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IOANNIS
IOANNIDES
v.
REPUBLIC
(MINISTRY OF
FINANCE
AND ANOTHER)

[TRIANTAFYLLOIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS IOANNIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF FINANCE,
2. THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 9/66).

Public Officers—Public Service and Greek Communal Chamber Service—Emplacements—The Transfer of the Exercise of Competence of the Greek Communal Chamber and The Ministry of Education Law, 1965 (Law No. 12 of 1965, sections 16 (1) (2) and (6)—Emplacement of Applicant in the post of Assistant Examiner of Accounts, by virtue of section 16 (1) of the Law—Relevant decision properly and reasonably open to Respondent 2—No interference by the Court called for.

Public Service and Greek Communal Chamber Service—Nothing in section 16 (1) of the Law No. 12 of 1965 (supra) safeguarding the promotion prospects of those officers transferred to the public service from the service of the Greek Communal Chamber.

Public Officers—Officer in the service of the Greek Communal Chamber—Transferred to the public service by virtue of the aforesaid Law No 12 of 1965 (supra)—Rent allowance—Eligibility of Applicant for a rent allowance in respect of his previous service under the Greek Communal Chamber and as a public officer i.e. as officer in the public service of the Republic transferred there to by virtue of the said Law—Section 16 (2) and (6) of the Law—Rent allowance not within the ambit of the status provided for under sub-section (2) of section 16—“Terms and conditions of service” as defined by sub-section (6) of the said section 16—“Remuneration” (ἀντιμισθία)—Rent allowance is a benefit not included in the term “remuneration” (ἀντιμισθία)—Cfr. Article 192.7 of the Constitution—The service under the Republic of officers like the Applicant transferred from the service of the Greek Communal Chamber to the public service of the Republic

by virtue of the said Law No. 12 of 1965 (supra) "shall be governed by the same terms and conditions of service which were in force in relation to him before the present date" (viz. the date of the enactment of the said law)—Section 16(2) of the Law—On the other hand "terms and conditions of service" are defined, for the purposes of section 16, by sub-section (6) thereof, and they include as so defined, "remuneration (ἀντιμισθία), leave, removal from service or retirement and benefits granted on retirement"—Thus, "the terms and conditions of service" do not include a matter such as a rent allowance—Which is a benefit (ἐπίδομα) and no mention of benefits is made in the said definition of the "terms and conditions of service" given in sub-section (6) of section 16—It follows that a rent allowance, not being part and parcel of the special status preserved in respect of the Applicant under sub-section (2) of section 16 (supra), the Applicant's eligibility for such a benefit as a rent allowance has to be decided on the same footing as in relation to all other public officers in general—And it is not disputed that on such footing the Applicant was eligible for such an allowance since he became emplaced in the post of Assistant Examiner of Accounts in the Audit Office of the Republic.

Greek Communal Chamber—Transfer of the exercise of its competence to the Republic—Law No. 12 of 1965 (supra)—See above.

Ministry of Education—Created by Law No. 12 of 1965 (supra)—See above.

Transfer—Officers in the service of the Greek Communal Chamber transferred to the service of the Republic by Law No. 12 of 1965 (supra)—See above.

Words and Phrases—"Terms and conditions of service", "remuneration" (ἀντιμισθία), as defined by sub-section (6) of section 16 of the Law No. 12 of 1965 (supra)—Benefit—Rent allowance—Rent allowance is a benefit (ἐπίδομα) and is not included in the word "remuneration" (ἀντιμισθία) (supra).—Cfr. Article 192.7 of the Constitution.

Cases referred to :

Loizides and The Republic, 1 R.S.C.C. 107 ;

Boyiatzis and The Republic, 1964 C.L.R. 367 ;

Georghiades and The Republic, (1966) 3 C.L.R. 252 at p. 286.

The facts of this case sufficiently appear in the judgment of the Court.

Recourse.

Recourse against a decision of Respondent No. 1 by virtue of which it was held that the Applicant is not entitled to a rent allowance and against a decision of Respondent 2 emplacing him in the post of Assistant Examiner of Accounts, when he was transferred, by operation of law, to the public service from the service of the dissolved Greek Communal Chamber.

L. Clerides, for the Applicant.

L. Loucaides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLLIDES, J.: By means of this recourse the Applicant complains against two separate administrative decisions:

First, against a decision of Respondent 2, the Public Service Commission, emplacing him in the post of Assistant Examiner of Accounts, when he was transferred, by operation of law, to the public service from the service of the dissolved Greek Communal Chamber.

