

[ZEKIA, P., VASSILIADES, TRIANTAFYLIDES, MUNIR AND
JOSEPHIDES, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
CHARALAMBOS BOYIATZIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 212/62)

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*Constitutional Law and Administrative Law—Public Officers—
Article 192.1 and 7 (b) of the Constitution—Constitutional
safeguard of the rights and benefits of public servants in the
service of the former colony of Cyprus immediately prior to
the coming into operation of the Constitution (i.e. 16th Au-
gust, 1960)—By ensuring to them after that date the same
“ terms and conditions of service ” as were applicable to them
before that date—Article 192.1 and 7 (b) of the Constitution—
“ Terms and conditions of service ” in Article 192.1—Mean-
ing of, as defined in sub-paragraph (b) of paragraph 7 of the
same Article—Meaning of “ Remuneration or the like
benefits ” in sub-paragraph (b) of paragraph 7 (supra)—Those
expressions are wide enough to cover the “ education grants ”
to Government Officers under the Circular No. 1286 of the
6th December, 1955—Dr. P. Loizides and others and the
Republic (1961) 1 R.S.C.C. 107, affirmed and followed—
Therefore, the refusal of the Director of Personnel Depart-
ment, Ministry of Finance, dated the 25th May, 1962
to accede to the applicant’s request for such education
grant under the aforesaid circular, is null and void—It is im-
material that the reason given for such refusal was the fact
that the House of Representatives failed to pass a Supple-
mentary Appropriation Bill which only would have provided
funds for ‘ education grant ’ to public servants pursuant to
the decision of the Supreme Constitutional Court of the 31st
May, 1961, in the Loizides’ case (supra).*

*Administrative Law—Public Officers—Education grants—Entitled
to such grants in certain circumstances—Circular No. 1286
of the 6th December, 1955—Preserved by operation of Article
192.1 and 7 (b) of the Constitution—With the appropriate
adaptations to the Constitution.*

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Administrative Law—Public Officers—They are entitled to a written reply addressed to them personally to a written application by them to a Government Department or Ministry.

Constitutional Law—Respect due to the judgments of the courts—Observation by the Supreme Court with regard to the importance which must be attached to the satisfaction of a declaratory judgment such as the one given in the instant case, and the order for costs therein.

Paragraphs 1 and 7 of Article 192 of the Constitution provide :

“ 1. Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date.

7. For the purposes of this Article—

(a)

(b) ‘ terms and conditions of service ’ means, subject to the necessary adaptations under the provisions of this Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits.”

The applicant is a Bailiff and Process-Server, 1st Grade, attached to the District Court of Famagusta. having been appointed to that post on the 14th May, 1958. He is established in a permanent post. He has a son aged 24, unmarried, who has been studying Law in the University of Athens since August, 1959. On the 31st July, 1961, applicant addressed a letter to the Minister of Justice requesting for the payment of an education grant under the provisions of the above mentioned circular. On that date his son was nearly 21. On the 8th August, 1961, a reply was addressed to the applicant by the Director-General of the Ministry of Justice to the effect that the matter would be considered in due course by the Director of Personnel. On the 17th of September, 1962, the applicant sent a remin-

der to the Minister of Justice, and on the 18th September, 1962, a letter was addressed to the applicant by the Registrar, District Court, Famagusta, to which was attached a reply of the Director of Personnel Department, Ministry of Finance, dated the 15th May, 1962, stating that "as the House of Representatives, has not passed the Supplementary Appropriation Bill which would provide funds for education grants to public servants, it is regretted that it is not possible to accede to" the applicant's request.

In the Registrar's letter of the 18th September, 1962, it was stated that the reply from the Director of Personnel was received by him on the 21st May, 1962, but, as the applicant was ill in bed this reply was communicated orally to the applicant's son, a practising advocate in Famagusta, on the same day but it does not appear that at the time the latter was acting on applicant's behalf. The applicant, who was on sick leave at the material time, and who resumed his duties on the 1st October, 1962, stated in evidence at the presentation of this case that from the 1st May, until about the end of July, 1962, he was very seriously ill in bed suffering from heart and kidney trouble, and that he was informed of the Director's refusal for the first time on the 17th September, 1962, when he handed in his reminder of that date. This was not disputed by the respondent.

The main question which was argued before the court in this recourse was whether the case of *Dr. P. Loizides and others and The Republic (Council of Ministers)* (1961), 1 R.S.C.C. 107, was correctly decided. If it was, then undoubtedly the applicant would be entitled to receive education grant at the rate of £100 per annum from the school year 1960/61 onwards in respect of his son.

Counsel on behalf of the respondent invited the court to overrule *Loizides'* case (*supra*) on the ground that the "education grant" in question is not covered by the expression "remuneration" "...or other like benefits" in Article 192.7 (b) of the Constitution (*supra*). He submitted that on the *ejusdem generis* rule the expression "or other like benefits" refers expressly to "retirement pensions, gratuities" which immediately precede it and that the intention of Article 192.1 of the Constitution (*supra*) was not to guarantee all the rights and benefits of a public officer immediately preceding Independence Day (*viz.* 16th August, 1960).

