1983 November 1

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, LORIS AND STYLIANIDES, JJ.]

GEORGHIOS APOSTOLIDES AND OTHERS,

Appellants.

v.

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

Respondents.

(*Revisional Jurisdiction Appeal No.* 295).

Constitutional Law—Equal before the Law and discrimination in Article 28 *of the Constitution—Do not convey the notion of exact arithmetical equality but safeguard only against arbitrary discrimination without excluding reasonable distinctions—Termination of Employment (Amendment) (No.* 4) *Law,* 1979 (*Law* 72/79) *giving right to redundancy payment to those whose employment was terminated between the* 14*th July,* 1974 *and before the* 18*th April,* 1977 *but who were re-employed thereafter—And not giving such a right to those who were not re-employed through having reached the age of* 65*—Differentiation made neither arbitrary nor unreasonable—No Article of the Constitution offended.*

The main issue in this appeal was whether the Termination of Employment (Amendment) (No. 4) Law, 1979 (Law 72/79) giving a right to redundancy payment to those whose employment was terminated between the 14th July, 1974 and before the 18th April, 1977, but who were re-employed thereafter, and not giving such a right to those who had their services terminated between the aforementioned dates and were not re-employed having reached the age of 65, is unconstitutional as being contrary to Article 28 of the Constitution.

Held, that the concept of equality in the context of Article 28 of our Constitution is a relative one and is designed to maintain equality among matters equal to themselves and that the expressions "equal before the Law" in Article 28.1 and

"discrimination" in Article 28.2 do not convey the notion of exact arithmentical equality which is safeguarded only against arbitrary discrimination without excluding reasonable distinctions; that it was only because the applicants have reached their pensionable age that they cannot be entitled to redundancy payment, and so the situation came into existence which is claimed to constitute a discrimination, but this is not a differentiation or discrimination made by the law which revived the Fund in order to compensate persons who are to be in employment, whose services are to be terminated after this Law came into force and whose age is not over 65 years; that, therefore, this differentiation is neither arbitrary nor unreasonable and no Article of the Constitution has been offended in any way; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Apostolides and Others v. *Republic* (1982) 3 C.L.R. 928.

Appeal.

Appeal against the judgment* of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 30th September, 1982 (Revisional Jurisdiction Case No. 383/81) whereby appellants' recourse against the constitutionality of the Termination of Employment (Amendment) Law, 1975 (Law 1/75) was dismissed.

A.S. Angelides, for the appellants.

D. Papadopoullou (*Mrs.*), for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU J.: The appellants are twelve of more than six-hundred workers dismissed by the Cyprus Mining Corporation, referred to usually as C.M.C., when as a result of the Turkish invasion and occupation of part of the territory of the Republic the said Corporation had to cease the operation of the mines at Skouriotissa, having for all intents and purposes become inaccessible to its staff.

On the 1st March 1975, C.M.C. was declared a stricken Enter-

* Reported in (1982) 3 L.L.R. 928.

prise under the provisions of the Termination of Employment (Temporary Restrictive Provisions) Law, 1974 (Law No. 50 of 1974). By being so declared it had the right to terminate the employment of its employees, which it did as from the 31st March 1975.

There followed negotiations between its management and representatives of the said employees and on the 21st May 1975, an agreement was reached which involved the payment of some compensation to each one of them. The employees, however, pursued thereafter their efforts towards the Ministry of Labour and Social Insurance for the payment to them of redundancy payment. In the meantime the Termination of Employment (Amendment) Law 1975 (Law No. 1 of 1975) was enacted. This Law was intended to be a temporary measure to meet the consequences of the invasion which necessitated the suspension of redundancy payment to the thousands of workers whose employment was terminated as a result of the tragic events of the summer of 1974. Its duration was successively extended up to the 18th April 1977 by Laws Nos. 67 of 1975, 17 of 1976, and 18 of 1977.

As it will appear hereinafter the applicants had submitted claims for payment out of the Redundancy Fund as far back as the time of the termination of their employment which claims obviously stood dismissed on account of the enactment of Law No. 1 of 1975 and the successive Laws that extended its force. The applicants, however, continued their efforts to all directions for a change of the said Law or a satisfaction of their claim for redundancy payment but unsuccessfully, when on the 13th July 1971, they addressed through their counsel to the Director-General of the Ministry of Labour and Social Insurance the following letter:

"1. I have been requested by a number of clients who appear in the attached Schedule 'A' to communicate with you in order to put forward the following and request their solution.

(a) All of them were employed in various departments of the Cyprus Mines Corporation.

(b) All were dismissed as redundant personnel after the Turkish invasion.

(c) All are since some time pensioners.

(d) On account of the particular nature of their profession most of them have remained, since their dismissal, continuously unemployed.

(e) Some of them died recently.

(f) All of them during their long service which ranges on the average to about 40 years, paid the sums provided by the law for the Fund of the Redundant Employees, as well as the Company contributed as an employer its corresponding contribution.

(g) Most of them are refugees.

2. In view of the aforesaid factors, we are of the opinion that the matter must be re-examined In its re-examination there must be taken into consideration the provisions of Articles 9, 25 and 29 of the Constitution and pay to the said entitled persons everything which they are entitled to; as the whole system and its spirit provided and provides, contribution for the purpose of insuring, as against future problems and/or demands of the person in whose favour the contribution or insurance is. When the problem arose the demand for the cover of the risk comes into existence, in the present case in the form of monetary compensation for their dismissal on account of redundancy or other consideration proportionate to the years of service of each one of them as provided by the Law by virtue of which the contributions were made by my said clients".

