and does not exclude distinctions which have to be made in view of the intrinsic nature of things; and that the principle of equality is violated only if the distinction made has no objective and reasonable justification (see *Mikromatis* and *The Republic*, 2 R.S.C.C. 125 and the

decision of the Full Bench of this Court in *The Republic v. Arakian and Others* (1972) 3 C.L.R. 294).

- (2) Now, a comparison of each one of the instances relied upon by counsel with the case of the applicants, shows that there are reasonable and objective distinctions between them.
- (3) *Regarding the peculiar case of Mr. Markou (supra) (who was granted by mistake an additional increment to which he was not entitled):* An illegality does not create an obligation on the administration to repeat it on another occasion; because in an earlier case an administrative organ took a mistaken view of the law, one cannot be held to be entitled to the same mistake. (See Conclusions from the Case Law of the (Greek) Council of State 1929-1959, page 158 and *Voyiazianos v. The Republic* (1967) 3 C.L.R. 239, at p. 243).

Recourse dismissed.

Cases referred to :

- Voyiazianos v. The Republic* (1967) 3 C.L.R. 239, at p. 243;
- Papachristodoulou v. The Republic* (1968) 3 C.L.R. 618, at pp. 626-627;
- Mikrommatis and The Republic*, 2 R.S.C.C. 125;
- The Republic v. Arakian and Others* C.A. (1972) 3 C.L.R. 294;
- Nicolaou v. The Republic* (1969) 3 C.L.R. 42, *distinguished*.

Recourse.

Recourse against the refusal of the respondent to grant to applicants additional increments.

- A. *Dikigoropoulos*, for the applicants.
- A. *Evangelou*, Counsel of the Republic, for the respondent.

Cur. adv. vult.

1973
June 16

—
BEDROS
SHAMASSIAN
AND OTHERS

v

REPUBLIC
(MINISTER OF
FINANCE)

1973
June 16

BEDROS
SHAMASSIAN
AND OTHERS

v.

REPUBLIC
(MINISTER OF
FINANCE)

The following judgment was delivered by :-

A. LOIZOU, J. : The applicants by the present recourse seek a declaration of the Court that the act and/or decision of the Respondent communicated to them by letter dated the 11th October, 1971 (*exhibit* 1) not to grant them additional increments is null and void and of no effect whatsoever.

The relevant facts are as follows :-

Applicant 1 was an assessor in the Department of Inland Revenue, the salary scale for the post being £1,014—£1,346, receiving as from the 1st November, 1970, £1,302 per annum. On the 27th April, 1970 he was registered as a member of the Association of Certified and Corporate Accountants. On the 7th July, 1971 he was offered the post of principal assessor, Class II in the said Department, with a salary at the rate of £1,326 per annum, in the salary scale of £1,230—£1,674 with effect from the 15th July, 1971, which the applicant accepted (Appendix II). His next incremental date moved to the 1st June, 1972.

Applicant 2 was an assessor in the same Department drawing £1,158 as from the 1st April, 1971. He was registered as a member of the Association of Certified and Corporate Accountants on the 27th April, 1970. On the 7th July, 1971 he was offered the post of principal assessor Class II in the same Department, with a salary of £1,230 per annum. His next incremental date moved to the 1st July, 1972. The said offer for promotion was accepted by this applicant by letter dated the 15th July, 1971 (Appendix V).

Applicant 3, an auditor in the office of the Auditor-General was drawing a salary of £1,230 per annum as from the 1st October, 1970, his salary scale being £1,230—£1,572. He was registered as a member of the Association of Certified and Corporate Accountants on the 23rd November, 1970 and offered the post of investigation officer Class II at the same salary, which he accepted, his incremental date being left as it was.

Applicant 4, a member of the Association of Certified and Corporate Accountants as from the 9th March, 1971, was offered an appointment to the post of investigation

officer class II in the Department of Inland Revenue as from the 15th July, 1971 on an unestablished basis at the salary of £1,230 per annum, which he accepted. This was his first appointment in the Government Service.

