IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARCOS PANAYIOTI AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF EDUCATION,

Respondent.

(*Case No.* 82/67).

Secondary Education—Schoolmasters—Called up for service in the National Guard at the end of the last term of the school-year (viz. circa 10th July)—As a result of their services already rendered during the rest of the school-year they became entitled to the payment of full salary during the months of the summer school vacation ending on the 31st August of the school year concerned—Section 24 of the National Guard Law 1964 (Law No. 20 of 1964 (as amended by section 4 of Law No. 5 of 1966 and section 12 of Law No. 70 of 1967)) inapplicable..

National Guard—National Guard Law, 1964 (supra). *section* 24—*Scope of the section: The protection of the interests of the employees called up for service in the National Guard—Employment of such employees not terminated but merely suspended—Cf. sections* 23 *and* 28 *of the said Law and the regulations made thereunder.*

Schoolmasters—Salary—Schoolmasters called up for service in the National Guard—See above.

The Applicants—schoolmasters, secondary education—were called up for service in the National Guard *circa* the 16th July, 1966. They claimed payment of their full salary for the months of the summer school vacation (July and August, 1966) but their claim was turned down by the Respondents by letter dated the 30th January, 1967. As a result the present recourse was filed.

It was contended on the part of the Applicants that in any school year the summer vacations commence on the 10th July

and as by that date the Applicants had performed their duties as schoolmasters in full they were also entitled to be paid their salaries in full i.e. till the end of the relevant school year viz. till the 31st August, 1966.

On the part of the Respondents it was contended that in view of the provisions of section 24 of the National Guard Law, 1964 (Law No. 20 of 1964 as amended, *supra*) the employment of the Applicants, once they were called up for military service, was suspended and consequently, so was their salary (section 24 is set out in full *post* in the judgment of the Court).

Annulling the refusal complained of the Court:–

Held, (1). It is quite clear that the scope of section 24 of the National Guard Law, 1964 (see the section *post* in the judgment) is to protect the interests of the employees called up for service in the National Guard by ensuring that their absence from work does not bring their employment to an end but only suspends it for the duration of the period of their service.

(2)(a) The fact, however, remains that during the summer months schoolmasters have the benefit of some two months of school vacations and that if the Applicants in the present case had not been called up for military service they would be enjoying their holidays and at the same time they would be paid their salaries at the end of July and August 1966.

(b) It seems to me a little odd to hold that because they were called up for service in the National Guard they should be deprived of the two months salary to which, in my opinion, they became entitled as a result of the services they had already rendered during the school year and which (salary) they would have got whilst on vacation.

(3) I think, therefore, that it is not open to the Respondent in the special circumstances of this case to invoke the provisions of section 24 of the Law (*supra*) which were enacted for the benefit of the employees called up for military service and twist them in such a way as to operate to the disadvantage of those whom the legislature intended to protect and benefit by its enactment.

Sub judice decision annulled with costs.

Recourse.

Recourse against the refusal of the Respondent to pay to the Applicants—secondary education schoolmasters—their salaries for the months of July and August 1966, in the course of their serving in the National Guard.

L. Papaphilippou, for the Applicants.

G. Tornaritis, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:-

LOIZOU, J.: All Applicants are schoolmasters posted at various secondary schools in the Republic.

With the exception of Applicants 12 and 13, Petros Charalambous and Finios Demetriou, who at the time of the decision challenged by this recourse were appointed on a permanent basis, all the others were on probation.

Exhibit 2 is a photostat copy of a specimen offer for appointment which contains, in a summary form, the terms of the appointment. It also expressly provides that the appointment is made in accordance with the laws and regulations in force. Clause (a) of this document sets out the salary scale applicable to the post and provides that the salary and cost-of-living allowance shall be paid in equal monthly instalments at the end of each month. The appointment was with effect from the 16th September, 1965.

With the exception of three of them, all Applicants were called up for service in the National Guard on the 16th July, 1966; the other three were called up on the 5th of the same month having been granted five days' leave by their headmasters for the purpose.

