1987 December 5

(PIKIS, J.)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

XENOPHON TSINONTAS,

Applicant,

v.

CYPRUS LAND DEVELOPMENT CORPORATION,

Respondent.

(Case No. 111/87).

Legitimate interest — Free and unreserved acceptance of an act — Deprives acceptor of legitimate interest to challenge it — Accepting terms of appointment, including the salary scale — Refusal to accept application for retrospective readjustment of salary — Applicant has no legitimte interest to challenge such refusal.

Executory act — Confirmatory act — Refusal to accept application for retrospective readjustment of salary, which applicant had accepted at the time of his appointment — In the absence of substantive re-examination of the matter the refusal is not justiciable.

Constitutional Law — Equality — Constitution, Art. 28 — Equal pay for equal work — The notion of equality does not exclude reasonable differentiations.

The applicant accepted unconditionally an offer for appointment to the post of Technical Assistant Grade B to the respondent Organization, setting out the terms and conditions of service, including his remuneration.

About a year later, the applicant sought the readjustment, retrospectively of his salary, on the ground that persons serving in a comparable position as himself and who were doing essentially the same work, were better remunerated than himself.

These employees had been appointed much earlier than the applicant at the formative period of the respondent on the same salary scale, but with the addition of 6 increments.

As applicant's application was turned down, the present recourse was filed.

Held, *dismissing the recourse* (1) By accepting the conditions of his appointment, the applicant forfeited any legitimate interest to seek the review of any aspect of that decision

(2) The application for readjustment did not lead to substantive re-examination of the matter in the sense that the respondents took into consideration facts unkown to them at the time the decision to appoint the applicant was taken It follows that the sub judice act is not justiciable, as it signifies adherence to the course of action, which led to applicant's appointment

(3) Assuming that the sub judice decision is justiciable, the recourse should be dismissed, because the notion of equality does not require the obliteration of differences in the remuneration of a class of public officers referable to the length of their service, the need for their services at the time of their appointment, as well as the circumstances of their appointment Public authority may reasonably make differentiations on that account, provided always that officers assigned similar duties are remunerated within the same salary scale

Recourse dismissed
No order as to costs

Cases referred to

Limassol Chemical Products Co v Republic (1978) 3 C L R 52,

Piens v The Republic (1983) 3 C L R 1054,

Xinan v The Republic, 3 R S C C 98

Recourse.

Recourse against the decision of the respondents whereby they rejected applicant's application for the readjustment of his salary scale.

G. Triantafyllides, for the applicant.

R Michaelides, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. Xenophon Tsinontas was appointed Technical Assistant Grade 'B' to the Cyprus Land Development Corporation (the respondents) on 1.9.1984. He was selected from among a number of candidates who applied for appointment following advertisement of the position. His appointment was preceded by an offer in writing (dated 13th August, 1984) setting forth the terms and conditions of his service

and the scale of his remuneration that was unconditionally accepted; whereupon he joined the permanent establishment of the respondents, albeit on probation for an initial period of two years.

More than a year later, on 19th August, 1985, he sought what in effect amounted to a variation of the scale of his remuneration, seeking the readjustment, retrospectively, of his salary by his emplacement on the sixth rung of his salary scale. His application for re-examination was founded on the premise that persons serving in a comparable position as himself and who were doing essentially the same work, were better remunerated than himself. Those employees were P. Mouzakis and H. Himonides who joined the respondent corporation before the applicant, on 1st March, 1983, and were appointed to the same position and same salary scale but with six increments added to their starting point of the salary scale.

The applicant's request was rejected for the reasons indicated in the letter of the respondents dated 13th February, 1987, wherein it was stated that after they had studied his request it could not be upheld for the following reasons:

(a) Unqualified acceptance of his appointment, and

(b) The explanation given to him, at the time when he had applied for appointment, by the Director-General that it would be impossible to assimilate his remuneration with that of his former colleagues at the Town Planning Department who had been appointed earlier at the formative period of the organization soon after its incorporation.

The applicant denied the allegation that the Director-General had apprised him from the beginning of their unwillingness to offer him more than the starting salary of the post or equate his remuneration with that of Mr. Mouzakis and Mr. Himonides. I drew the attention of counsel to the conflicting allegations affecting this factual aspect of this case and inquired whether they intended to elicit the matter by the adduction of oral evidence. They informed the Court that they regarded that course unnecessary as in their view elicitation of that fact would not alter the complexion of the issues calling for resolution in this case.

I entertain serious reservations, to begin, whether the act complained of, that is, the rejection of his claim for readjustment of

his salary is justiciable. The offer for appointment, including the conditions of his remuneration, were accepted by the applicant without reservation; hence he forfeited any legitimate interest to seek the review of any aspect of that decision. A right to judicial review would only accrue if his application of 19th October, 1985, led to a substantive re-examination of the issues, substantive in the sense that the respondents took into consideration facts unknown to them at the time the decision to appoint the applicant was taken. This does not appear to have happened. Nor were any facts unknown to the respondents at the time of appointment, brought to their notice or examined. By their decision of February 1987 they signified adherence to the course already plotted by the decision of 1st September, 1984*. Even if we were to suppose that the action complained of is justiciable, the outcome of the case would be no different; for the position of the applicant was distinguishable from that of his two colleagues in a number of respects and for that reason no duty was cast on the respondents under Art. 28 to equate their remuneration. The decision in *Jeny Xinari v. The Republic*** does salutarily establish that the notion of equality under Art. 28 encompasses equal pay for equal work in the public service. Broadly speaking the applicant was similarly remunerated as his colleagues in that like them he was emplaced on the salary scale applicable to Technical Assistants. The respondents were under no duty to offer him the increments they had added to the initial salary of his colleagues as they had been appointed before him, a fact in itself differentiating applicant's position from that of his colleagues; whereas the fact that his colleagues were appointed at the initial stages of the establishment and operation of the respondent authority may yet be another reason for distinguishing between them. The notion of equality does not require the obliteration of differences in the remuneration of a class of public officers referable to the length of their service, the need for their services at the time of their appointment, as well as the circumstances of their appointment. Public authority may reasonably make differentiations on that account, provided always that officers assigned similar duties are remunerated within the same salary scale.

For the reasons indicated above, the application is dismissed. Be it with a degree of reluctance, I shall make no order as to costs.

Recourse dismissed
No order as to costs.

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* *Limassol Chemical Products Co. v. Republic (1978) 3 C.L.R. 52; Pieris v. Republic (1983) 3 C.L.R. 1054.*
** *3 R.S.C.C. 98.*