

1983 November 24

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TAKIS HASAPOPOULOS,

Applicant,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(Case No. 502/80).

Public Corporate Bodies—Electricity Authority of Cyprus—Employees of—Are not “State Servants”—(“Κρατικοί Υπάλληλοι”)—Article 122 of the Constitution—Public Service Law, 1967 (Law 33/67)—Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law 61/70).

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The sole issue for consideration in this recourse was whether the term “state servants” used in a decision* of the Council of Ministers relating to compulsory retirement of state servants covered employees of Public Corporate Bodies such as the Electricity Authority of Cyprus.

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Held, that though Article 122 of the Constitution undoubtedly includes the employees of Public Law Corporations, later, with the enactment of the Public Service Law, 1967 (Law 33/67), and the setting up in reality of another Public Service Commission other than the one provided by the Constitution (see *Bagdassarian v. The Electricity Authority of Cyprus and Another* (1968) 3 C.L.R. p. 736) in case of service, retirement and disciplinary control the term of civil servant acquired a narrower meaning; that the Public Service Commission deals only with matters which concern the employees of the Government, whereas matters or conditions regulating the service and retirement of the servants of Public Corporations are, by virtue of

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* The decision is quoted at p. 1199 post.

s. 3 of Law 61/70 within the exclusive competence of the statutory body itself; that the term "state servant" includes or presupposes the element of direct service relationship to the state which does not exist in cases of servants of Public Corporations; and that, therefore, it is obvious that the Council of Ministers could not have decided in respect of employees who were not under its competence; accordingly the employees of the Electricity Authority of Cyprus are not "State servants" and are not covered by the relevant decision of the Council of Ministers.

10 *Application dismissed.*

Cases referred to:

Bagdassarian v. E.A.C. (1968) 3 C.L.R. 736;

Iosif v. C.Y.T.A. (1970) 3 C.L.R. 225.

Recourse.

15 Recourse against the refusal of the respondent to re-adapt, for pension purposes, applicant's date of birth.

N. Zomenis, for the applicant.

G. Cacoyannis, for the respondent.

Cur. adv. vult.

20 HADHIANASTASSIOU J. read the following judgment. In the present case the applicant seeks (a) a declaration that the decision of the Electricity Authority of Cyprus which was communicated to the counsel of the applicant on the 22nd October, 1980, by a letter dated 16th October, 1980, that for
25 the purposes of pension of the applicant they were not prepared to re-adapt the date of his birth by the addition thereto of 13 more days by virtue of the application of the new calendar and the relevant correcting decision of the Council of Ministers No. 14.378 dated 30.10.1975, is illegal, arbitrary, unconstitutional, null and void and of no effect whatsoever; (b)
30 a declaration of the Court that applicant, having been born on 23.6.1920, i.e. prior to 10th March, 1924 (official date of application of the new calendar) is entitled, for pension purposes, to the re-adaption of his date of birth by the addition
35 thereto of 13 more days and that on the basis of the new calendar and the said decision of the Council of Ministers his date of birth for pension purposes etc. corresponds with the 6th July, 1920.

THE FACTS

The applicant is a pensioner section head of the Electricity Authority of Cyprus and was born on the 23rd June, 1920. 2. On the 10th March, 1924, there was introduced the new calendar for purposes of determining of the date of compulsory retirement of public officers who had been born prior to the 10th March, 1924. The Council of Ministers by virtue of its decision No. 14.378 dated 30th October, 1975, re-determined their date of birth by 13 days subsequently in all instances in which this has not been made before. (3) Applicant falls within and is covered by the said decision and/or re-adaptation; (4) By means of his relevant letters and particularly by letters of his counsel dated 23rd September, 1980 and 21st October, 1980, applicant asked from the Electricity Authority of Cyprus that his date of birth be duly re-adapted for pension purposes. The Electricity Authority of Cyprus by its letter dated 16th October, 1980 to applicant's counsel which was received by him on 22nd October, 1980, informed applicant that after considering his application it decided not to accept his request; (5) the said decision of the Electricity Authority of Cyprus constitutes a discriminatory treatment against the applicant contrary to Article 6 of the Constitution, it does not afford to the applicant equal protection and treatment, contrary to Article 28 of the Constitution, is unjustifiable, illegal, unconstitutional, and null and void; (6) Applicant is entitled that for pension purposes his date of birth be duly re-adapted on the basis of the new calendar and the said decision of the Council of Ministers which is applicable in his case.