1973
June 16

BEDROS
SHAMASSIAN
AND OTHERS

Applicant 5, a member of the Association of Certified and Corporate Accountants as from December, 1970, was offered an appointment to the post of principal assessor Class II in the same Department on an unestablished basis as from the 15th July, 1970 at the salary of £1,230 per annum, which he accepted. This was his first appointment in the Government Service

v
REPUBLIC
(MINISTER OF
FINANCE)

The post of principal assessor Class II is on a combined establishment with the post of principal assessor Class I which is on salary scale 23, £1,674x72—£1,962x78—£2,196, and that of investigation officer Class II is on a combined establishment with the post of investigation officer Class I which is also on salary scale 23.

The applicants by letter dated the 22nd September, 1971 (*exhibit* 2) addressed to the Director-General, Ministry of Finance, requested approval for their emplacement at the salary of £1,566. In paragraph 2 thereof they state —

“We wish to submit that similar approval has been given in the case of the following officers appointed to posts with identical schemes of service in the Treasury and Audit Departments :-
Antonis Nicolaou, Accountant, Class II.
Charalambos Kotsonis, Accountant, Class II.
Ioannis P. Poyadjis, Principal Auditor, Class II”.

The Director of the Department of Personnel of the Ministry of Finance which appears to be the appropriate department dealing with such matters, replied to the applicants by letter dated the 11th October, 1971 (*exhibit* 1) as follows :-

“I am directed to refer to your letter of the 22nd September, 1971 requesting that you should be granted additional increments and to inform you with regret that it has not been found possible to approve your request. No additional increments are

1973
June 16

PEDROS
SHAMASSIAN
AND OTHERS

REPUBLIC
(MINISTER OF
FINANCE)

granted in cases such as yours. In the past, a number of placing increments were granted to persons mentioned in your letter on their first appointment to the Government Service, because they were chartered accountants”.

After this reply, by letter dated the 18th November, 1971 (*exhibit 4*) a number of Certified Accountants in the Government Service including the applicants complained to the Ministry of Finance regarding the differentiation made between Certified and Chartered Accountants. The reply to this was given on the 15th November, 1972 (*exhibit 5*) which reads as follows :-

“I was directed to refer to your letter dated the 18th January, 1971 addressed to the Minister of Finance and I regret to say that the letter of the Personnel Department No. 6019/68/IV dated the 11.10.1971 to Mr. Shamassian and others, has been misinterpreted by you. The second paragraph of the said letter is a simple reference in cases whereby approval has been given in the past and there was no intention to differentiate between the qualifications of the accountants.

As you know, no additional increments are granted to civil servants already in the Government upon their promotion or for any other purpose. In the past placing increments were granted to certain cases upon first appointment in the Civil Service, because of the lack of qualified accountants. It has been decided though that no placing increments be granted in case of first appointment of qualified accountants in the Public Service”.

With regard to the granting of increments to officers already in the Civil Service, the Council of Ministers by its Decision No. 3697 dated the 27th February, 1964 (Appendix XVI) decided, and this decision is still in force, that—“in view of the present situation — (a) no acting allowance should be paid in accordance with the relevant General Orders; and (b) no application for additional increments should be entertained”.

Subsequently it decided by its decision No. 5361 of the 3rd February, 1966, (Schedule XVII) that — “Though

the Council considers that the Minister of Finance already possesses the power mentioned in the proposal, nevertheless, in order to alleviate any doubt, it decided to grant to the Minister of Finance the power which it has regarding 'the placing of certain officers upon their appointment in the Service' (τὴν τοποθέτησιν ὀρισμένων ὑπαλλήλων ἄμα τῷ διορισμῷ των εἰς τὴν Ὑπηρεσίαν) at any point above the starting point of the approved scale of their post".

