[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHROSSO SOUNDIA,

Applicant,

and

1. THE TOWN SCHOOL COMMITTEE OF LARNACA
2. THE GREEK COMMUNAL CHAMBER, AND/OR
3. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondents.

(*Case No. 46/63*).

Secondary Education—School-teachers—Recourse against decision of respondent 1 regarding the basis of computation of applicant's gratuity under a Gratuities Scheme—Decision annulled as based on a wrong premise regarding the montly salary of applicant to be taken into account.

Pensions and gratuities—Secondary Education—School-teachers—Computation of gratuity payable to a school-teacher under Gratuity Scheme—Annulled as based on a wrong premise.

The applicant in the instant recourse complains against the decision of respondent 1 concerning the computation of the gratuity payable to her in respect of her services as a school teacher.

The main issue for consideration is whether or not applicant is entitled, under the relevant Gratuities Scheme, to have the monthly salary which she was receiving in the school-year 1960–1961—at the end of which she finally left the service of the Larnaca Commercial Lyceum in 1961—be taken as the basis of the computation of her gratuity : By the decision complained of the computation of the gratuity of applicant appears to have been made not on the basis of her monthly salary in the school-year 1960/1961, as aforesaid, but on the basis of her monthly salary during the school-year 1951/1952, in which she reached the age of 55 years.

The matter of the Gratuities in this connection is governed by Regulations 4 and 5 of the relevant Gratuities Scheme (Note: Regs. 4 and 5, appear in the judgment at p. 524 *post*).

It was argued on behalf of the respondents that, in any case, applicant's service after 1952, when she attained the age of 55 years, was temporary and not such as would bring applicant within the definition of " teacher " in reg. 2 of the Gratuities Scheme ; and, that, applicant, in fact, had ceased to serve as a " teacher ", in the sense of the scheme in question, when she attained in 1952 the age of 55 years and that, therefore, it is her monthly salary in the school-year 1951/1952 which should be deemed to be the proper basis for the computation of her gratuity.

It was further argued on behalf of respondent 1 that applicant was estopped from succeeding in this recourse on account of the fact that while still in service she received an amount of £575 out of the Gratuities Fund ; and it has been submitted that applicant, who was about 55 years old at the time, had opted to receive the gratuity due to her and she was as a result paid the said amount and she could not seek now a different computation of her gratuity.

Held, (1) It is clear that—as already stated in the Interim Decision in this Case*—applicant is not entitled to any gratuity in respect of her years of service after she became 55 years old. But from this does not, in my opinion necessarily follow that her monthly salary to be taken into account in computing her gratuity should also be the one she was receiving when she became 55 years old. On the contrary, it is clearly envisaged by the proviso to regulation 5 that a female teacher's service may be extended after she attains the age of 55 years, and under regulation 4 there can be really no doubt that the monthly salary to be taken into account in computing a teacher's gratuity is the salary which such teacher is " then receiving " on " retirement, resignation, dismissal, abolition of post or otherwise ceasing to be in the service " of the school authorities concerned ; thus, a female teacher whose service ceases subsequently to her 55th year is entitled to have the monthly salary she is " then receiving " be taken as the basis of the computation of her gratuity, even though she is not also entitled to gratuity in respect of service after her 55th year. In my view, therefore, the monthly salary of applicant which had to be taken into account for the purpose of computing her gratuity was the salary she was receiving when she left the service of the Lyceum at the end of the school-year 1960/1961.

*Reported in (1965) 3 C.L.R. 425.

(2) In the light of all the material before me, including the contents of the personal file of applicant—*exhibit* 22—I have no doubt that the reason why applicant was described on occasion as "temporary" is that she was being issued annually with a provisional teaching licence, because of her being a Greek subject, and that she was, nevertheless, a member of the permanent teaching staff, in the sense of regulation 2 of the Gratuities Scheme (exhibit 11) all along, before and after she became 55 years old, during the whole of her thirty-one years' continuous service in the Lyceum. It is significant, in this respect, that while in a return made to the Education Office for the *school-year* 1959/1960 (exhibit 14) applicant is described as "temporary" yet, respondent 1—the School Committee of Larnaca—issued to applicant on the 7th March, 1960, a certificate (*exhibit* 8(*b*)) stating that applicant had been serving since 1930 and including the *school-year* 1959/1960 as a regular schoolmistress—in other words as a member of the permanent teaching staff, no doubt.

