

1986 December 13

{MALACHTOS, J.}

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CHRYSOSTOMOS CHRISTODOULOU (OR TOOULI).

*Applicant,*

v.

1. THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS,
2. THE AUDITOR-GENERAL OF THE REPUBLIC.

*Respondents.*

(Case No. 336/74).

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*Administrative Law—Due inquiry—Conflicting material as regards a material fact—Gratuity depending on years of service—Affidavit by applicant's two fellow employees that he took up employment in 1932—Declaration by applicant made in 1954 at a time, when he had no interest to give a wrong date, that he was first employed on 30.8.47—Respondent Authority preferred to rely on such declaration—Discretion not wrongly exercised— HjiLouca v. The Republic (1966) 3 C.L.R. 354 and Constantinou v. The Republic (1966) 3 C.L.R. 793 distinguished.*

The applicant was a regular employee of the Public Works Department till the 31.12.73. In virtue of Regulation 18 (1) (e) of the Regulations governing the conditions of service of Government labourers the applicant was entitled to a gratuity equal to two weeks emoluments for each full year of service before the 14.7.60

The applicant claimed that he was continually employed by the Public Works Department from 1932 to 1948, when he was promoted to regular employee. In support of his aforesaid claim he forwarded to respondent 1 affidavits to that effect sworn by two of applicant's fellow workers. Ap-

5 plicant's said claim as regards the period 1932 till 30.8.47  
was turned down. Hence the present recourse. In reaching  
the sub judice decision respondents relied on a declaration  
dated 19.6.54 and signed by the applicant to the effect  
10 that he had been engaged as a temporary labourer on  
30.8.47 and was promoted to regular employee on 8.5.48.  
This declaration is a form, which a government employee  
as regular labourer was required to submit in duplicate  
for the Government (Regular Employees) Social Insurance  
15 Fund giving inter alia particulars as a contributor to the  
Fund of his service.

Counsel for the applicant complained of lack of due  
inquiry relating to the true facts and relied on the decision  
in *HjiLouca v. The Republic* (1966) 3 C.L.R. 854, where  
15 reference is made to the decision in *Constantinou v. The  
Republic* (1966) 3 C.L.R. 793.

*Held, dismissing the recourse:* (1) In the light of reg.  
18 of the aforesaid Regulations the only fact that the  
respondent authority had to ascertain was the date on  
20 which the applicant first obtained work as a Government  
labourer. On this issue the respondent authority had be-  
fore it the written declaration of 19.6.54 and the affidavit  
by applicant's two fellow workers.

(2) In exercising its discretion the Authority preferred  
25 to rely on the declaration of 1954, which was made at a  
time, when the applicant had no interest to give a wrong  
date.

(3) It follows that it cannot be said that the Authority's  
discretion was wrongly exercised or that the Authority  
30 laboured under a misconception of fact (*HjiLouca v. The  
Republic*, supra and *Constantinou v. The Republic*, supra  
*distinguished*) on the ground that in those cases the res-  
pondents were labouring under a misconception of fact  
and the personal files of the applicants were not such as  
35 to put the matter beyond doubt.

*Recourse dismissed.  
No order as to costs.*

Cases referred to:

*HjiLouca v. The Republic* (1966) 3 C.L.R. 854:

*Constantinou v. The Republic* (1966) 3 C.L.R. 793.

**Recourse.**

Recourse against the refusal of the respondents to re- 5  
cognise applicant's years of service in the Department of  
Public Works from 1932 - 1947.

A. *Ladas*, for the applicant.

R. *Gavrielides*, Senior Counsel of the Republic, for 10  
the respondents.

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. The appli-  
cant in this recourse claims a declaration of the Court that  
the decision of the Public Works Department dated 20th 15  
April, 1974, by which the said department refused to re-  
cognise to the applicant his years of service as from 1932  
to 1947, is null and void as taken in excess and/or abuse  
of power. The relevant facts of the case are as follows:

The applicant was a regular employee as a labourer of 20  
the P.W.D., till the 31st December, 1973, when he retired  
due to his age. According to the existing regulations  
governing the conditions of service of government labourers,  
exhibit 1, the applicant on his retirement was entitled to  
a gratuity for the years of his service before 1960. These 25  
regulations came into force on the 31st March, 1973.