On the contrary, Mr. Cacoyannis, counsel for the Electricity Authority, opposed the legal grounds of the applicant put forward, and in doing so he relies on the following grounds: (1) That the retirement of applicant was correctly and lawfully made and in accordance with the collective agreements in force and the terms of employment of the applicant; (2) Respondents acted lawfully and in the proper exercise of their powers; (3) The decision of the Council of Ministers No. 14.378 dated 30th October, 1975, invoked by applicant refers to the retirement of public officers and not to the retirement of officers of organs of public law such as the Electricity Authority of Cyprus; (4) The permanent appointment, promotion, disciplinary control

- and retirement of the staff of the respondents is within the competence of the respondents in accordance with s.3 of the Public Bodies (Regulation of Personnal Matters) Law, 1970, Law No. 61/70 and consequently the said decision of the Council of Ministers is not applicable and does not bind the respondents;
- 5 (5) The sub judice act and/or decision and/or omission of the respondents does not constitute discriminatory treatment towards the applicant nor does it constitute unequal treatment;
- 10 (6) The sub judice decision of the respondents was duly reasoned;
- (7) The application does not reveal grounds on the basis of which the annulment of the sub judice act and/or decision or the performance of any omission will be justified.

Before the Court there is really one point for decision, that which concerns the interpretation of the term "State servant" as it is used in the decision of the Council of Ministers, No. 14.378 and whether it covers the servants of Public Corporate Body, and more particularly in the present case, the employees of Electricity Authority.

The aforesaid decision of the Council of Ministers reads as follows:-

"For the purpose of fixing the dates of compulsory retirement of the state servants (kratiki ipallili) who were born before the 10th of March, 1924 (date on which the new calendar was introduced by virtue of Pension Laws), the Council of Ministers decided the readjustment of the date of birth in cases of those servants where this was not done by recording their date of birth to have occurred 13 days subsequent to the recorded date".

Indeed, counsel for the applicant based the main part of his argument on Article 122 of the Constitution which provides that "Public Service means any service under the Republic other than service in the army of the security forces of the Republic and includes service under the Cyprus Broadcasting Corporation, the Cyprus Inland Telecommunication Authority and any other Public corporate or unincorporate body created in the public interest....."

According to suggestion made by the learned counsel the provisions of Article 122 being constitutional provisions is the

paramount law and supercedes and prevails every and any other legal provision or regulation inconsistent with them.

Counsel in support of his grounds of law referred also to the *Electricity Development Law, Cap. 171*, especially to s.11 of this law, which as he alleged, has been enacted with the sole purpose of including the persons employed in the public service and the servants of the Electricity Authority.

Counsel further argued that as from the date of establishment of the Electricity Authority, by virtue of Cap. 171, the employees of the Electricity Authority are for all intents and purposes considered to be civil servants. In addition he pointed out the identical position which exists between the terms of employment of the employees of Electricity Authority and the civil servants.

On the other side, learned counsel for the respondents stressed that by virtue of the provisions of s.3 of Law 61/70, the conditions regulating retirement have always been and still are within the exclusive competence of the Electricity Authority of Cyprus and nobody could legislate or decide for the Electricity Authority.

In the light of the above and having in mind the arguments put before the Court I come back to the decision of the Council of Ministers and the meaning of the term "state servant" upon whom this decision is binding.

At first it must be stated in respect of the submissions made with reference to Article 122 of the Constitution and its consequences that a term which is used by the Constitution must not be taken or used as a technical term. The Constitution only drafts the general frames and a term gains its substantial meaning and uncovers itself by the special way it is used in the relevant law.

I must also say that I agree with the view supported by learned counsel for the respondents that although Article 122 of the Constitution undoubtedly includes the employees of Public Law corporations, later, with the enactment of Law 33/67, and the setting up in reality of another Public Service Commission, other than the one provided by the Constitution (see also

Yervant Bagdassarian v. The Electricity Authority of Cyprus and Another (1968) 3 C.L.R. p. 736 and *Ioannis Iosif v. Cyprus Telecommunications Authority*, (1970) 3 C.L.R. p. 225), in case of service, retirement and disciplinary control the term of civil servant acquired a narrower meaning. The Public Service Commission deals only with matters which concern the employees of the Government, whereas matters or conditions regulating the service and retirement of the servants of Public Corporations are, by virtue of s.3 of Law 61/70 within the exclusive competence of the statutory body itself.

The situation does not change even if we based the sections of Cap. 171 which have been cited by the learned counsel of the applicant, who cannot be isolated but must be construed with reference to the other provisions of the law and their development through the provisions of the Law 61/70.

It must be also noted the careful wording of the contents of the decision of Council of Ministers. It uses the term "state servant" which it could not be taken in the wider sense. The term "state servant" includes or presupposes the element of direct service relationship to the state which does not exist in cases of servants of Public Corporations.

In my view, therefore, it is obvious that the Council of Ministers could not have decided in respect of employees who were not under its competence. For the decision to be binding for the servants of Electricity Authority as well, it had to be approved by the authority, as it has done later. Unfortunately for the applicant this was made after his retirement and its case falls out of the time boundaries of this decision.

Therefore, the application is dismissed. There will be no order as to costs.

Application dismissed. No order as to costs.