(3) On the basis of the relevant material before me, including the evidence of applicant and of Mr. D. Koutoumanos, the then Headmaster of the Lyceum, who was, managing the Gratuities Fund at the time and who paid the said amount to applicant, I have no doubt that the amount of £525 was paid to applicant, at the time, by way of an interim facility, as against the total amount of gratuity which she would stand to receive at the end of her services, and that, therefore, she is not estopped, because of such payment, from pursuing her present claim in this recourse.

(4) On the basis of the foregoing, I find that the applicant is entitled to succeed in this recourse; it is clear that the *sub judice* decision of respondent 1, as communicated to applicant by *exhibit* 5, was based on a wrong premise regarding the monthly salary of applicant to be taken into account—(her monthly salary in the school-year 1951/1952 was relied upon instead of her monthly salary in the school-year 1960/1961)—and, therefore, it should be declared to be *null and void* and of no effect whatsoever; the whole matter should now be reconsidered in the light of this Judgment.

(5) This recourse suceeds as against respondent 1 only, because it is the decision of respondent 1 which led to the erroneous application of applicant's gratuity.

Decision complained of annulled.

Recourse.

Recourse against the decision of the Respondents concerning to computation of the gratuity payable to Applicant.

L. Clerides, for the Applicant.

S. Demetriou, for Respondent 1.

G. Tornaritis, for Respondents 2 and 3.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: By an Interim Decision given earlier in these proceedings* a number of issues arising herein have been disposed of, and what has now, in effect, to be decided is whether or not the decision of Respondent 1 regarding Applicant's gratuity has been based on a proper computation of such gratuity.

In this respect, the main issue to be resolved is whether or not Applicant is entitled, under the relevant Gratuities Scheme (*exhibit* 11), to have the monthly salary, which she was receiving in the school-year 1960/1961—at the end of which she finally left the service of the Larnaca Commercial Lyceum, in 1961—be taken as the basis of the computation of her gratuity.

The decision of Respondent 1 which is being challenged by this recourse is set out in *exhibit* 5, dated 26th February, 1963; by such decision the computation of the gratuity of Applicant appears to have been made not on the basis of her monthly salary in the school-year 1960/1961, as aforesaid, but on the basis of her monthly salary during the school-year 1951/1952, in which she reached the age of 55 years.

*Interim Decision reported in (1965) 3 C.L.R. 425.

Regulations 4 and 5 of the Gratuities Scheme (*exhibit* 11) read as follows:-

> "4. On retirement, resignation, dismissal, abolition of post, or otherwise ceasing to be in the service of the Governing Body every teacher shall, on the certificate of the Governing Body that such teacher has discharged the duties of his/her office with efficiency, fidelity and zeal, receive a gratuity of one month's salary at the rate of the salary such teacher is then receiving for every year of service after the 1st day of September, 1939, and of half a month's salary for every year of service prior to 1st September, 1939.
>
> "5. No male teacher who attains the age of 60 and no female teacher who attains the age of 55 or gets married shall receive any gratuity in respect of service after the year in which he or she attains the age of 60 or 55 respectively or in which, in the case of a female teacher, she gets married.
>
> Provided that a teacher who is allowed to continue to serve after the age of 60 in the case of males or 55 in the case of female teachers or after getting married in the case of female teachers may if he or she so desires be granted his or her gratuity at the age of 60 or 55 or on getting married as the case may be".

It is clear that—as already stated in the Interim Decision in this Case—Applicant is not entitled to any gratuity in respect of her years of service after she became 55 years old. But from this does not, in my opinion, necessarily follow that her monthly salary to be taken into account in computing her gratuity should also be the one she was receiving when she became 55 years old. On the contrary, it is clearly envisaged by the proviso to regulation 5 that a female teacher's service may be extended after she attains the age of 55 years, and under regulation 4 there can be really no doubt that the monthly salary to be taken into account in computing a teacher's gratuity is the salary which such teacher is "then receiving" on "retirement, resignation, dismissal, abolition of post or otherwise ceasing to be in the service" of the school authorities concerned; thus, a female teacher whose service ceases subsequently to her 55th year is entitled to have the monthly salary she is "then receiving" be taken as the basis of the computation of her gratuity, even though she is not

also entitled to gratuity in respect of service after her 55th year. In my view, therefore, the monthly salary of Applicant which had to be taken into account for the purpose of computing her gratuity was the salary she was receiving when she left the service of the Lyceum at the end of the school-year 1960/1961.

