

1966
May 24,
June 30

[ZEKIA, P., VASSILIADES, MUNIR, JOSEPHIDES, J.J.]

PANTELIS SKOURIDES,

Appellant,

PANTELIS
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and

and

1. THE REPUBLIC
OF CYPRUS,
THROUGH
THE MINISTER
OF FINANCE
2. THE GREEK
COMMUNAL
CHAMBER
THROUGH THE
OFFICE OF GREEK
EDUCATION
AND/OR
3. THE REPUBLIC
OF CYPRUS,
THROUGH THE
ATTORNEY-
GENERAL
AS SUCCESSOR
TO THE GREEK
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1. THE REPUBLIC OF CYPRUS. THROUGH THE
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2. THE GREEK COMMUNAL CHAMBER, THROUGH
THE OFFICE OF GREEK EDUCATION AND/OR
3. THE REPUBLIC OF CYPRUS, THROUGH THE
ATTORNEY-GENERAL, AS SUCCESSOR TO
THE GREEK COMMUNAL CHAMBER,

Respondents.

(Revisional Jurisdiction Appeal No. 12).

Elementary Education—Schoolteachers—Retirement on attaining the prescribed age—Pension—Gratuity—Reduced pension and gratuity—Election—Decision of the respondents to pay the appellant-applicant on his retirement at the age of 60, in accordance with his election made previously, a gratuity only instead of pension or reduced pension and gratuity, upheld—Trial Court's finding to the effect that the Authorities did not act in a manner which has misled the appellant-applicant as to his rights, upheld on appeal by the Supreme Court—But even if the appellant-applicant was ever misled by the Authorities, this did not make any difference to him—Considering that what he wanted to get viz. a reduced pension and gratuity, was not possible under the Law in the circumstances of this case—The Elementary Education Laws, 1933 to 1937, (sections 43 and 44 of Law 18 of 1933)—The Elementary Education (Amendment) Law, 1944, the Elementary Education (Amendment) Law, 1947, sections 2 (A) (B) (C) and (D) and 3 (2)—The Elementary Education (Amendment) Law, 1954 (Law 12 of 1954) section 15, and the Elementary Education Law, Cap. 166, sections 53 (1) (c) and 63 (2).

Pension—Gratuity—Reduced pension and gratuity—Elementary Education—Retired Schoolteachers—See under Elementary Education above.

Schoolteachers—Pension—Gratuity etc.—See under Elementary Education above.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Triantafyllides, J.) given on the 31st December, 1965, (Revisional Jurisdiction Case No. 214/63) whereby a recourse against the decision of the Respondents to pay Applicant on retirement a gratuity only, instead of a pension or a reduced pension and gratuity was dismissed.

L. Clerides for the Appellant.

L. Loukaides, Counsel of the Republic, for the Respondents.

Cur. adv. vult.

VASSILIADES, J.: The Judgment of the Court will be delivered by Josephides, J. I agree with the Judgment and I desire to state that we have been authorised by our brother Judges, Zekia, P. and Munir, J., to say that they concur.

JOSEPHIDES, J.: The Appellant (Applicant), who is a retired schoolteacher, filed a recourse against the decision of the Respondents to pay him on retirement a gratuity only, instead of a pension or a reduced pension and gratuity. He served as an elementary schoolteacher from September 1924 to August 1963 when he was retired at the age of 60.

The learned Judge at first instance dismissed the recourse* and the Applicant now appeals against that decision on two grounds, namely:—

“1. The Honourable Court erred in arriving at the conclusion that it had no jurisdiction in accepting the relief sought for the reason that it referred to an act done prior to the establishment of the Republic.

“2. The Honourable Court erred in arriving at the conclusion that the appellant was not entitled to the relief sought by him for the reason that appellant in 1956 had exercised the right of option for pension or gratuity on the basis of a letter from the Director of Education dated the 23rd May, 1956 (*Exhibit 3*), which was misleading being wrong in law and moreover not containing the full legal rights of appellant”.

The pension rights of the Appellant until the enactment of the Elementary Education (Amendment) Law, 1944, were governed by the provisions of the Elementary Education

*Note: Judgment reported in (1965) 3 C.L.R. 715.

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Laws, 1933 to 1937, and he was due to retire at the age of 60, when he would be entitled to receive a gratuity only on retirement (sections 43 and 44 of Law 18 of 1933).

The agreed facts in this case are as follows:

On the 21st July, 1944, the Appellant opted to receive a gratuity instead of a pension on his retirement. This option was exercised under the provisions of the Elementary Education (Amendment) Law 1944. On the 15th September, 1947, the Appellant, under the provisions of section 3(2) of the Elementary Education (Amendment) Law, 1947, opted not to come under the provisions of section 2(A)(B)(C) and (D) of the said Law. The net result of these options, exercised by the Appellant, was that he elected to retire at the age of 60 and receive a gratuity only, instead of retiring at the age of 55 and receiving a pension or reduced pension and gratuity.