1973
June 16
...
BEDROS
SHAMASSIAN
AND OTHERS

v.
REPUBLIC
(MINISTER OF
FINANCE)

As a result of certain applications for additional increments by three officers in the Department of Inland Revenue the whole practice or policy for granting increments to Chartered Accountants, first entrants in the Government Service, was reconsidered by the Minister. The Director - General of the said Ministry in minute 19 of *exhibit 7* referred to the relevant material in the file as to the previous practice and the advice received from the office of the Attorney - General (Minutes 15-18 in *exhibit 7*), and made the following submission after dealing with the particular applications that gave rise to the reconsideration of the matter: — "3. It is further suggested that the practice of granting increments to first-appointed Chartered Accountants be terminated, because of the entrance in the Civil Service of sufficient Certified Accountants and other officers who study in order to acquire such diploma on the one hand and in order to avoid similar applications, as the case of the 3rd applicant (Red 36) on the other hand, so that we shall not reach at the same time the situation that can be found in paragraph 3 of minute 18. Perhaps in the future, additional increments may be granted to officers already in the service, who acquire additional qualifications, though this will require the approval of appropriate regulations".

The Minister of Finance agreed to the aforesaid proposal and by so doing he adopted the submission thus becoming the reasoning for his decision. There was a clear-cut submission supported by all relevant material.

It has been argued that the reasoning of the *sub judice* decision is to be found in the aforesaid submission and that on the authority of *Nicolaou v. The Republic* (1969) 3 C.L.R. 42, the Director-General had no competence to decide such matter as the powers of the Council of

1973
June 16

BEDROS
SHAMASSIAN
AND OTHERS

v.

REPUBLIC
(MINISTER OF
FINANCE)

Ministers had been delegated to the Minister himself who could not delegate his powers to the Director-General in his Ministry.

Nicolaou's case (supra) is distinguishable from the present one, as it was a case of a transfer of an officer on grounds of the exigencies of the service, the submission of the Director-General contained both relevant and irrelevant matters and the Minister by approving the transfer was not clarifying what he considered as relevant and what not; the Court consequently could not decide whether the Minister took into account the relevant or irrelevant parts of the submission, whereas in the present case there was a definite proposal supported by due reasoning and the relevant material in the file.

On the 5th October, 1971, the Minister of Finance considered the application of the present applicants together with that of other officers (Red 5-8 in *exhibit 8*). The Director of the Department of Personnel placed before him in the form of a minute (minute 3 in *exhibit 8*) all relevant material. Reference was made therein to the effect that it was a case of additional increments and not increments on first appointment in the Public Service. It was also pointed out that similar requests had been examined in the past and turned down. The circumstances under which increments were given to Antonis Nicolaou, Charalambos Kotsonis and Ioannis Poyadjis, the three persons named in the letter of the applicants of the 22nd September, 1971 (*exhibit 2*) are explained and the termination of the practice to grant increments to first entrants in the Government Service is also pointed out by reference to minute 19 in *exhibit 7* (hereinabove set out verbatim). It was also suggested that their application could not be granted, as additional increments were not given in such circumstances. The Minister by approving, was adopting the reasoning to be found in the said minute and minute 19 of *exhibit 7*, to which reference is made. In this way, one may safely arrive at the conclusion that the *sub judice* decision is duly reasoned in itself and by reference to the reasoning of the preparatory acts for the decision.

From the aforesaid facts it is clear that the Council of Ministers had decided to discontinue as far back as 1964, the granting of increments to officers already in

the Service. Regarding the granting of emplacement increments for new entrants into the Government Service, the Council of Ministers authorized the Minister of Finance—if authority was needed at all—to deal with the matter at his own discretion. In his turn, the Minister of Finance for the reasons already given hereinabove, decided to discontinue the practice of granting emplacement increments to Chartered Accountants upon their first appointment in the Civil Service, because of the entrance in the Service of sufficient number of Certified Accountants and other officers. It was the contention of counsel for applicants that the bar on increments stopped being in force as from 1966, when by decision No. 5361 the Minister of Finance was empowered to grant increments on first appointment. In my view, that decision was not intended and did not have the effect of cancelling the previous bar for additional increments. Both decisions, subject to what has already been said about the policy followed by the Minister in the exercise of his powers under the second decision, are still in force, but I shall be dealing further with their effect.

