

1985 July 11

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CHARALAMBOS SAVVA,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS,

*Respondent.*

(Case No. 382/82).

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*Pensions and Gratuities—Police Force—Requirement to resign of member of, following his disciplinary conviction—No absolute right to receive pension—Regulation 45 of the Police (Discipline) Regulations 1958-1981—Section 6(f) and 7 of the Pensions Law, Cap. 311—Meaning of expression “As provided in this Law” in section 6(f) of Cap. 311.\** 5

The applicant, a Police Constable, was found guilty of disciplinary charges brought against him and as a result he was required to resign from the Police Force. The applicant, then applied to the Council of Ministers for the grant to him of pension and other benefits under regulation 45 of the Police (Discipline) Regulations 1958-1977. The Council rejected the said application, but the applicant filed a recourse under Article 146 of the Constitution. On Appeal the decision of the Council of Ministers was annulled on the ground that the Rules of Natural Justice were infringed. (See the case of *Savva v. The Republic* (1981) 3 C.L.R. 599). 15

After the said annulment the applicant applied to the Council of Ministers for the grant to him of pension arising out of his service in the Police Force. 20

\* Sections 6(f) and 7 of Cap 311 and Regulation 45 are quoted at pp. 1600-1601 post.

The Council of Ministers, after considering a submission by the Minister of Interior, in which all facts relating to the personal circumstances of the applicant and his conduct while serving in the Police Force, decided to reject the applicant's said application. Hence this recourse.

*Held*, dismissing the recourse (1) That the Council of Ministers in cases such as the present one have a discretion in granting pensions and other benefits earned when the disciplinary punishment of "requirement to resign" from the Police Force is imposed. *Savva v. The Republic* (1979) 3 C.L.R. 250 (per Malachos J.) and *Constantinou v. The Republic* (1984) 3 C.L.R. 456 (per A. Loizou J.) in respect of the meaning of the expression "as provided in this Law" in section 6(f) of Cap. 311, the meaning of the expression "will not deprive the member of his rights to pensions" in regulation 45 of the Police (Discipline) Regulations 1958-1981 and the application of section 7 of Cap. 311 in cases where a member of the Force is required to resign as a punishment for a disciplinary offence under regulation 45, adopted.

(2) That in the circumstances of this case and having regard to all the material placed before the Council of Ministers when it was taking the sub judice decision it cannot be said that the Council exercised its discretion in a defective manner or has acted in any way in abuse or excess of power or contrary to the provisions of the Law. The Council was correct in reaching the sub judice decision.

*Application dismissed.*

30 Cases referred to:

*Savva v. The Republic* (1979) 3 C.L.R. 250 and on Appeal (1981) 3 C.L.R. 599;

*Constantinou v. The Republic* (1984) 3 C.L.R. 456.

**Recourse.**

35 Recourse against the decision of the respondents whereby applicant's claim for the payment to him of the retire-

ment benefits which he had earned on the basis of his actual service was dismissed.

*E. Efsthathiou*, for the applicant.

*M. Florentzos*, Senior Counsel of the Republic, for the respondent. 5

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. The applicant was enlisted in the Police Force on the 16th June, 1958 but was required to resign by a decision of the Deputy Chief of the Police because of disciplinary charges which had been brought against him and after he was found guilty by the Police Disciplinary Board that tried him. He then applied to the Council of Ministers for the grant to him of pension and other benefits earned during his service, under regulation 45 of the Police (Discipline) Regulations, 1958-1977, but his application was turned down. He then applied to this Court for the annulment of the decision of the Council of Ministers. His recourse was dismissed and he appealed against the judgment of the first instance Court. His appeal was successful (see the case of *Savva v. The Republic*, (1981) 3 C.L.R. 599) on the ground that the Council of Ministers, in considering his application, took into account and was substantially influenced by allegations made that he was an active member of the unlawful organization EOKA B. The Supreme Court further found that in view of the fact that the appellant was never given the opportunity to reply to these accusations there had occurred an infringement of the basic rules of natural justice. 10  
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On the 14th May, 1982, that is after the decision of the Supreme Court, the applicant, through his counsel, applied to the Council of Ministers for the grant to him of pension arising out of his service in the Police Force. 30

At their meeting of the 24th June, 1982, the Council of Ministers, after considering a submission by the Minister of Interior under No. 712/82, copy of which is an exhibit in the file of the recourse and in which all facts relating to the personal circumstances of the applicant and his conduct while serving in the Police Force are stated, by its 35

decision No. 21.907 decided to reject the application of the applicant. The decision of the Council of Ministers was communicated to the counsel for the applicant by letter signed on behalf of the Director-General of the Ministry of Interior, dated the 6th July, 1982.