By virtue of a decision of the Council of Ministers all Applicants but one, Applicant 3 Stylianos Papaphotiou, were discharged from the National Guard on various dates between the 31st October and the 17th November, 1966, as their services were considered essential.

Schedule "B" attached to the Application, which has been marked as *exhibit* 1, sets out the names of the Applicants and

against each name, in separate columns, the school at which he was posted at the time, the date of his appointment, the date he was called up for National Guard service and the date of his discharge.

It would appear that for the period of the school vacations during which the Applicants were serving in the National Guard they were not paid their salaries. On the 4th January, 1967, counsel for the Applicants wrote the letter *exhibit* 3 to the Ministry of Education; the relevant part of this letter reads as follows:

«Ἔχω ἐντολὴν τῶν πελατῶν μου στρατευθέντων καθηγητῶν τῶν ὁποίων τὰ ὀνόματα ἐμφαίνονται εἰς ἐπισυνημμένον κατάλογον νὰ σᾶς καλέσω ὅπως πληρώσετε εἰς αὐτοὺς ἢ εἰς τὸ γραφεῖον μου τοὺς μισθοὺς των ἀπὸ τῆς στρατεύσεως των κατ' Ἰούλιον 1966 μέχρι Αὐγούστου 1966.

Παρακαλῶ σημειώσατε ὅτι ἐὰν παραλείψετε νὰ συμμορφωθῆτε πρὸς τὰ ἀνωτέρω θὰ ληφθῶσι δικαστικὰ μέτρα.»

In reply to the above letter the Director-General of the Ministry of Education wrote the letter dated 30th January, 1967, *exhibit* 4 which reads as follows:

«Ἐνετάλην ὅπως ἀναφερθῶ εἰς τὴν ἐπιστολήν σας ὑπ' ἀριθμὸν Ε. 913 καὶ ἡμερομηνίαν 4 Ἰανουαρίου, 1967, ἐν σχέσει πρὸς τὸ θέμα τῆς καταβολῆς τῶν μισθῶν τοῦ Ἰουλίου καὶ Αὐγούστου 1966, εἰς πελάτας σας καθηγητὰς κληθέντας πρὸς κατάταξιν εἰς τὴν Ἐθνικὴν Φρουράν, καὶ νὰ πληροφορήσω ὑμᾶς ὅτι ἐφ' ὅσον οἱ πελάται σας πράγματι ὑπηρέτουν εἰς τὴν Ἐθνικὴν Φρουρὰν κατὰ τὸν Ἰούλιον καὶ Αὔγουστον τοῦ 1966, οὗτοι δὲν δικαιοῦνται εἰ μὴ μόνον εἰς τὰ χορηγήματα τὰ προνοούμενα ὑπὸ τῶν Κανονισμῶν δι' ὅλους τοὺς Ἐθνοφρουρούς.»

As a result the present recourse was filed. The relief claimed is a declaration that the decision contained in the letter *exhibit* 4 is *void* as being in excess or abuse of powers and/or contrary to the orders and/or regulations of the Ministry of Education. Applicants further seek a declaration that they are entitled to be paid their salaries for the period July-August 1966.

It was contended on the part of the Applicants in support of their case that in any school-year, but particularly during the school-year 1965–1966, the end of the school-year is the

10th July, when the school vacations commence, and as by that date the Applicants had performed their duties as schoolmasters in full they were also entitled to be paid their salaries in full. Learned counsel for the Applicants has also stated that the Applicants were posted for National Guard service near their schools and that some of them rendered services, the nature of which he did not specify, to their schools during the school vacations for which they were not paid. He further contended that up to a few years ago, first he said up to 1962 or 1963 and later up to 1961, the practice was to pay to the schoolmasters their salaries for the months of July and August at the end of June in each year, but that since then the practice has changed and schoolmasters are paid at the end of each month the same as all other civil servants. But in spite of this, learned counsel argued, during the months of July and August all teachers are on leave and have no obligation to work.