Secondly, against a decision of the Director of the Personnel Department—on behalf of Respondent 1, the Ministry of Finance—by virtue of which it was held that the Applicant is not entitled to a rent allowance.

The salient events relevant to the matter of the emplacement of the Applicant in the post of Assistant Examiner of Accounts are as follows:

When the Greek Communal Chamber was dissolved the Applicant was working in the Audit Service of the Chamber as an Auditor, 3rd grade (or Auditor C).

By virtue of section 16(1) of the Transfer of The Exercise of Competence of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law 12/65) the Applicant was transferred to the public service of the Republic; and by a decision of Respondent 2 taken under section 16(1) of Law 12/65, on the 7th October, 1965 (see its minutes *exhibit 8*) he was emplaced in the post of Assistant Examiner of Accounts in the Audit Office of the Republic.

As it appears from the relevant minutes of Respondent 2

it considered the duties of the post which had been held by the Applicant under the Greek Communal Chamber and, having regard to views expressed for the purpose by the Auditor-General of the Republic—as such views were mentioned in a relevant decision of the Council of Ministers dated the 26th August, 1965 (see *exhibit 9*)—came to the conclusion that the said duties of the Applicant were analogous to the duties of the post of Assistant Examiner of Accounts in the Audit Office of the Republic.

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The aforesaid views of the Auditor-General, are to be found, also, in the relevant submission to the Council of Ministers dated the 10th August, 1965 (see *exhibit 10*); they were to the effect that, having considered the functions of the posts concerned under the Greek Communal Chamber and the duties and responsibilities under the schemes of service relating to posts in the Audit Office of the Republic, he was of the opinion, *inter alia*, that an Auditor, 3rd grade, under the Chamber, should be emplaced in the post of Assistant Examiner of Accounts in the Audit Office of the Republic.

The above decision of Respondent 2 was communicated to the Applicant by a letter dated 12th October, 1965 (see *exhibit 5*).

On receiving this letter the Applicant replied on the 25th October, 1965 stating that had the Communal Chamber not been dissolved he would have been promoted to the post of Auditor, 2nd grade (or Auditor B) in the Audit Service under the Chamber and that, therefore, he could not accept appointment as Assistant Examiner of Accounts only (see *exhibit 2*).

On the 2nd November, 1965, Respondent 2 reconsidered the matter (see its minutes *exhibit 11*) and decided that it could not alter its decision in the matter and informed the Applicant accordingly by letter dated the 8th November, 1965 (see *exhibit 1*); and it is against this final decision in the matter by Respondent 2 that this recourse has been filed on the 18th January, 1966.

According to section 16(1) of Law 12/65, the emplacement of the Applicant in a post in the public service had to be made, as far as practically possible, in a post the functions of which were analogous to the functions of the post which he had held under the Chamber.

Respondent 2 in emplacing the Applicant has based itself on the expert views of the Auditor-General and has, also—as it appears from its minutes—considered itself the duties of the respective posts.

The functions of the post of Auditor, 3rd grade, under the Chamber, are to be found set out in the relevant scheme of service (see page 4 of *exhibit 17*).

The duties and the responsibilities of the post of Assistant Examiner of Accounts in the Audit Office are to be found in the relevant scheme of service (see page 6 of *exhibit 13*).

Having compared myself the relevant schemes of service, I am satisfied that the decision reached by Respondent 2 was properly and reasonably open to it and I should not interfere therewith (see *Georgiades and The Republic* (1966) 3 C.L.R. 252 at p. 286). Moreover, Respondent 2 was quite entitled to rely—and rightly did so—on the expert views of the Auditor-General.

Counsel for the Applicant has submitted that Respondent 2 was unduly influenced by the related to the matter decision of the Council of Ministers (*exhibit 9*), which preceded its own decision, and in which it was, in effect, stated that the Applicant being an Auditor 3rd grade should be emplaced in the post of Assistant Examiner of Accounts.

At the time the Council of Ministers was dealing with the matter from another angle, that of the number of relevant posts needed in the public service; and, it proceeded, also, to request Respondent 2 to emplace the officers of the Chamber affected, including the Applicant, in accordance with the views of the Auditor-General.

I do not think, however, that Respondent 2 was unduly influenced by the action taken by the Council of Ministers. It is perfectly clear from the relevant minutes of Respondent 2 (*exhibit 8*) that it took into account the decision of the Council of Ministers only in so far as it conveyed the views of the Auditor-General, and for no other purpose; and that Respondent 2 proceeded to make itself the necessary examination of the matter. The fact, furthermore, that later, as a result of representations of the Applicant, Respondent 2 proceeded to reconsider the whole matter on the basis of the points raised by the Applicant (see *exhibit 11*), shows that Respondent 2 did not consider

itself bound by the decision in question of the Council of Ministers; and Respondent 2 proceeded to reaffirm its own previous decision, on the ground that the points raised by the Applicant did not justify altering it, and for no other reason at all.

