

1979 June 26

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS SAVVA,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS AND OTHERS,

*Respondents.*

(Case No. 318/78).

*Pensions and gratuities—Police Force—Compulsory retirement of member of—No absolute right to receive pension, gratuity or other allowance—Regulation 45 of the Police (Discipline) Regulations 1958 to 1977—Sections 6(f) and 7 of the Pensions Law, Cap. 311.*

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*Pensions Law, Cap. 311—“As provided in this Law” in section 6(f)—Meaning.*

*Equality—Principle of equality—Article 28.1 of the Constitution—Meaning of the principle—Instance cited by applicant different in material particulars—Principle of equality not contravened.*

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*Administrative acts and decisions—Reasoning—Due reasoning—Reasoning of sub judice decision supplemented by material in the file.*

The applicant, a police constable, was required to resign by a decision of the Deputy Chief of Police, as a result of disciplinary charges preferred against him which arose out of his conviction and sentence, by a Criminal Court, of the offence of obtaining money by false pretences. The respondent Council of Ministers refused his application for the grant to him of his retirement benefits which he has earned on the basis of his actual service and hence the present recourse.

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Counsel for the applicant mainly contended:

(a) That the decision of the respondents is contrary to

the provisions of regulation 45\* of the Police (Discipline) Regulations 1958 to 1977.

- (b) That the decision of the respondents discriminates against the applicant contrary to Article 28 of the Constitution.

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Counsel argued, in this connection, that in a similar case the respondent Council of Ministers, in exercising its discretion approved the application of that applicant and granted to him all the benefits under section 6(e) of the Pensions Law Cap. 311.

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- (c) That the *sub judice* decision\*\* is not duly reasoned.

Sections 6(f) and 7 of the Pensions Law, Cap. 311 read as follows:

“ No pension, gratuity or other allowance shall be granted under this Law to any officer except on his retirement from the Public Service in one of the following cases:

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(f) In the case of termination of employment in the public interest as provided in this Law.

7. Where an officer's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law, the Governor in Council (now the Council of Ministers) may, if he thinks fit, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6 of this Law”.

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\* Regulation 45 reads as follows:-

“In case the punishment imposed by virtue of these Regulations on a member of the Force for a disciplinary offence is the one of requirement to resign, the resignation of the member arising as a result of such punishment will, for purposes of pension, be considered as termination of services in the Public interest and will not deprive the member of his rights to pension granted on the said basis of termination of services in the public interest.”

\*\* The *sub judice* decision is quoted at pp. 254-5 *post*.

*Held*, (1) that regulation 45 does not give to a member of the Police Force who was required to resign, an absolute right to receive pension, gratuity or other allowances; that the sentence imposed in the case in hand, under regulation 45 is considered for pension purposes as termination of employment in the public interest and so under section 6(f) of the Pensions Law, Cap. 311, the applicant is entitled to pension as provided in this Law; that the expression "as provided in this Law" appearing in section 6(f) does not mean the calculation and machinery under which pension, gratuity and other allowances are collected, as counsel for applicant submitted, but the right to such benefits and so the provisions of section 7 of the Law come into play; that it is clear that by virtue of section 7 of the Law the Council of Ministers is vested with the discretionary powers to grant or refuse pension benefits; and that, accordingly, contention (a) must fail.

(2) That equality before the Law in paragraph 1 of Article 28 of the Constitution, 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 (see *Mikrommatis v. The Republic*, 2 R.S.C.C. 125 and *Republic v. Arakian and Others* (1972) 3 C.L.R. 294); that it is apparent from the respective records of the disciplinary proceedings in the case of the applicant and in the similar case referred to by his counsel, that the two cases were different in material particulars, such as the nature of the offences, the circumstances under which the offences have been committed and the personal circumstances of the applicant and the other police constable concerned; that, therefore, it was open to the Council of Ministers to take the decision they took in each case; and that, accordingly, contention (b) must fail.

(3) That the reasoning of the *sub judice* decision is supplemented by the material in the file which was before the Council of Ministers at the time it was taking the decision complained of; and that, accordingly, contention (c) must fail.

*Application dismissed.*

Cases referred to:

*Mikrommatis v. Republic*, 2 R.S.C.C. 125;

*Republic v. Arakian and Others* (1972) 3 C.L.R. 294.