Mr. Frixos Petrides, the Head of the Pancyprian Gymnasium, who was called as a witness by the Applicants, has confirmed that up to a few years ago the salary of schoolmasters for the months of July and August was paid before the closing of the schools for the summer vacations, but that this practice has been discontinued. This witness has also confirmed that the work of the school-year ends approximately on the 10th July of each year. Asked whether schoolmasters have any obligation to work during the school vacations the witness has, very fairly, replied that he does not know if they have any legal obligation but that in practice they are very seldom called upon to render any services. It has happened, the witness said, for him to request schoolmasters to do some work during the vacations and they complied with his request, but he could not say if they were legally bound to do so.

Another witness, Mr. Socrates Evangelides was also called for the Applicants, but his evidence was not very helpful and does not affect the issue one way or the other.

On the part of the Respondents it was contended that in view of the provisions of section 24 of the National Guard Law No. 20 of 1964 the employment of the Applicants, once they were called up for military service, was suspended and, consequently, so was their salary. Section 24 of the National Guard Law 1964 (as amended by section 4 of Law No. 5/66 and section 12 of Law No. 70/67) reads as follows:

«24.–(1) 'Οσάκις πρόσωπον κληθὲν δι' ὑπηρεσίαν ἐν ἐνεργῷ ὑπηρεσίᾳ τῆς Δυνάμεως δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου ἐργάζεται εἰς τακτικὴν ἀπασχόλησιν παρά τινι ἐργοδότῃ, ἡ ἀπασχόλησις αὐτοῦ οὐδόλως διακόπτεται ἀλλ' ἁπλῶς ἀναστέλλεται διαρκούσης τῆς περιόδου καθ' ἣν τὸ πρόσωπον τοῦτο τελεῖ ἐν τῇ ὑπηρεσίᾳ τῆς Δυνάμεως· ὁ ἐργοδότης ὅμως ὑποχρεοῦται ὅπως ἐξακολουθῇ νὰ καταβάλλῃ, διαρκούσης τῆς τοιαύτης ἀναστολῆς, τὴν ἑβδομαδιαίαν αὐτοῦ εἰσφορὰν συμφώνως πρὸς τὸ ἄρθρον 5 τοῦ περὶ Κοινωνικῶν 'Ασφαλίσεων Νόμου τοῦ 1964 καὶ ὅπως καταβάλλῃ περαιτέρω τὴν ὑπὸ τοῦ μισθωτοῦ πληρωτέαν εἰσφορὰν συμφώνως πρὸς τὸ ρηθὲν ἄρθρον ἀνεξαρτήτως τοῦ ὅτι ὁ μισθωτὸς οὐδεμίαν ὑπηρεσίαν παρέσχεν εἰς τὸν ἐργοδότην διαρκούσης τῆς περιόδου ταύτης.

Πᾶς ἐργοδότης ὅστις παραλείπει ἢ ἀμελεῖ νὰ καταβάλῃ τὴν ὑπὸ τοῦ παρόντος ἐδαφίου προνοουμένην εἰσφορὰν διαπράττει ἀδίκημα καὶ ὑπόκειται ἐν περιπτώσει καταδίκης του εἰς τὰς ὑπὸ τοῦ ἄρθρου 73 τοῦ περὶ Κοινωνικῶν 'Ασφαλίσεων Νόμου τοῦ 1964 προνοουμένας ποινὰς καὶ ὑπόκειται περιπλέον εἰς τὰς λοιπὰς διατάξεις τοῦ ἄρθρου τούτου.

(2) Πᾶν πρόσωπον ἀναφερόμενον ἐν τῷ ἐδαφίῳ (1) ἐντὸς ἑνὸς μηνὸς ἀπὸ τῆς ἀπολύσεως ἢ ἀποστρατεύσεως αὐτοῦ αἰτεῖται παρὰ τοῦ ἐργοδότου ὅπως προσλάβῃ αὐτὸν εἰς τὴν ἀπασχόλησιν εἰς ἣν ἠσχολεῖτο παρὰ τῷ ἐργοδότῃ πρὸ τῆς στρατεύσεως αὐτοῦ καὶ ὁ ἐργοδότης ὑποχρεοῦται ὅπως προσλάβῃ τοῦτον εἰς τὴν τοιαύτην ἢ παρομοίαν ἀπασχόλησιν ὑπὸ ὅρους οὐχὶ ὀλιγώτερον εὐνοϊκοὺς τῶν ὅρων ὑφ' οὓς θὰ εἰργάζετο ἐὰν δὲν ἐκαλεῖτο νὰ ὑπηρετήσῃ καὶ εἰς περίπτωσιν καθ' ἣν ἡ τοιαύτη ἀπασχόλησις θὰ ἦτο ἀορίστου διαρκείας διὰ περίοδον οὐχὶ ὀλιγωτέραν τῶν ἓξ μηνῶν.