I am of the opinion that the view taken above, as to Applicant's monthly salary to be taken into account for the purposes of her gratuity, is not only the one dictated by the context of the provisions of the Gratuities Scheme, but it is, also, in particular, the only one which is reasonably compatible with the aforequoted proviso to regulation 5 of such Scheme; whereas the contrary view, as agrued by counsel for Respondent 1, would render such proviso practically meaningless, as explained hereinafter:

A female teacher, such as Applicant, is, in any case, not entitled to any gratuity in respect of years of service after the 55th year of her age; so, if her gratuity is to be computed on the basis of her monthly salary during the school-year in which she attains the 55th year of her age—even though she may be allowed to continue serving after becoming 55 years old—I really fail to see why it has not been provided by regulations 4 and 5 that her gratuity is payable to such a teacher, in any case, on becoming 55 years old, and only an option was given, for the purpose, under the proviso to regulation 5.

What would be there to opt about? No length of service after the age of 55 years would increase by even one pound the amount of gratuity due to such a teacher, because even if she would eventually come to receive a monthly salary higher than the one she was receiving when she reached the age of 55 years, such increase in her emoluments would not be reflected in the amount of her gratuity. So there would be nothing to gain by not receiving her gratuity on attaining her 55th year, and there would be everything to lose, by way of being deprived, while serving after such age, of the opportunity to utilize the amount of her gratuity, which carries no interest so long as it is in the hands of the gratuity-paying authority.

On the contrary, if the monthly salary to be taken into account for the purpose of computing a female teacher's

gratuity, such as Applicant's, is—as I have found it to be—the salary received by her at the time she ceases to be in the service of the particular school concerned, even if this event occurs after the 55th year of her age, then the option given under the proviso to regulation 5 has a meaning and a purpose, because there might be cases in which it is to the interest of such a teacher not to claim to receive her gratuity on attaining her 55th year—and while she continues to serve thereafter—in order that she may benefit by having the eventual amount of her gratuity augmented through any increase in her monthly salary by the time she finally retires; on the other hand, there might be cases in which such a female teacher would opt to receive her gratuity on becoming 55 years old, even if her service was to continue thereafter, as if e.g. on attaining the said age she had also reached the top of the relevant salary scale, and she could not anticipate any increase in the amount of her gratuity through any increased monthly salary in furure.

An attempt has been made to argue in these proceedings that, in any case, Applicant's service after 1952, when she attained the age of 55 years, was "temporary" and not such as would bring Applicant within the definition of "teacher" in regulation 2 of the Gratuities Scheme, *exhibit* 11—(so as to entitle Applicant to be deemed to have ceased to serve as a "teacher", in the sense of the said Scheme, in the school-year 1960/1961, and, thus, entitle her to have her monthly salary in respect of that year taken into account for gratuity purposes); and, that, Applicant, in fact had ceased to serve as a "teacher", in the sense of the Scheme in question, when she attained in 1952 the age of 55 years and that, therefore, it is her monthly salary in the school-year 1951/1952 which should be deemed to be the proper basis for the computation of her gratuity.

It is correct that the definition of "teacher" in regulation 2 of *exhibit* 11, envisages employment as part of the "permanent teaching staff".

In this respect, the Secretary of Respondent 1, Mr. Photiou, has given evidence and described Applicant's employment after the age of 55 as "temporary" and he has referred the Court to an entry (*exhibit* 13) in the minutes-book, or journal, of Respondent 1 where Applicant's appointment in the school-year 1955/1956 is described as "temporary".