The relevant decision of the Council of Ministers, which is appended to the opposition, reads as follows:

«36. Αναφορικῶς πρὸς τὴν Ἀπόφασιν ὑπ' Ἀριθμ. 16.832 τῆς 4ης Μαΐου, 1978, τὸ Συμβούλιον ἐμελέτησε νέαν αἴτησιν (μέσω τοῦ δικηγόρου κ. Εὐσταθίου Εὐσταθίου) τοῦ κ. Χ. Σάββα, πρώην Ἀστυφ. ὑπ' Ἀρ. 2659, εἰς τὸν ὁποῖον ἐπεβλήθη ἡ πειθαρχικὴ ποινὴ τῆς ἀπαιτήσεως πρὸς παραίτησιν, διὰ τὴν καταβολὴν εἰς αὐτόν, δυνάμει τοῦ Κανονισμοῦ 45 τῶν περὶ Ἀστυνομίας (Πειθαρχικῶν) Κανονισμῶν καὶ τοῦ ἄρθρου 7 τοῦ περὶ Συντάξεων Νόμου, Κεφ. 311 καὶ Νόμων 17 τοῦ 1960, 9 καὶ 18 τοῦ 1967, 51 καὶ 119 τοῦ 1968, 9 τοῦ 1971, 65 τοῦ 1973, 42 τοῦ 1976, 38 τοῦ 1979 καὶ 2 καὶ 39 τοῦ 1981, τῶν ὠφελημάτων ἀφυπηρητήσεως τὰ ὁποῖα οὗτος ἐκέρδισε θάσει τῆς πραγματικῆς αὐτοῦ ὑπηρεσίας καὶ ἀπεφάσισεν ὅπως ἢ ὡς ἄνω αἴτησις μὴ γίνῃ ἀποδεκτὴ.

Κατὰ τὴν μελέτην τῆς ὡς ἄνω ὑποθέσεως καὶ τὴν λήψιν τῆς Ἀποφάσεως, τὸ Συμβούλιον δὲν ἔλαβεν ὑπ' ὄψιν τὰ ἀποδιδόμενα εἰς τὸν πρώην Ἀστυφ. 2659 Χ. Σάββα ὅτι οὗτος ὑπῆρξεν ἐνεργὸν μέλος τῆς παρανόμου ὀργανώσεως ΕΟΚΑ Β' με πλουσίαν δράσιν κατὰ τῆς νομίμου Κυβερνήσεως καὶ ὅτι οὗτος συμμετέσχεν εἰς τὴν καταλήστευσιν τοῦ Προεδρικοῦ Μεγάρου εἰς Τρόοδος κατὰ τὸ πραξικόπημα.

36Α. Ὁ Ὑπουργὸς Ἐσωτερικῶν δὲν συμμετείχε εἰς τὴν λήψιν τῆς ὡς ἄνω Ἀποφάσεως».

(“With reference to Decision No. 16.832 of the 4th May, 1978, the Council studied a new application (through advocate Mr. Efstathios Efstathiou) by Mr. Ch. Savva ex Police Constable No. 2659 to whom there was imposed the disciplinary punishment of the requirement to resign, for the payment to him, by virtue of regulation 45 of the Police (Discipline) Regulations and 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, 42 of 1976, 38 of 1979, 2 and 39 of 1981, of the retirement benefits which he has earned on the basis of his actual service and, having taken into consideration all that has been presented during the meetings, as well as the record of the applicant, decided that his application should not be accepted.

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During the study of the above case and the taking of the decision, the Council did not take into consideration what was attributed to ex P. C. 2659 Ch. Savva, namely that 'he was an active member of the unlawful association EOKA B with rich action against the lawful Government and that during the coup he participated in robbing the Presidential Palace at Troodos'.

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36A. The Minister of Interior did not participate in the taking of the above decision.")

The applicant bases his claim for pension and other benefits on regulation 45 of the Police (Discipline) Regulations 1958-1981 and sections 6(f) and 7 of the Pensions Law, Cap. 311.