It was argued by counsel for the applicants, that the respondent acted under a misconception of law and/or fact, in the sense that the respondent in examining their application for increments, treated the change in their status as being a promotion and not an appointment. This, he based on the definition of the words “appointment” and “promotion” to be found in section 28 of the Public Service Law, 1967 (Law No. 33 of 1967) and to the provision of section 31 of the same law, that a vacancy in a promotion office may be filled by the promotion of an officer serving only in the immediately lower grade or office of the particular section or sub-section of the public service.

As set out hereinabove, the Minister when examining the application of the applicants for increments, had three decisions to apply. The first one prohibiting the granting of additional increments, and the second one giving him a discretion to consider the granting of increments to first entrants in the Government Service. Furthermore, he had his decision of the 24th May, 1971, whereby the practice of granting emplacement increments to Chartered Accountants, first entrants in the Government Service,

1973
June 16

—
BEDROS
SHAMASSIAN
AND OTHERS

v.

REPUBLIC
(MINISTER OF
FINANCE)

1973
June 16

BEDROS
SHAMASSIAN
AND OTHERS

v.

REPUBLIC
(MINISTER OF
FINANCE)

was discontinued. The *sub judice* decision of the Minister was taken in the light of the aforesaid three decisions and the practice followed in the past, as shown by the relevant material in the file and in particular by minute 3 in *exhibit 8* and the other minutes referred to therein.

The only authority that the Minister had was to grant additional increments in the exercise of his discretion to first entrants in the Government Service. The words "upon their appointment in the Service" to be found in Decision No. 5361 of the 3rd February, 1966, can, to my mind, mean only one thing, the first appointment in the Service as such and not the appointment of an already serving officer in a first entry or first entry and promotion post. The Greek word "ama" (upon) which precedes the words "their appointment in the Service" should be considered as used in connection with the words "in the Service"; so denoting the time of entering the Service as such and not the time of being appointed to a particular post in the Service whether by way of "promotion" or "appointment". The words "upon their appointment in the Service" to be found in Decision No. 5361 should be construed according to their ordinary meaning and with regard to the subject matter to which they are used and there is nothing which renders it necessary to read them in a sense that it is not their ordinary sense; in fact these distinctions are made, as stated in the section itself, for the purposes of that part of the Law, unless from the context a different meaning occurs.

The matter, however, does not end here. It is stated in paragraph 2 (minute 3 in *exhibit 8*) that "the applicants are Certified Accountants. The granting of increments has never been approved in the past to holders of such diploma on first appointment in any post in the Civil Service, nor to officers in the Service", and by the added paragraph 4, it was suggested that the reply should be that their request could not be approved, as additional increments are not granted in such cases. It was in compliance with this paragraph that the communication of the decision of the Minister to the applicant (*exhibit 1*) was framed.

In so far, therefore, as the first three applicants were concerned, there was the prohibition that no increments

should be granted by virtue of the first decision. As to the remaining two, the discretion of the Minister was exercised against the granting of increments which was consistent with the practice relating to cases such as the present one.

There was, therefore, no misconception of Law, nor of fact in the present case, as the decision No. 5361 for the reasons hereinabove given, refers to first entrants in the Service and not appointees to a first entry or a first entry and promotion post. In any event, in my view, the first three applicants were in fact promoted, because, in accordance with the definition in section 28 the word "promotion" means "any change in an officer's substantive status which carries with it increase in the officer's remuneration or which carries with it the emplacement of the officer in a higher division of the Public Service or on a salary scale with higher maximum, whether the officer's remuneration at the time is increased by such a change or not and the expression 'to promote' shall be construed accordingly".