On the 8th April, 1974, the applicant, through his ad-  
vocates, addressed to the respondent the following letter,  
exhibit 2:

"We have been instructed by our client Mr. Chryso- 30  
stomos Christodoulou or Ttooulis from Kaliana to  
bring to your knowledge the following:

1. As form 1932 to 1973 our client was employed  
by the P.W.D. as a labourer. Now, he is employed as  
daily paid labourer.

2. With regard to the years of service before 1960, for which he is entitled to receive a gratuity for each year of service, our client has obtained an affidavit sworn before the Registrar of the District Court of Nicosia, by his fellow workers Stavros Stavrinides and Charalambos Chloros, in that he was employed continuously by the P.W.D. from 1932 to 1948 when he was promoted to regular employee. The original of this affidavit is in your possession.

3. Therefore, our client is entitled to collect a gratuity for all the years of his service from 1932 till 1960 and for this reason we pray that the above mentioned affidavit be regarded as convincing evidence for the years of his service. Otherwise we pray that the decision of the P.W.D. for the years of service they intend to recognise be communicated to us soon, together with the reasons for that decision, because our client intends to have recourse to the Courts for the satisfaction of his claim."

The respondents replied by letter dated 20th April, 1974, exhibit 3, as follows:

"I refer to your letter dated the 8th April, 1974, on the subject of the gratuity of your client Mr. Chrysestomos Christodoulou of Kaliana, and inform you the following:

(a) Mr. Christodoulou did in fact present a sworn statement dated 11th December, 1965, signed by two other labourers and it is indicated that he was employed as from the 1st May, 1932 till the 8th May, 1948;

(b) on the basis of these elements I submitted the relevant documents for the payment of a gratuity for the period from 1st May, 1932 to 13th August, 1960.

(c) When the documents were checked by the Accountant-General of the Government, it was revealed that there existed documents signed by Mr. Christodoulou who stated on 19th June, 1954, that he was

engaged as a temporary labourer on 30th August, 1947 and was promoted to regular employee on 8th May, 1948;

(d) in view of the written declaration of Mr. Christodoulou I intend to give instructions for the preparation of a gratuity payment for the period 30th August, 1947 till 13th August, 1960." 5

By letter dated 27th April, 1974, exhibit 4, the applicant through his advocates, wrote to the respondent as follows: 10

"We have received your letter dated 20th April, 1974 and after having consulted further our client Mr. Chrysostomos Christodoulou of Kaliana, we have to point out the following:

(a) Our client does not remember whether he has signed the declaration of 1954 to which you refer, and, therefore, we request you to supply us with a copy of the said declaration: 15

(b) Our client further alleges that even if he did sign the above mentioned declaration, he did so without knowing either what he was signing or the legal consequences of that declaration, since he is illiterate, being almost incapable of writing his name: 20

(c) Since there are at least two fellow workers of our client, who are prepared to give evidence on oath before the Court that Mr. Christodoulou was employed together with them by the P.W.D. without interruption as from 1932, we believe that the declaration of 1954, even if made, has no substantial force as convincing evidence. 25 30

For these reasons we ask you to take notice that Mr. Christodoulou does not accept your decision not to pay to him gratuity for the years 1932 to 1947, and that he will have recourse to the Court, if you don't reconsider your decision." 35

There was some further correspondence between the

respondents and the advocates for the applicant and, finally, on the 4th July, 1974, the applicant filed the present recourse.

5 The declaration referred to in the letter of the respondents of the 8th April, 1954, has been produced and is exhibit 6 before the Court. This declaration is a form which a government employee as a regular labourer was required to submit in duplicate for the Government (Regular Employees) Social Insurance Fund, and give particulars as a contributor to the said Fund of his service and make a declaration as regards other members of his family. 10 It is clear that exhibit 6 was filled in by the then foreman of the applicant but the information contained therein was supplied by the applicant himself. The following are the particulars contained in exhibit 6: 15

“The Departmental Registration number of the applicant was 1401. His place of birth Kalia. date of birth 13.3.1908. Period of previous service without break in other government departments Nil. Date of first employment as casual, either in the P.W.D. or in any other government department. 30.8.1947, date of promotion to regular employee 8.5.1948, and married without children.” 20

The said exhibit 6 was signed by the applicant and by his foreman who testified that the form was filled in by him for regular employee No. 1401 (the applicant) and who having scrutinized it carefully, declared that its contents are true and correct. 25

The grounds of law on which the application is based, as stated therein, are: 30

1. That the decision of the respondent Authority complained of, was taken in ignorance and/or misconception of the real facts and, therefore, should be considered as null and void and of no legal effect; and
- 35 2. That the respondent Authority before taking the decision complained of did not inquire in order to find out the real facts of the case, as it was bound to do, putting

before it the whole existing evidence and giving the relevant weight to it.