In the light of all the material before me, including the contents of the personal file of Applicant—*exhibit* 22—I have no doubt that the reason why Applicant was described on occasion as "temporary" is that she was being issued annually with a provisional teaching licence, because of her being a Greek subject, and that she was, nevertheless, a member of the permanent teaching staff, in the sense of regulation 2 of the Gratuities Scheme (*exhibit* 11) all along, before and after she became 55 years old, during the whole of her thirty-one years' continuous service in the Lyceum. It is significant, in this respect, that while in a return made to the Education Office for the *school-year* 1959/1960 (*exhibit* 14) Applicant is described as "temporary" yet, Respondent 1 —the School Committee of Larnaca—issued to Applicant on the 7th March, 1960, a certificate (*exhibit* 8(b)) stating that Applicant had been serving since 1930 and including the *school-year* 1959/1960 as a regular school-mistress—in other words as a member of the permanent teaching staff, no doubt.

Another matter which was raised as estopping Applicant from succeeding in this recourse is the fact that Applicant while still in service received an amount of £525 out of the Gratuities Fund; it has been argued that Applicant, who was about 55 years old at the time, had opted to receive the gratuity due to her and she was as a result paid the said amount and she could not seek now a different computation of her gratuity.

On the basis of the relevant material before me, including the evidence of Applicant and of Mr. D. Koutoumanos, the then Headmaster of the Lyceum, who was managing the Gratuities Fund at the time and who paid the said amount to Applicant, I have no doubt that the amount of £525 was paid to Applicant, at the time, by way of an interim facility, as against the total amount of gratuity which she would stand to receive at the end of her services, and that, therefore, she is not estopped, because of such payment, from pursuing her present claim in this recourse.

On the basis of the foregoing, I find that the Applicant is entitled to succeed in this recourse; it is clear that the sub judice decision of Respondent 1, as communicated to Applicant by *exhibit* 5, was based on a wrong premise regarding the monthly salary of Applicant to be taken into account

—(her monthly salary in the school-year 1951/1952 was relied upon instead of her monthly salary in the school-year 1960/1961)—and, therefore, it should be declared to be null and void and of no effect whatsoever; the whole matter should now be reconsidered in the light of this Judgment.

This recourse succeeds as against Respondent 1 only, because it is the decision of Respondent 1 which led to the erroneous computation of Applicant's gratuity set out in *exhibit* 5. After *exhibit* 5 it does not appear that Respondents 2 or 3 have reached any executory decision in the matter of Applicant's gratuity. The letter written by the Director of the Greek Education Office on the 5th October, 1961, (*exhibit* 7)—one and a half year prior to *exhibit* 5—is not in my opinion an executory decision on the subject; it is only an explanation as to why the Director could not assist in the matter; and it does not constitute an omission, either. In the circumstances this recourse is dismissed as against Respondents 2 and 3.

The issue which was argued in these proceedings—mainly between Respondents—as to which of them is the one liable to meet the claim of Applicant, from the financial point of view, does not have to be decided in this Judgment, once by this Judgment it has been found that the whole matter of the computation of Applicant's gratuity has to be reconsidered. Once such reconsideration takes place then the question may possibly arise as to which of the Respondents will have to pay out to Applicant whatever is due to her; but until then such issue remains open and it is to be trusted that the appropriate authorities will see that Applicant does receive whatever is due to her in respect of public service, irrespective of any financial arrangements between them.

Nor does the Court in this Case has to go into any arithmetical calculations regarding the computation of Applicant's gratuity. This is something to be done administratively, in the first instance, when the matter is reconsidered.

It is correct that on some of the issues which have not been decided in this Judgment evidence was received and arguments were heard; this was done *ex abundante cautela* in case it would appear that any such issue had to be determined for the purpose of adjudicating on this Case; but once the conclusion already stated in this Judgment has been reached,

about the outcome of this recourse, it is neither necessary nor proper to decide on such issues.

Regarding costs I have decided that, as Respondent 2 (which became later "Respondents 2 and 3") was brought into these proceedings on the insistence of Respondent 1, there should be no order as to costs against Applicant in favour of Respondents 2 and 3; nor should there be an order as to costs against Respondent 1, in respect of the costs of Respondents 2 and 3, because I think that it was proper and necessary to have joined Respondent 2 as a party to these proceedings, in the circumstances, even though in the end this recourse has been dismissed as against Respondents 2 and 3.

Regarding the costs of Applicant 1 direct that they should be borne to the extent of £30 by Respondent 1.

Decision complained of annulled.

Order as to costs as aforesaid.