The limitation to promote by more than one grade relates to the machinery for promotion and although it may render a promotion so made contrary to law, if the post to which a person is promoted is only a promotion post and not a first entry or a first entry and promotion post, yet, it does not change the character of the promotion as such. So, Regulation 37 which continues to be applicable by virtue of the proviso to section 86 of the Law, was rightly applied in this case.

For the aforesaid reasons, therefore, I find that there has been neither a misconception of law nor of fact in the present case.

Finally, I wish to deal with the grounds of law that "the decision is contrary to the provisions of Article 28 of the Constitution, in that it discriminates against the applicants vis-a-vis other public officers of equal standing and violates their right of equal treatment safeguarded thereunder". This principle of equality has been the subject of judicial pronouncement. It has been stated that it does not convey the notion of exact arithmetical equality, but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to

1973
June 16

--
BLDROS
SHAMASSIAN
AND OTHERS

v
R. PUBLIC
(MINISTER OF
FINANCE)

1973
June 16

BEDROS
SHAMASSIAN
AND OTHERS

v

REPUBLIC
(MINISTER OF
FINANCE)

be made in view of the intrinsic nature of things, and that the principle of equality is violated if the distinction has no objective and reasonable justification. (Vide *Mikromatis and The Republic*, 2 R.S.C.C. 125 and *The Republic of Cyprus v. Nishan Arakian & Others* (1972) 3 C.L.R. 294).

Although the applicants in their letter, *exhibit 2*, referred only to three instances, in the course of the hearing of the present recourse, three other officers who were also granted increments, were mentioned. The first three, namely, Nicolaou, Kotsonis and Poyadjis, were Chartered Accountants and first entrants into the Government Service; appointed at a time when there was shortage of qualified accountants and their increments were granted before the 20th May, 1971, when the decision to discontinue the practice of granting additional increments was taken. Regarding Mr. Stavros Nathanael, the Accountant-General, he was given additional increments on 1st August, 1961, long before the decision of the Council of Ministers on the 24th February, 1964. Mr. Papachristodoulou was first appointed in the Government Service in 1961. He was placed at the starting point of his salary scale, whereas it was the practice of the Government to employ officers with certain qualifications with a salary above the starting point. In fact, a colleague of Papachristodoulou, namely, Tapakis, who possessed the same qualifications, was given additional increments on his appointment in 1963. The Minister did not grant increments to Papachristodoulou, labouring under a misconception that this officer did not possess the required qualifications. Papachristodoulou filed a recourse which was decided in his favour. (Vide *Papachristodoulou v. The Republic* (1968) 3 C.L.R. 618 at pp. 626 - 627). As a result of that decision, he was given additional increments as from the date of his appointment. The case of Petrakis Markou, has certain peculiar characteristics. To put it briefly, he was granted increments by mistake, although in fact, he was not entitled. An illegal act of the administration, does not create an obligation on the administration to repeat it on another instance; because in an earlier case an administrative organ took a mistaken view of the law, one cannot be held to be entitled to the same mistake on the part of the administration. (Vide

Conclusions of Case Law of the Greek Council of State (1929 - 1959) page 158 *Voyiazianos v. The Republic* (1967) 3 C.L.R. p. 239 at p. 243). A comparison of each one of the aforesaid instances with the case of the applicants, shows that there are reasonable and objective distinctions between them, both on account of their circumstances, as well as their happening in relation to the time of discontinuance of the practice to grant increments to newly appointed accountants. So this ground also cannot succeed.

In the circumstances, therefore, I find that the present recourse should fail and is hereby dismissed. There shall be, however, no order as to costs.

Application dismissed.
No order as to costs.

1973
June 16
--

BEDROS
SHAMASSIAN
AND OTHERS

v.

REPUBLIC
(MINISTER OF
FINANCE)