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Regulation 45, above, reads as follows:

«45. Εἰς περίπτωσιν καθ' ἣν ἡ δυνάμει τῶν παρόντων Κανονισμῶν ἐπιβληθεῖσα εἰς μέλος τῆς Δυνάμεως ποινὴ διὰ πειθαρχικὸν ἀδίκημα εἶναι ἡ τῆς ὑπὸ τοῦ ἐκδικάσαντος τὸ ἀδίκημα ἀπαιτήσεως πρὸς τὸ μέλος διὰ παραίτησιν, ἡ συνεισφορά τῆς τῆς αὐτῆς ποινῆς παραίτησιν τοῦ μέλους θὰ θεωρηθῆται, διὰ σκοποῦς συντάξεως, ὡς τερματισμὸς ὑπηρεσίας πρὸς τὸ δημόσιον συμφέρον καὶ δὲν θὰ ἀποστερῆ τὸ μέλος τοῦ δικαιώματός του διὰ σύνταξιν χορηγουμένην ἐπὶ τῆς ρηθείσης βάσεως τοῦ τερματισμοῦ ὑπηρεσίας πρὸς τὸ δημόσιον συμφέρον.»

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("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 consi-

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dered 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.”)

5 Section 6(f) and 7 of Cap. 311, above, read 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:

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

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7. Where an officer’s service is terminated by the Council of Ministers 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 Council of Ministers may, if it thinks fit, grant such pension, gratuity or other allowance as it 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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As a result of the above decision the appellant filed the present recourse by which he seeks its annulment and/or that what was omitted ought to be performed.

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The legal grounds on which the applicant bases his recourse are, in a nutshell, the following:

- (1) That the sub judice decision was taken in excess and/or abuse of power.
- (2) That the respondents acted in breach of the Pensions Law, Cap. 311.
- (3) That the respondents did not exercise their discre-

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tionary powers correctly and/or that their decision is not duly reasoned.

- (4) That had the respondents acted correctly and duly they would not have reached their decision.
- (5) That it is a vested right of every person to enjoy, after retirement for any reason, the benefits that arise from his long service. 5

The meaning and effect of regulation 45, above, has been decided by this Court in, inter alia, the cases of *Savva v. The Republic*, (1979) 3 C.L.R. 250 (on appeal (1981) 3 C.L.R. 599), and *Constantinou v. The Republic*, (1984) 3 C.L.R. 456. 10

In the *Savva* case, supra, Malachos J. held 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 punishment imposed under regulation 45 is considered for pension purposes as termination of employment in the public interest and so under section 6(f) of Cap. 311, the applicant is entitled to pension as provided by the said 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, but the right to such benefits and so the provisions of section 7 of the Law come into play, under which the Council of Ministers is vested with discretionary power to grant or refuse pension benefits. 15 20 25

In the *Constantinou* case, supra (at p. 461) A. Loizou J. had this to say on a similar issue as the one raised in the present recourse: 30

"The expression 'as provided in this Law' in para. (f) of section 6 of the Law cannot be confined to a particular provision of the Law but to the whole of it and in this respect section 7 which deals with the question of pension, gratuity or other allowance in cases of termination of services in the public interest is applicable also to cases under regulation 45 when the punishment imposed for a disciplinary offence is the one of requirement to resign. The expression 'will 35

not deprive the member of his rights to pension' appearing in regulation 45 does not take away the discretionary powers of the Council of Ministers that are given to it by section 7 as the said expression in this regulation is followed by the expression 'on the basis of termination of services in the public interest' and the word 'basis' in this expression means the powers—discretionary at that—that the Council of Ministers has under section 7 of the Law.

Any other interpretation would lead to absurdity in the sense that a person submitting his resignation might be deprived of his pension rights, whereas a person required to resign as a result of a disciplinary offence would be entitled as of right to the receipt of a pension."

I fully agree with the approach adopted in the judgments referred to above and I am, also, of the view that the Council of Ministers in cases such as the present one have a discretion in granting pensions and other benefits earned when the disciplinary punishment of "requirement to resign" from the Police Force is imposed.

In the circumstances of the present case and having regard to all the material placed before this Court, which, as it appears from the record of the recourse, has also been placed before the Council of Ministers when it was taking the sub judice decision, it cannot be said that the Council of Ministers exercised its discretion in a defective manner or had acted in any way in abuse or excess of powers or contrary to the provisions of the Law. On the contrary, the Council of Ministers was absolutely correct in reaching the decision to reject the request of the applicant for a pension and benefits arising out of the termination of his service.

In the result, the recourse is dismissed but in all circumstances surrounding this case I have decided not to order the applicant to pay the costs of the proceedings.

*Recourse dismissed.*

*No order as to costs.*