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It was, further, argued on behalf of the respondent that the reply of the Director of the Personnel dated the 15th May, 1962 (*supra*) did not deny the applicant's right to an education grant but it simply stated that it was not possible to accede to his request as the House of Representatives had not passed the Supplementary Appropriation Bill which would have provided funds for education grants to public servants on the lines of the judgment of the Supreme Constitutional Court in *Loizides'* case (*supra*). This, it was contended, is not a "decision, act or omission" in the sense of paragraph 1 of Article 146 of the Constitution, on the part of the Director of Personnel.

Held, (1) we agree with the decision in the *Loizides'* case (*supra*) that the expressions "remuneration" and "or other like benefits" in Article 192.7 (b) are sufficiently wide to include education grants. The question whether the scheme could be applied modified to include countries other than Greece and Turkey is left open as it does not arise in the present case.

Case of *Dr. P. Loizides and others and The Republic (Council of Ministers)* (1961), 1 R.S.C.C. 107, *affirmed and followed*.

(2) *On whether the reply of the Director of Personnel, dated the 15th May, 1962, constitutes a "decision, act or omission" within the provisions of Article 146.1 of the Constitution :*

However one looks at this, the net result was that the applicant was not paid the education grant of £100 for the school year in question, to which he was entitled under the provisions of Article 192, paragraphs 1 and 7 (b), through the refusal of the Director of Personnel which is an act or decision but *not* an omission on the Director's part. It makes no difference whether the Members of the Executive failed (which they did not) in their duty to introduce a Supplementary Appropriation Bill to the House of Representatives or the Members of the House of Representatives, failed to pass such a Bill, which could have provided funds for education grants to public servants pursuant to the decision of the Supreme Constitutional Court in the *Loizides'* case dated the 31st May 1961 (*supra*).

(3) The applicant is entitled to a declaration that the decision of the respondent not to pay to him education

grant from the school year 1960/61 onwards in respect of his son is null and void and of no effect whatsoever.

*Decision of respondent
declared null and void.*

Declaration accordingly.

Cases referred to :

Dr. P. Loizides and others and the Republic (Council of Ministers) (1961), 1 R.S.C.C. 107 :

Per curiam : (1) When a public officer addresses a written application to a Government Department or Ministry, he is entitled to receive a written reply addressed to him personally. An oral communication through a son, even if that son may happen to be a practising advocate, cannot possibly be considered a proper reply to the applicant.

(2) We need hardly stress the importance which must be attached to the satisfaction of a declaratory judgment of this nature, and the order for costs therein.

Recourse.

Recourse against the refusal of the respondent to grant or to pay applicant education grant from the scholastic year 1960 onwards in respect of his son.

A. Triantafyllides with I. Boyiadjis, for applicant.

K. C. Talarides, Counsel of the Republic, for respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the court.

ZEKIA, P. : The judgment of the court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J. : The main question which was argued before us in this recourse was whether the case of *Dr. P. Loizides and others and The Republic (Council of Ministers)* (1961), 1 R.S.C.C., 107, was correctly decided. If it was, then undoubtedly the applicant would be entitled to receive education grant at the rate of £100 per annum from the school year 1960/61 onwards in respect of his son.

The *Loizides'* case, *inter alia*, decided that Article 192 of the Constitution was intended to safeguard the rights of those civil servants who were in the service of the for-

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mer Colony of Cyprus, immediately prior to the date of the coming into force of the Constitution, by ensuring to them the same "terms and conditions of service" as were applicable to them before that date (paragraphs 1 and 7 (b) of that Article); that the combined effect of the words "remuneration" and "other like benefits" in Article 192.7 (b) included education grants; and, finally, that in view of the Constitution and the London and Zurich Agreements, the "necessary adaptations" to be made in the particular case should be that the education grant would be payable to public officers towards the expense of educating their children in Greece or Turkey instead of the British Commonwealth.

The Supreme Constitutional Court, in deciding the above case, was of the opinion that the combined effect of the word "remuneration" and the expression "or other like benefits" is sufficiently wide to bring the grant of free return passages and education grants within the letter and spirit of the definition (*Loizides' case*, at page 110G).

The applicant based his claim for the payment to him of an education grant at the rate of £100 per annum on Government Circular No. 1286, dated the 6th December, 1955, addressed by the Establishment Secretary of the former Colony of Cyprus to all Heads of Departments, whereby a scheme was put into effect for the payment of financial grants to Government Officers towards the expense of educating their children in the British Commonwealth outside Cyprus.

Article 192, paragraphs 1 and 7 (b) of the Constitution, which are material for the purposes of this case, read as follows :

"1. Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date."

7. For the purposes of this Article—

(a)

(b) 'terms and conditions of service' means, subject to the necessary adaptations under the provisions of this Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits."