**Recourse.**

Recourse against the decision of the respondents not to grant to applicant pension as a result of his compulsory retirement from the ranks of the Police Force.

5        *E. Lemonaris*, for the applicant.

*N. Charalambous*, Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

10        MALACHTOS, J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the Decision of the respondents, not to grant to him pension as a result of his compulsory retirement from the ranks of the Police Force, communicated to the applicant by letter dated 29th May, 1978, is null and void and of no effect whatsoever.

15        The facts of the case are the following:

      The applicant enlisted in the Cyprus Police Force on the 16th June, 1957 and served as a police constable under No. 2659 up to 18th September, 1976, when he was required to resign by a Decision of the Deputy Chief of Police in respect of disciplinary charges preferred against him.

25        Disciplinary action was taken against the applicant as a result of a conviction and sentence in a criminal offence, for obtaining money by false pretences, to which he appeared before the Court and pleaded guilty. Subsequently to his retirement and on the 11th October, 1977, the applicant, through his advocates, applied to the Chief of Police for the grant to him of his pension rights.

30        The Council of Ministers by its Decision No. 16.832 dated 4th May, 1978, *exhibit 3*, rejected the application of the applicant. This Decision of the Council of Ministers was communicated to the applicant's advocates by letter dated 29th May, 1978, of the Ministry of Interior (*exhibit 4*) which reads as follows:

35        " I have been instructed to refer to your letter dated 11th October, 1977, to the Chief of Police, by which you applied for the grant of pension to ex constable 2659 Charalambos Savva due to his compulsory retirement from the ranks of

the Force, and to inform you that the Council of Ministers at its Meeting of the 4th May, 1978, considered your application for payment to Mr. Savva, by virtue of regulation 45 of the Police (Discipline) Regulations 1958 to 1977 and of section 7 of the Pensions Law, Cap. 311, and Laws 17 of 1960, 9 and 18 of 1967, 51 and 119 of 1968, 9 of 1971, 65 of 1973 and 42 of 1976, of the retirement benefits which he has earned on the basis of his actual service and, taking into consideration everything that has been presented during the meeting, decided (Decision No. 16. 832) that your application should not be accepted."

The grounds of law on which the application is based, as argued before me, may be summarised as follows:

1. That the decision of the respondents is contrary to the provisions of regulation 45 of the Police (Discipline) Regulations 1958 to 1977.
2. That the decision of the respondents discriminates against the applicant contrary to Article 28 of the Constitution; and
3. That the said decision is not duly reasoned.

As regards the first ground counsel for applicant argued that regulation 45 of the Police (Discipline) Regulations 1958 to 1977 is mandatory and does not give any discretion to the Council of Ministers. This regulation reads as follows:

" Εἰς περίπτωσιν καθ' ἣν ἡ δυνάμει τῶν παρόντων Κανονισμῶν ἐπιβληθεῖσα εἰς μέλος τῆς Δυνάμεως ποινὴ διὰ πειθαρχικὸν ἀδίκημα εἶναι ἢ τῆς ὑπὸ τοῦ ἐκδικάσαντος τὸ ἀδίκημα ἀπειθήσεως πρὸς τὸ μέλος διὰ παραίτησιν, ἢ συνετεία τῆς ταύτης ποινῆς παραίτησις τοῦ μέλους θὰ θεωρῆται, διὰ σκοποῦς συντάξεως, ὡς τερματισμὸς ὑπηρεσίας πρὸς τὸ δημόσιον συμφέρον καὶ δὲν θὰ ἀποστερῇ τὸ μέλος τοῦ δικαιώματός του διὰ σύνταξιν χορηγομένην ἐπὶ τῆς ρηθείσης βάσεως τοῦ τερματισμοῦ ὑπηρεσίας πρὸς τὸ δημόσιον συμφέρον."

(" In case the punishment imposed by virtue of these Regulations on a member of the Force for a disciplinary offence is the one of requirement to resign, the resignation of

the member arising as a result of such punishment will, for purposes of pension, be considered as termination of services in the public interest and will not deprive the member of his rights to pension granted on the said basis of termination of services in the public interest.” ).