In February, 1954, Law 12 of 1954 was enacted which, inter alia, gave the opportunity to schoolteachers to revoke their previous election at any time before they attained the age of 55 years with the permission of the Governor. This provision is now included in the proviso to section 63(2) of the Elementary Education Law, Cap. 166. Following the enactment of that Law (No. 12 of 1954), the Director of Education on the 5th October, 1955, addressed a circular letter to all schoolteachers, who had elected to retain the right of gratuity on retirement, informing them that the Governor was then prepared to consider personal applications of schoolteachers, who were interested in the review of their previous election, by which they were claiming gratuity on retirement; and inviting them, if they wished their personal case to be considered, to submit certain particulars to him regarding date of birth, retirement, etc., and a short history of their case. The appellant by his letter dated the 21st October, 1955, gave the particulars required and stated that the reasons for which he opted for gratuity were "the different conditions of salary-pension and of life in general". He concluded his request for review as follows: "I hope that H.E. the Governor will be kind in approving the granting of reduced pension and gratuity to me, and that the year of my retirement be considered as the 60th, because until then my children will be just finishing their studies and my family obligations will diminish".

By his letter dated the 12th April, 1956, the Acting Director of Education informed the Appellant that if he was transferred to the pensionable staff he would come under Part V of the Elementary Education Law, and that he would, therefore, have to retire at the age of 55 and not 60; and the Acting Director concluded as follows: "Please let me know immediately whether on consideration of this point you still wish to apply for transfer to the pensionable staff".

The Appellant did not reply to that letter and the Acting Director of Education sent him a reminder on the 8th May, 1956, quoting the substance of his previous letter and requesting him to send in an early reply.

In reply to that letter the Appellant wrote his letter of the 14th May, 1956 in which he stated "I have the honour to state, as in my previous letter to you, that due to my family obligations, I elect to retire on the 60th year of my age". He went on to request, however, that in addition to being allowed to retire at the age of 60 he should be granted a pension and gratuity, and he concluded his letter as follows: "In the event of a decision to the contrary I wish to repeat that I elect to retire at the age of 60 reserving my rights if the Law is amended in the future". To this letter of the Appellant the office of the Director of Education sent a reply, quoted below, which is the letter complained of by the Appellant as having misled him to opt to retire with a gratuity only at the age of 60:

"23.5.56

"I have to refer to your letter of 14th May, 1956 and to inform you that you cannot opt to retire at the age of 60 with a pension or reduced pension and gratuity, nor can you delay your option until the age of 55.

2. You must, therefore *now* inform me *clearly* whether you wish—

- (a) to retire at the age of 60 and receive gratuity only; or
- (b) to retire at the age of 55 and receive pension; or
- (c) to retire at the age of 55 and receive reduced pension and gratuity.

(Sgd) O. D. Elliott,
for the Acting Director of Education".

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For convenience we shall refer to this letter as "Elliott's letter".

The Appellant's reply to the above letter is undated but was received in the Education Office on the 29th May, 1956, and it reads as follows:

"In reference to your letter of 23.5.56 I have the honour to inform you again that—since my option to retire at the age of 60 with reduced pension and gratuity is not accepted—I wish to retire at the age of 60 with gratuity".

When the Appellant was approaching the age of retirement, in reply to an enquiry made by him, he was informed by the Director of the Office of Education, on the 20th August, 1963, that on the basis of his previous elections he was entitled to gratuity only on retirement.

Finally, on the 4th October, 1963, the Minister of Finance, by command of the Council of Ministers, approved on the basis of a minute of the Director of Personnel (who referred to the previous elections made by the Appellant) that Appellant be granted a gratuity only.

This concludes the statement of facts in this case.

We shall first deal with the second ground of appeal.

The parties are agreed that the law applicable to the Appellant at the time when Elliott's letter was written in 1956, is that which is now contained in the first proviso to section 63(2) of the Elementary Education Law, Cap. 166, which reads as follows:

"63.(1)

"(2) This Part of this Law as enacted in the Elementary Education (Amendment) Law, 1944, as amended by the Elementary Education (Amendment) Law, 1947 shall be deemed to have commenced on the 1st day of January, 1945, and shall apply to—

- (a) every teacher whose name was on the Permanent Staff Register on that date and who has not made an election under section 49A of the Elementary Education Law as enacted in section 23 of the Elementary Education (Amendment) Law, 1944;

(b) every teacher whose name was on the Permanent Staff Register on that date and continued to be on that Register on the 3rd day of July, 1947 and who has made an election under section 49A of the Elementary Education Law as enacted in section 23 of the Elementary Education (Amendment) Law, 1944;

“Provided that this Part of this Law as amended by the Elementary Education (Amendment) Law 1947 shall not apply to any teacher who has made an election under and in accordance with the provisions of subsection (2) of section 3 of the Elementary Education (Amendment) Law, 1947, unless he is permitted by the Governor to revoke such election at any time before he attains the age of fifty-five years, and all matters relating to the pension or gratuity and the age of retirement of any such teacher shall be regulated and determined as if the Elementary Education Laws, 1933 to 1944, had not been amended by the Elementary Education (Amendment) Law 1947”.

