

1979 June 2

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NIKOS IONIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 105/69).

Public Officers—Pensions—Option to retire at age of 55—Section 5 of the Pensions (Amendment) (No. 2) Law, 1977 (Law 18/1967)—Reduction of monthly pension by 6 1/4% under regulation 19A of the Pensions Regulations—Not unconstitutional as being contrary to Article 192. 1 of the Constitution.

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The applicant, who was employed in the public service, retired at the age of 55, having exercised in writing an option open to him in that behalf by virtue of s. 5 of the Pensions (Amendment) (No. 2) Law, 1967 (Law 18/1967). When, because of such exercise, his monthly pension was reduced by 6 1/4% under regulation 19A of the Pensions Regulations set out in the Schedule to the Pensions Law, Cap. 311, he complained, by means of this recourse, that that reduction was unconstitutional.

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Counsel for the applicant contended that:

The provisions referred to are unconstitutional because their effect is to deprive the applicant of the full benefit of salary increases granted to public officers by the Public Officers (Amalgamation with the Salaries of Part of the Cost-of-Living Allowance) Law, 1967 (Law 10/1967), and the Public Officers (Revision of Salaries and Salary Scales) Law, 1968 (Law 106/1968), this adverse result having been brought about (a) by the discounting, in the calculation of his pension, of the 12 1/2% of the cost-of-living allowance referred to in the definition of "pen-

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5 pensionable emoluments" in s. 2(1) of the Pensions Law, Cap. 311, and (b) the provision, introduced originally by the Pensions (Amendment) Law, 1967 (Law 9/1967), and re-enacted by the Pensions (Amendment) Law, 1967 (Law 18/1967) reducing the pensionable emoluments of public officers who had exercised the option granted to them by s. 5 of Law 18 of 1967 by 6 1/4%; such deprivation having resulted in "an alteration to his disadvantage" of his conditions of service guaranteed by Art. 192, para. 1, of the Constitution to all public officers who were in 10 the service when it came into effect.

Held, dismissing the recourse, that the fact that the consequence complained of has resulted from the option exercised by the applicant is fatal to his claim; and that, accordingly, his application must fail (see, also, the Indian decision in *Chittoor Motor Transport Co. v. Income Tax Office* (1966) A. SC. 570, 15 (1966) 1 S.C.J. 127).

Application dismissed.

Cases referred to:

20 *Chittoor Motor Transport Co. v. Income Tax Office* (1966) A.S.C. 570, (1966) 1 S.C.J. 127, cited in footnote 58 at p. 243 of Seervais Constitutional Law of India, Vol. 1.

Recourse.

25 Recourse against the decision of the respondent whereby applicant's monthly pension as a civil servant was reduced by 6 1/4% under regulation 19A of the Pensions Regulations due to his having exercised an option under s. 5 of the Pensions (Amendment) (No. 2) Law, 1967 (Law No 18 of 1967).

A. *Dikigoropoulos*, for the applicant.

30 S. *Georghiades*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

35 STAVRINIDES J. read the following judgment. The applicant was employed in the public service for 34-odd years. He retired on February 1, 1969, on reaching the age of 55, having exercised in writing an option open to him in that behalf by virtue of s. 5 of the Pensions (Amendment) (No. 2) Law, 18 of 1967. In the document whereby he did so he stated that "If any of the provisions of the above Law, which affects my inter-

ests, is unconstitutional I reserve the right to raise the question in due course". Because of such exercise his monthly pension was reduced by 6 1/4% under reg. 19A of the Pensions Regulations set out in the Schedule to the Pensions Law, Cap. 311. He now complains that that reduction was unconstitutional. 5

The argument on which this complaint is based may be put thus: the provisions referred to are unconstitutional because their effect is to deprive the applicant of the full benefit of salary increases granted to public officers by the Public Officers (Amalgamation with the Salaries of Part of the Cost-of-Living Allowance) Law, 10 of 1967, and the Public Officers (Revision of Salaries and Salary Scales) Law, 106 of 1968, this adverse result having been brought about (a) by the discounting, in the calculation of his pension, of the 12 1/2% of the cost-of-living allowance referred to in the definition of "pensionable emoluments" in s. 2(1) of the Pensions Law, Cap. 311, and (b) the provision, introduced originally by the Pensions (Amendment) Law, 9 of 1967, and re-enacted by the Pensions (Amendment) Law, 18 of 1967, reducing the pensionable emoluments of public officers who had exercised the option granted to them by s. 5 of Law 18 of 1967 by 6 1/4%; such deprivation having resulted in "an alteration to his disadvantage" of his conditions of service guaranteed by Art. 192, para. 1, of the Constitution to all public officers who were in the service when it came into effect. 10 15 20

In my judgment the fact that the consequence complained of has resulted from the option exercised by the applicant is fatal to his claim. This proposition appears to be only reasonable. But further it appears to be confirmed by the Indian decision in *Chittoor Motor Transport Co. v. Income Tax Office* (1966) A.S.C. 570, (1966) 1 S.C.J. 127, cited in footnote 58 at p. 243 of Seervai's Constitutional Law of India, Vol. 1. The full report of the case is not available in the island, but it seems to me that the annotation following the reference to the case is sufficiently clear. 25 30

It reads:

" Held, that s. 20(2)(vib) of the Income-tax Act, 1922, did not violate art. 14. Rightly interpreted, that section provided that if an assessee sold to a person other than the Government at any time before the expiry of ten years from the end of the year in which a motor vehicle was ac- 35

quired, the allowance in respect of it was deemed to have been wrongly allowed for the purposes of the Act; but if the assessee sold it to the Government no such consequence followed. There was no discrimination, because every
5 person had the right to sell the motor-car to the Government, or to any other person."

Application dismissed without costs.