The said Director-General replied to the aforesaid letter by his letter dated 25th August 1981, putting right a number of allegations, both the factual and legal aspect of the case contained therein, as follows:

"

The Fund for Redundant Employees is financed by contributions which are wholly made by employers and the payment or not of contributions by one concrete employer has no relation to the right of the employee for payment on account of redundancy.

The redundancy payments for termination of employ-

ment which took place on or after the 15th July, 1974, were suspended in March 1975. The reason of the suspension was the inability of the Fund to meet its obligations. More specifically it was estimated then that the termination of employment of employees on account of redundancy because of the Turkish invasion were 50,000 out of which 20,000 would be entitled to redundancy payment. The amount which would be needed for payments on account of redundancy for the 20,000 was estimated between 6 to 7 million pounds, whereas the reserves of the Fund at the end of 1974 amounted to C£1,200,000.-.

In April 1977 the payments on account of redundancy were reinstated under different, however, terms and prerequisites. There were excluded the payments for terminations which took place between the 15th July, 1974 and the 17th July, 1977. In December 1979 the legislation for termination of employment was amended again. By virtue of Law No. 92 of 1979 since December 1979 the payments on account of redundancy are made under the same terms and prerequisites that were made before July 1974. There remains, however, the provision for the nonpayment on account of redundancy, if the employment was terminated between the 14th July 1974, and before the 18th April, 1977.

In view of the aforesaid provisions of the legislation your clients are not entitled to payment on account of redundancy".

The necessity for its enactment is clearly set out in the aforesaid letter of the Director-General, arising out of a situation in respect of which the Courts of the Republic have repeatedly taken judicial notice.

Upon receipt of this letter the applicants filed a recourse which was determined by a Judge of this Court and who dismissed it on the 30th September, 1982, for the grounds given in his elaborate judgment reported as *Apostolides & Others* v. *The Republic* (1982) 3 C.L.R. p. 928. As against this judgment the appellants filed the present appeal which has been heard by the Full Bench under the provisions of section 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No 33 of 1964).

The force of the argument of counsel for the appellants in this Court has been directed against the exclusion of the appellants and the people belonging to the same category as themselves, by the Termination of Employment (Amendment) (No. 4) Law, 1979 (Law No. 72 of 1979), from the revived operation of the Redundancy Fund, as such exclusion it was argued was an unreasonable and arbitrary discrimination and therefore unconstitutional, as offending Article 28 of the Constitution and also as violating Articles 9, 23 and 29 of the Constitution.

Section 2 of the said Law provides that no one whose employment was terminated between the 14th July 1974 and before the 18th April 1977 is entitled to payment on account of redundancy. It has been urged that this provision, read in conjunction with the remaining provisions of the said Law, gave a right to redundancy payment on the conditions set out therein to all those whose employment was terminated during the aforesaid period, but who were re-employed thereafter, whereas the appellants, who by virtue of having reached the age of 65 could not be eligible for redundancy payment and so they lose all the rights they had in the Redundancy Fund.

This was a new line pursued for the first time in this Court where it was conceded that the situation justified on the ground of necessity the suspension of the operation of the fund and no objection was taken any longer against the approach of the learned trial Judge reached on these issues. This was obviously done in order to bypass the big obstacle of the sub judice acts in question, being confirmatory in nature.

To all the arguments advanced our brief answer is that in so far as the case related to the claims of the applicants, as set out in their letter of the 13th July 1981, in respect of any right to redundancy payment that arose before the enactment of Law No. 92 of 1979 the subject decisions could not but be considered, as the learned trial Judge did, as confirmatory and therefore not capable of being the subject of a recourse under Article 146 of the Constitution and consequently that the recourse was out of time vis-a-vis the original executory acts, of which the subject ones were confirmatory. In so far, however, as they refer to claims of unconstitutionality of Law No.

92 of 1979 in the sense that the revival of the reactivation of the Fund for the redundant employees should have been made on the basis of equal treatment and should have given to all its previous beneficiaries the same rights, the decision which is contained in the letter of the 25th August 1981, and to that extent only could be considered as being an executory one. So we have decided in the circumstances to examine the constitutionality of the relevant sections of the said Law which have been questioned on the basis of the differentiation made between those, who, as put by counsel, had their services terminated between the aforementioned dates and were never re-employed and those, who were re-employed and were entitled to compensation from the fund by crediting them also with the prior to the said period years of service.

It has been time and again stated that the concept of equality in the context of Article 28 of our Constitution is a relative one and is designed to maintain equality among matters equal to themselves and that the expressions "equal before the Law" in Article 28.1 and "discrimination" in Article 28.2 do not convey the notion of exact arithmetical equality which is safeguarded only against arbitrary discrimination without excluding reasonable distinctions.

No doubt under the said Law no one is entitled to redundancy payment whose services were terminated during the aforesaid period and no payment was made in respect of such termination of his employment and no right was given to anyone to be paid conspensation in respect of the period for which the operation of the fund was suspended. In that respect no differentiation at all was made.

In fact what was provided by the Law was that those who were re-employed after the 18th April 1977, would be entitled to redundancy payment calculated in the manner provided by the law. It was only because the applicants have reached their pensionable age that they cannot be entitled to redundancy payment, and so the situation came into existence which is claimed to constitute a discrimination, but this is not a differentiation or discrimination made by the law which revived the Fund

in order to compensate persons who are to be in employment, whose services are to be terminated after this Law came into force and whose age is not over 65 years.

We find that this differentiation is neither arbitrary nor unreasonable and no Article of the Constitution has been offended in any way.

For these reasons the appeal is dismissed, but in the circumstances we make no order as to costs.

Appeal dismissed with no order as to costs.