Counsel for applicant argued that, in the first place, the administrative organ had to ascertain the true facts but they failed to do so. No proper inquiry was carried out in order to reach a duly reasoned decision. The necessity of strict compliance with this principle is greater when there is conflicting evidence, as in the present case. The Director failed to make the fullest possible inquiry in order to be in a position to exercise his functions and decide as to which version to accept.

Counsel for applicant relied on the case of *Hji Louca v. The Republic, through the Chairman of the Council of Reinstatement of Dismissed Civil Servants* (1966) 3 C.L.R. 854, where reference is made to an earlier case, that of *Ioannis Constantinou v. The Republic, through the Council for the Reinstatement of Dismissed Civil Servants* (1966) 3 C.L.R. 793. The applicant in the *Constantinou* case was a member of the Cyprus Police Force since 1926 and in August 1955 he applied for permission to retire having reached the age of 50 years. He put forward as the reasons for his wish to leave the police "Excessive fatigue" due to hardships during his long service. Eventually, the applicant was permitted to retire from the service under section 8(1) of the Pensions Law, then Cap. 288 now Cap. 311, with effect as from the 1st January, 1956. He received all retirement benefits that were normally due to him. In due course, the applicant applied to the respondent Council for reinstatement under the Dismissed Public Officers Reinstatement Law 1961. His application was refused.

It was the applicant's case that he was forced to apply in 1955 for permission to retire and his allegation was that he retired compulsorily within section 2(c) of the Law as he came under suspicion on the part of his British superiors that he was rendering assistance to the National Organization of Cypriot Fighters which was waging the Liberation Struggle and he was running the risk of being dismissed from service losing thus also his pension. So, acting on the advice of one of his Greek superiors, he decided to retire from service and applied accordingly.

The respondents did not accept that applicant's retirement took place as he alleged, but treated it as a purely voluntary retirement.

5 In annulling the said refusal, the Court held that the applicant decided to retire because of the very difficult situation in which he found himself due to his connection with the Liberation Struggle and that this was not a case of normal retirement and the respondents were labouring under a basic misconception of fact. They decided the applicant's claim out of and contrary to its correct context and divorced from its true background, as they failed to call before them the witnesses suggested by the applicant and so there was lack of proper inquiry on their part.

15 On the other hand, counsel for the respondents submitted that exhibit 6 amounted to sufficient evidence under regulation 18 (1) (e) of the Regulations governing the conditions of service of Government Labourers. This regulation reads as follows:

20 "18. (1). All permanent labourers who completed seven years continued service before the introduction of the Social Insurance Fund on the 14th July, 1960, and who continued to be employed by the Government, are entitled to a gratuity upon their retirement for their years of service before the coming into force of the Social Insurance Fund on 14th July, 1960, as follows:

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- (a) the gratuity shall be equal to two weeks emoluments for each full year of service...
  - (b)
  - 30 (c)
  - (d)
  - (e) where there are no elements regarding the previous temporary service of any Regular Labourer or the existing elements are insufficient, the Head of the Department asks the Labourer to adduce affidavits sworn by two persons certifying that the Labourer was em-
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ployed continuously during the period of time for which there are no elements in existence.”

In the present case the only fact to be ascertained by the respondent authority, in the light of regulation 18 of the Regulations Governing the Conditions of Service of Government Labourers was the date on which the applicant first obtained work as a government casual labourer. On this issue the respondent authority had before it the written declaration of the applicant, exhibit 6, where it was stated that he first obtained work as a government casual labourer on 30th August, 1947 and the affidavit sworn by his two fellow workers where it was stated that he first obtained work as a government casual labourer on 1st May, 1932 and in exercising its discretion preferred the statement made by the applicant himself which was made under circumstances and at a time when he had no interest to give a wrong date. It cannot, therefore, be said that the respondent authority wrongly exercised its discretionary power or that there was any misconception of fact on its part or did not carry out a proper inquiry. The cases of *Hji Louca* and *Constantinou* (supra) are clearly distinguishable from the present case. In the said cases the respondents were labouring under a misconception of facts and the personal files of the applicants were not such as to put the essential nature of the matter beyond doubt.

For the reasons stated above this recourse fails and it is hereby dismissed. There will be no order as to costs.

*Recourse dismissed.*  
*No order as to costs.*