The main argument of Appellant's counsel before us, as well as before the trial Judge, was that Elliott's letter of 1956, which caused the final election of the Appellant in the matter, was misleading in that it did not present to him the correct legal position regarding his rights and that, therefore, the Appellant was misled thereby to elect to retire with a gratuity only at the age of 60; that is to say, he did not apply to the Governor under the provisions of the Elementary Education Law (as amended by section 15 of Law 12 of 1954, now incorporated in the first proviso to section 63(2) of Cap. 166), to permit him to revoke his election to retire at the age of 60 with a gratuity only. This he could have done “at any time before he attains the age of fifty-five years”. In May 1956, when Elliott's letter was written, the Appellant was 53 years of age.

The learned trial Judge in rejecting the Appellant's contention was of the view that by the circular of the 5th October, 1955, the Appellant was invited to take the opportunity of revoking his previous elections and that the authorities appear to have responded to his reaction in a manner fully within the ambit laid down in the legislation in force and the proper limits of their discretion. This, the Judge stated, was quite obvious on the face of the correspondence exchanged at the time, the net result of which was that it was not possible for Appellant to retire as pensionable at the age of 60 instead

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of at the age of 55. The learned Judge then went on to state:

“Counsel for Applicant has complained also that it was not pointed out to Applicant that he could opt to retire with pension and gratuity at the age of 55 and that there was the possibility of applying for an extension of service after the age of 55 under the provision which is now section 53 of Cap. 166. This is quite so, but I do not think that the authorities had a duty at the time to point out to Applicant his legal rights concerning extension of service. It was a matter legally unconnected with the question of his option whether to remain a person entitled to gratuity or to be transferred to the pensionable staff. Regarding the possibility for an extension, Applicant was expected to know the legislation governing the matter and he could also obtain legal advice, if necessary. I do not think that the authorities acted in a manner which has misled Applicant as to his rights, in any respect”.

We find ourselves in full agreement with the above reasoning of the learned Judge. It is true that at first sight the statement in Elliott's letter of 1956 “nor can you delay your option until the age of 55”, may not appear to give the correct position regarding the time when the Appellant could apply to the Governor to permit him to revoke his previous election to retire at the age of 60. In fact, in 1956 there was no question of exercising an “option” whether to retire at the age of 60 or at the age of 55. The right given to the Appellant by virtue of section 15 of the amending Law 12 of 1954, was to apply to the Governor to permit him to revoke his previous election to retire at the age of 60, at any time before he attained the age of 55 years. He had exercised his option twice before, that is to say, in 1944 and in 1947, to retire at the age of 60 and receive a gratuity and not a pension. But even if what is meant by the expression “option” in Elliott's letter was the Appellant's right to apply to the Governor to permit him to revoke his previous election to retire at the age of 60 with a gratuity and not a pension, the Appellant ought to be cognizant of the legislation governing his pension rights, and there was nothing to prevent him from seeking legal advice in the matter. Furthermore, as he was at the time (in 1956) 53 years of age, in spite of his letter of the 29th May 1956, stating that he wished to retire at the age of 60 with gratuity, he could, subsequently, until he attained

the age of 55, that is to say, until July 1958, apply to the Governor to permit him to revoke his election to retire at the age of 60 with a gratuity only. But this he failed to do.

Assuming that Elliot innocently misrepresented the legal position to the appellant, what effect did this have on the appellant's rights? We can assume that the Governor would have readily allowed the appellant to revoke his option to retire at the age of 60 with a gratuity and, in that case, he would have retired at the age of 55 with a pension or a reduced pension and gratuity. But, in fact, the Appellant was not misled because, even if Elliott had stated the correct position to the Appellant as to the time when he could apply to the Governor, what the Appellant wanted was to retire at the age of 60 and receive a pension, and not a gratuity, which was not possible under the provisions of the Law. So, that, even if the Appellant was misled by Elliott this did not make any difference to him considering what he wanted to get, which was not possible under the Law.

As regards the Appellant's complaint that it was not pointed out to him that he could opt to retire with pension and gratuity at the age of 55 and that there was the possibility of applying for an extension of service after the age of 55 under the provision which is now section 53(1)(c) of Cap. 166, we do not think that there was any duty cast on the Director of Education to point this out to the Appellant. In the first place, the question of the extension of the teacher's service beyond the age of 55 years was in the absolute discretion of the Governor, and there is no evidence whatsoever to reach the conclusion that the Appellant's services would or might have been extended beyond the age of 55. On the facts before the Court there is nothing to show that the Appellant's rights under the Law were in any way prejudiced by Elliott's letter of 1956 and the second ground of appeal must accordingly fail.

As this conclusion disposes of the appeal, it is not necessary for us to deal with the first ground of appeal.

The appeal is accordingly dismissed with £10 costs against the Appellant.

*Appeal dismissed with £10.-
costs against the Appellant.*

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