(3) Διὰ τοὺς σκοποὺς τοῦ παρόντος Νόμου — τακτικὴ ἀπασχόλησις σημαίνει ἐργοδότησιν εἰς μόνιμον θέσιν ἢ ἐργοδότησιν εἰς προσωρινὴν θέσιν διαρκέσασαν πέραν τῶν ἓξ μηνῶν.» (In fact the second paragraph of sub-section (1) was only enacted on the 10th November, 1967, and was not, therefore, in force at the relevant time, but it does not in any way affect the issue in the present case).

It is, in my view, abundantly clear from the wording of the above section read in conjunction with sections 23 and 28 and the regulations made thereunder that suspension of employment of the employee entails suspension of the payment of his salary

by the employer and this, quite obviously, in view of the fact that the employee conscript no longer renders any services to his employer.

It is equally clear that the scope of the section is to protect the interest of employees called up for service in the National Guard by ensuring that their absence from work does not bring their employment to an end but only suspends it for the duration of the period of their service so that when they are discharged or demobilized they will not find themselves out of work.

The question that arises is whether in the somewhat peculiar circumstances of the present case the employer, the Respondents, were entitled to suspend payment of Applicants' salaries for the months of July and August on the ground that they were called up for service in the National Guard. I say peculiar circumstances because it is an undisputed fact that as from approximately the 10th July in each year the schools close for the summer vacations and the work of the schoolmasters comes to an end but they, nevertheless, continue to get their salaries while they are on vacation.

Quite probably the summer and other vacations that school teachers enjoy are considered to be in the nature of leave and this may be the reason why they are entitled to only 14 days leave during the rest of the school year as against the 42 days in the case of other government servants. But I do not think that we need go into this matter for the purposes of this case. The fact remains that during the summer months schoolmasters have the benefit of some two months of school vacations and that if the Applicants in the present case had not been called up for National Guard Service they would be enjoying their holidays and at the same time they would be paid their salaries at the end of July and August. It seems to me a little odd to hold that because they were called up for service in the National Guard they should be deprived of the two months salary to which, in my opinion, they became entitled as a result of the services they had already rendered during the school year and which (salary) they would have got whilst on vacation. It is interesting to note that under section 31 of Law 10 of 1963 pregnant schoolmistresses are granted eight weeks continuous leave of absence i.e. four weeks before delivery and four weeks after delivery and that whereas they get their full emoluments if the leave happens to be during the school vaca-

tions they only get half of their emoluments if the birth occurs and, therefore, the leave is granted at any time during the rest of the school year. The provisions of this section, in my view, to a certain extent, support the view that the services rendered by schoolmasters during the rest of the school year entitle them to full salary during the period of the summer school vacations or in other words that by their work during the rest of the school year they earn the right to full salary during the summer school vacations.

With regard to section 24 of the National Guard Law I think that it is not open to the Respondents, in the special circumstances of this case, to invoke its provisions which, as stated earlier on, were enacted for the protection and the benefit of employees called up for military service and twist them in such a way as to operate to the disadvantage of those whom legislature intended to protect and benefit by its enactment.

For all the above reasons I am of the view that the Respondents wrongly refused to pay Applicants their salaries for the months of July and August and that, consequently, this recourse must succeed. In all the circumstances I consider that Respondents should pay the costs of these proceedings.

In the result the decision challenged by this recourse is annulled.

Order for costs as above.

Sub judice decision annulled;
order for costs as aforesaid.