Counsel for the Applicant has argued, further, that the Applicant, by virtue of the decision of Respondent 2 regarding his emplacement, has been deprived of his prospects of promotion, because he was due to have been promoted to Auditor, 2nd grade, (or Auditor B) under the Chamber; and that now he has no promotion prospects because he does not possess the qualifications required for promotion to Examiner of Accounts, 3rd grade, in the Audit Office of the Republic.

It is a fact which I do accept that the material before the Court tends to show that had the Communal Chamber not been dissolved the Applicant might have eventually been promoted to Auditor, 2nd grade. But I cannot find anything in section 16(1) of Law 12/65 safeguarding the promotion prospects of those transferred to the public service from the service of the Greek Communal Chamber, or making it necessary for the Commission to take such prospects into account in emplacing them under the provisions of such section. On the contrary, the wording of sub-section (1) of section 16 seems to point to the opposite direction, in the sense that it provides that analogy must exist between the post which the person to be emplaced had held under the Chamber and the post in which he is to be emplaced in the public service of the Republic—and not between the post to which he might have been, or would have been eventually, promoted, in the service of the Chamber, and the post in the public service in which he is to be emplaced; moreover, there is nothing in sub-sections (2) and (6) of section 16 which could lead to the conclusion that the promotion prospects of persons, such as the Applicant, are preserved and have to be given effect to by Respondent 2 under section 16(1) of Law 12/65.

In any case, I cannot agree that the Applicant can *never* be promoted from the post of Assistant Examiner of Accounts; he can always acquire the necessary qualifications, in future, and become eligible for promotion.

For all the above reasons this part of the recourse—which relates to the emplacement of the Applicant in the post of Assistant Examiner of Accounts—fails and is hereby dismissed accordingly.

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I pass on next to the part of the recourse which is aimed at the refusal to grant Applicant a rent allowance. The salient facts in relation thereto are as follows:

The Applicant, before he was appointed to the post of Auditor, 3rd grade, under the Chamber, was being employed by the Chamber as a weekly-paid regular employee, having been transferred to the service of the Chamber, from the public service, again as a weekly-paid regular employee; and as a weekly-paid employee he was never in receipt prior to July, 1961, when he was appointed as Auditor, 3rd grade, of a rent allowance.

The Applicant, when appointed on the 1st July, 1961, to the post of Auditor, 3rd grade, under the Greek Communal Chamber, did not become entitled to receive a rent allowance in view of the fact, that, as stated in a relevant circular, dated the 11th September, 1961 (see *exhibit 12*) it had been decided by the Chamber that no rent allowance would be paid to those who were appointed or were to be appointed in the service of the Chamber after the 15th August, 1960.

On the 11th December, 1965, the Applicant claimed, by letter which he addressed to Respondent 1 (see *exhibit 6*), a rent allowance retrospectively, as from the 1st July, 1961, when he was appointed as Auditor, 3rd grade, under the Chamber.

In the end he came to know by means of copy of a letter addressed to the Auditor-General, and dated the 29th December, 1965, (see *exhibit 7*) that there was nothing to be added to what had been already stated by the Director of the Personnel Department in a letter to the Auditor-General dated the 7th December, 1965; it is common ground that this amounted, in effect, to a refusal of the rent allowance claimed by the Applicant.

As the letter of the 7th December, 1965, had not been produced I directed, after judgment had been reserved, that copies thereof should be filed in Court and delivered to counsel for the Applicant. This was duly done (see *exhibit 18*) and copies of a related letter by the Director of the Personnel Department to the Ministry of Education, dated the 19th November, 1965, were also filed, and delivered to counsel for the Applicant (see *exhibit 19*). These letters confirm fully that the Applicant was not regarded as eligible for a rent allowance.

At the request of counsel for the Applicant I heard the parties further on the issue of the rent allowance, after the production of the above two letters.

Counsel for Respondents has argued all along that the reason why Respondent 1 has refused a rent allowance to Applicant are the provisions of sub-section (2) of section 16 of Law 12/65 which read as follows:

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«Ἡ παρά τῆ Δημοκρατίᾳ ὑπηρεσίᾳ παντὸς τοιοῦτου προσώπου τελεῖ ὑπὸ τοὺς αὐτοὺς ὅρους ὑπηρεσίας οἵτινες ἴσχυον δι' αὐτὸ πρὸ τῆς ἡμερομηνίας ταύτης.