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Respondent's counsel invited this court to overrule the *Loizides'* case on the ground that the education grant claimed by the applicant is not covered by the expressions "remuneration" and "or other like benefits". He submitted that on the *ejusdem generis* rule the expression "or other like benefits" refers expressly to "retirement pensions, gratuities" which immediately precede it, and that the intention of Article 192.1 was not to guarantee all the rights and benefits of a public officer immediately preceding Independence Day. The expression "or other like benefits", he said, was intended to cover provident fund benefit only and no other benefit of a different kind. Finally, respondent's counsel submitted that unless a public officer was actually in receipt of the education grant on the date of the coming into operation of the Constitution, he was not entitled to such a grant subsequently.

We do not think that it could seriously be argued that the expressions "remuneration" and "or other like benefits" are not sufficiently wide to include, say, the cost of living allowance, which was payable before Independence Day. In interpreting the expression "terms and conditions of service" one has to look at the actual terms and conditions enjoyed by public officers prior to Independence and not to adhere literally to the words appearing in that definition. For instance, the expression "terms and conditions of service" includes also "removal from service". If one interprets literally these three words, surely "removal from service" as such is not a term or condition of service which was intended to be safeguarded in favour of a public officer under Article 192. In interpreting that expression ("removal from service") one has to bear in mind the principles underlying disciplinary procedure as envisaged in the Colonial Regulations (1956) (regulations 55 to 68), subject to the necessary adaptations under the provisions of the Constitution. Those regulations embody the rules of natural justice in disciplinary proceedings, that is to say, that the public officer is entitled—(a) to know the grounds upon which it is intended to dismiss him, and (b) to be given an adequate opportunity of making his defence.

Likewise in interpreting the expressions "remuneration" and "or other like benefits" one has to look at the Government General Orders and circulars then in force (*i.e.* the 15th August, 1960), as these included many of the terms and conditions of the public service. If we were to accept the submission of respondent's counsel that the latter expression refers only to provident fund and to no

other benefit, then this would mean that free medical treatment and dental treatment are no longer part of the terms and conditions of service of public officers, which could not be seriously maintained. Free medical treatment includes surgical operations, specialist examinations and medicines, and free treatment at Government's expense outside Cyprus in certain cases (see General Order III/5.1). It will thus be seen that free medical treatment is a substantial "benefit" for public officers amounting in some cases to hundreds of pounds in one year.

For these reasons we agree with the decision in the *Loizides'* case that the expressions "remuneration" and "or other like benefits" in Article 192.7 (b) are sufficiently wide to include education grants. The question whether the scheme could be applied modified to include countries other than Greece and Turkey is left open as it does not arise in the present case.

There remain two more points for consideration—

- (a) whether the recourse is out of time ; and
- (b) whether the reply of the Director of Personnel, dated the 15th May, 1962, constitutes an "omission" or a "decision" within the provisions of Article 146.1 of the Constitution.

As regards (a), it was contended on behalf of the respondent that his decision was communicated to the applicant by letter dated the 15th May, 1962, from the Director of Personnel, through the Director-General, Ministry of Justice and the President, District Court, Famagusta, and, as the present recourse was filed on the 21st September, 1962, it is out of time.

From the statement of facts in the earlier part of this judgment it appears that the substance of the Director's letter was communicated to the applicant's son orally on the 21st May, 1962, but the applicant in evidence denied that his son passed this communication on to him and stated that he first came to know of the Government's refusal on the 17th September, 1962. This was not disputed by the respondent and on this evidence we are satisfied that the recourse was filed in time.

We would, however, take this opportunity of expressing the view that when a public officer addresses a written application to a Government Department or Ministry, he is entitled to receive a written reply addressed to him

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personally. An oral communication through a son, even if that son may happen to be a practising advocate, cannot possibly be considered a proper reply to the applicant.

As regards (b), it was submitted on behalf of the respondent that the reply of the Director of Personnel, dated the 15th May, 1962, did not deny the applicant's right to an education grant but it simply stated that it was not possible to accede to his application as the House of Representatives had not passed the Supplementary Appropriation Bill which would provide funds for education grants to public servants. This, it was contended, was not a decision, act or omission on the part of the Director of Personnel, within the provisions of Article 146.1 of the Constitution. However, one looks at this, the net result was that the applicant was not paid the education grant of £100 for the school year in question to which he was entitled under the provisions of Article 192, paragraphs 1 and 7 (b), through the refusal of the Director of Personnel which is an act or decision but *not* an omission on the Director's part. It makes no difference whether the Members of the Executive failed (which they did not) in their duty to introduce a Supplementary Appropriation Bill to the House of Representatives, or the Members of the House of Representatives failed to pass such a Bill, which would have provided funds for education grants to public servants, pursuant to the decision of the Supreme Constitutional Court in the *Loizides'* case, dated the 31st May, 1961.

In the result, the applicant is entitled to a declaration that the decision of the respondent not to pay to him education grant from the school year 1960/61 onwards in respect of his son is null and void and of no effect whatsoever. The respondent is also adjudged to pay to the applicant the costs of these proceedings for one advocate. There will be declaration and an order for £35 costs accordingly.

We need hardly stress the importance which must be attached to the satisfaction of a declaratory judgment of this nature, and the order for costs therein.

Decision of respondent declared null and void and of no effect whatsoever. Order for costs as aforesaid.