Counsel for applicant also submitted that since the applicant’s disciplinary punishment was that of “requirement to resign”, under regulation 45 such punishment is considered for pension purposes as termination of employment in the public interest and, consequently, the applicant is entitled as of right to pension under the provisions of section 6(f) of the Pensions Law. This section reads as follows:

“ 6. No pension, gratuity or other allowance shall be granted under this Law to any officer except on his retirement from the Public Service in one of the following cases:

.....

(f) In the case of termination of employment in the public interest as provided in this Law”.

Counsel for applicant further submitted that the words “as provided in this Law” appearing in section 6(f) of the Law, refer to the computation of the pension and not to any other provision of the Law.

On the other hand, counsel for the respondents submitted that the second part of regulation 45 must be read in conjunction with the last part of section 7 of the Law, which gives absolute discretion to the Council of Ministers to grant pension, gratuity or other allowance as it thinks just and proper.

Section 7 reads as follows:

“ 7. Where an officer’s service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension,

gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law, the Governor in Council (now the Council of Ministers) may, if he thinks fit, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6 of this Law.” 5

Paragraph (e) of section 6 reads as follows: 10

“ 6(e) on medical evidence to the satisfaction of the Governor in Council (now the Council of Ministers) or the Secretary of State that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent.” 15

I have considered the arguments of counsel on the first ground of law and I came to the conclusion that regulation 45 does not give to a member of the Police Force who was required to resign, an absolute right to receive pension, gratuity or other allowances. The sentence imposed in the case in hand, under regulation 45 is considered for pension purposes as termination of employment in the public interest and so under section 6(f) of the Pensions Law, Cap. 311, the applicant is entitled to pension as provided in this Law. The expression “as provided in this Law” appearing in section 6(f) does not mean the calculation and machinery under which pension, gratuity and other allowances are collected, as counsel for applicant submitted, but the right to such benefits and so the provisions of section 7 of the Law come into play. It is clear that by virtue of section 7 of the Law the Council of Ministers is vested with the discretionary powers to grant or refuse pension benefits. 20 25 30

As regards the second ground of law, counsel for applicant argued that in a similar case the respondent Council of Ministers in exercising its discretion approved the application of that applicant and granted to him all the benefits for which he would be eligible if he retired from the service in the circumstances described in paragraph (e) of section 6 of the Law. 35

In rejecting the application of the applicant in the present

case the Council of Ministers, as counsel for applicant submitted, acted contrary to the provisions of Article 28. 1 of the Constitution which provides that all persons are equal before the Law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

The application of the principle of equality has been considered in the case of *Mikrommatis v. The Republic*, 2 R.S.C.C. 125 where it was stated that equality before the Law in paragraph 1 of Article 28 of the Constitution, 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.

In the case of the *Republic v. Nishan Arakian and Others* (1972) 3 C.L.R. 294, the authorities on this principle were reviewed by the Full Bench of this Court. At page 299 of the Report we read:

" In Case 1273/65 it was stated that the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation.

In Case 1247/67 it was held that the principle of equality safeguarded by Article 3 of the Greek Constitution of 1952—which corresponds to Article 28. 1 of our Constitution—excludes only the making of differentiations which are arbitrary and totally unjustifiable and exactly the same was held in Case 1870/67.

In Case 2063/68 it was held that the principle of equality was not contravened by regulating differently matters which were different from each other.

In Case 1215/69 it was held that the principle of equality is applicable to situations which are of the same nature."

Having gone through the record of the disciplinary proceedings against the present applicant, as well as the record of disciplinary proceedings in the similar case referred to by his counsel, which have been produced as exhibits in this case, it became apparent that the two cases were different in material particulars, such as the nature of the offences, the circumstances under



which the offences have been committed and the personal circumstances of the applicant and the other police constable concerned.

It was, therefore, open in my view to the Council of Ministers to take the decision they took in each case.

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Coming now to the third ground that the decision of the Council of Ministers is not duly reasoned, I am of the view that this ground cannot stand either as the reasoning is supplemented by the material in the file which was before the Council of Ministers at the time it was taking the decision complained of.

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For the reasons stated above, this recourse fails and is dismissed but under the circumstances I make no order as to costs.

*Application dismissed. No order as to costs.*