Νοεῖται, ὅτι ἡ ἀντιμισθία τῆς θέσεως ἦν τὸ πρόσωπον τοῦτο κατεῖχε ὡς ἐμφαίνεται ἐν τῷ τελευταίῳ προϋπολογισμῷ τῆς Συνελεύσεως θεωρεῖται ὡς προσωπικὴ ἀντιμισθία τοῦ προσώπου τούτου».

("The service of any such person under the Republic shall be governed by the same terms and conditions of service which were in force in relation to him before the present date:

Provided that the remuneration relating to the post which such a person had held, as shown in the last Budget of the Chamber, shall be deemed to be remuneration personal to such person").

«Ὅροι Ὑπηρεσίας» ("terms and conditions of service") are defined, for the purposes of section 16, by sub-section (6) thereof, and they include, as so defined, «τὰ ἀφορῶντα εἰς τὴν ἀντιμισθίαν, ἄδειαν, παῦσιν ἢ ἀποχώρησιν, καὶ τὰ ἐπὶ τῇ ἀποχώρησει χορηγούμενα ὠφελήματα» ("remuneration, leave, removal from service or retirement, and benefits granted on retirement").

Thus, according to counsel for the Respondents, the rent allowance being part of the remuneration of the Applicant, and his remuneration under the Chamber having not included a rent allowance, the Applicant was not—through the combined effect of sub-sections (2) and (6) of section 16—eligible for a rent allowance while holding the post of Assistant Examiner of Accounts to which he had been emplaced under sub-section (1) of such section 16.

Counsel for the Respondents has fairly conceded that his above set out view holds good only while the Applicant holds the post in which he has been emplaced i.e. Assistant Examiner of Accounts, and that after promotion therefrom to another post he would be eligible for a rent allowance like other public officers; it was only while he held the post in which he had been emplaced that he was treated differently from other public

officers and such differentiation, as provided for under sub-section (2) of section 16, was a reasonable one, in the circumstances, due especially to the fact that the Applicant had come from the service of the Greek Communal Chamber and was enjoying a special status protected by sub-section (2) of section 16.

I have no difficulty in finding that there can be no question of Applicant being entitled to claim now rent allowance allegedly due to him by the Greek Communal Chamber, as from July, 1961 onwards. The relevant decision to the contrary of the Chamber was applied to him all through his service under the Chamber; he never received any rent allowance from the Chamber and he never challenged its decision not to pay him such allowance. It is too late now to challenge the said decision by means of this recourse.

The decision, however, of Respondent 1 not to pay to the Applicant a rent allowance, to which he would admittedly have been otherwise entitled as a public officer, appears to me to have been based on a mistaken construction of sub-section (2) of section 16 of Law 12/65:

It is quite clear that, apart from what is laid down as applicable to an officer—such as the Applicant—by virtue of the said sub-section (2), the Applicant being now a member of the public service of the Republic is, otherwise, subject to the same terms and conditions of service as are applicable to public officers in general.

So, *even if I were to assume*, in agreement with counsel for the Respondents, that sub-section (2) lays down that certain terms and conditions of service, as defined in sub-section (6) of section 16, are preserved in force and constitute a special status for the Applicant, to the exclusion, in respect of the matters concerned, of the terms and conditions applicable to public officers in general, the Applicant would be excluded from receiving, as an Assistant Examiner of Accounts, a rent allowance—on the ground that he was not receiving a rent allowance under the Greek Communal Chamber—*only* if I were to find that the matter of the rent allowance is within the ambit of the terms and conditions of service to which sub-section (2) of section 16 refers.

I have come to the conclusion that the terms and conditions of service, to which sub-section (2) of section 16 refers, do not include a matter such as a rent allowance; I take this view be-

cause in my opinion the rent allowance is not related to the remuneration («ἀντιμισθία») which the Applicant was receiving under the Greek Communal Chamber and, therefore, is unconnected with the terms and conditions of service of the Applicant under such Chamber, as such terms and conditions are defined by sub-section (6) of section 16, for the purposes, *inter alia*, of sub-section (2) of such section.

It is a benefit («έπιδόμα») and no mention of benefits is made in the definition of the terms and conditions of service given in sub-section (6) of section 16.

It follows that a rent allowance, not being part and parcel of the special status preserved in respect of the Applicant under sub-section (2) of section 16, the eligibility of the Applicant for such a benefit has to be decided on the same footing as in relation to all other public officers in general—and it is not in dispute that on such a footing the Applicant was eligible for such an allowance since he became employed in the post of Assistant Examiner of Accounts in the Audit Office.

My view that the rent allowance is not covered by the term “remuneration” («ἀντιμισθία») to be found in sub-section (6) of section 16—and “remuneration” is the only term in such sub-section with which we need be concerned in this Case—is based not only on the very nature of a rent allowance, which being an “allowance” is something different from “remuneration”, but it is also based, *inter alia*, on a comparison of the definition of terms and conditions of service in sub-section (6) of section 16, with the definition of terms and conditions of service in paragraph 7(b) of Article 192 of the Constitution—section 16 and Article 192 being provisions quite similar to a large extent.

Actually, it appears from a comparison of the texts of sub-section (6) of section 16 and of paragraph 7(b) of Article 192 that the latter formed the drafting prototype of the former; even the sequence of terms common to both is the same. Yet, whereas in paragraph 7(b) of Article 192 mention is made expressly of benefits (έπιδόματα) in addition to the term remuneration (ἀντιμισθία), sub-section (6) of section 16 mentions only remuneration (ἀντιμισθία), and there is no mention therein of any benefits (έπιδόματα). In the circumstances I have to conclude that it was not intended to cover benefits (έπιδόματα) by means of the definition in section 16(6).

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That remuneration and rent allowance are different and separate matters, for the purposes, at any rate, of sub-sections (2) and (6) of section 16 is, apparent, also, from the 1965 Budget of the Greek Communal Chamber, to which express reference is made in the proviso to sub-section (2) in relation to the term remuneration (ἀντιμισθία). We note, thus, in the said Budget (Greek Communal Chamber Law 1/65), and particularly in the part thereof dealing with the Administration Expenses of the Chamber—in which the expenses for the Audit Service of the Chamber are included—that a differentiation is made between remuneration and allowances (μισθοὶ καὶ ἐπιδόματα) and special separate provision is made therein for allowances (ἐπιδόματα) including the rent allowance—(and in relation to the relevant nomenclature it is to be noted that no difference in meaning exists between «μισθός» and «ἀντιμισθία», both amounting to one and the same thing—see Δημητράκου Νέου Λεξικὸν τῆς Ἑλληνικῆς Γλώσσης, Β' ἔκδοσις).

Likewise in the Budgets of the Republic the remuneration of public officers and allowances payable to them, such as a rent allowance, are provided for as separate matters.

In the cases of *Loizides* and *The Republic* (1 R.S.C.C. p. 107) and *Boyiatzis* and *The Republic* (1964 C.L.R. 367) the Court, in dealing with education grants, did not have to decide specifically whether such grants were “remuneration” or “benefits” and it was held that such grants were, in any case, covered by the said two terms; in the latter case however, it was mentioned, by way of obiter dictum, that free medical treatment was a “benefit”.

In the present Case when it has to be decided whether a rent allowance is “remuneration” or a “benefit” I have no difficulty at all in holding that a rent allowance, being an allowance, is a benefit, and that, in any case, and for all the foregoing reasons, when sub-sections (2) and (6) of section 16 were referring to remuneration (ἀντιμισθία) it was not either possible, or intended, to cover thereby rent allowances; therefore, the matter of a rent allowance was not within the ambit of the status provided for under sub-section (2) of section 16.

In the circumstances I hold that the provisions of sub-section (2) of section 16 of Law 12/65 cannot affect the eligibility of the Applicant, as an Assistant Examiner of Accounts, for a rent allowance in the ordinary course.

In view of the foregoing I need not decide, and I leave open, the question as to whether or not sub-section (2) of section 16—like the relevant provisions of Article 192—is a beneficial provision only, in the sense that it safeguards the terms and conditions of service enjoyed by persons such as the Applicant under the Greek Communal Chamber, but it cannot be construed—(in its context, and in view of the need to construe it, as far as possible, in accordance with the constitutional provisions regarding equal treatment and non-discrimination)—as depriving the said persons of any terms and conditions of service applicable to all other public officers, once such persons have become by operation of law—section 16(1) of Law 12/65—public officers in the service of the Republic.

In the result, this recourse succeeds in so far as the refusal to the Applicant of a rent allowance as from the time of his emplacement in the post of Assistant Examiner of Accounts is concerned; such refusal is declared to be null and void and of no effect whatsoever as being wrong in law and in excess and abuse of powers. Otherwise this recourse is hereby dismissed; and there shall be no order as to costs.

*Application succeeds in part.
No order as to costs.*

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