

1971
Dec. 13

[STAVRINIDES, L].

GEORGHIOS
ASHOTIS
v.
REPUBLIC
(MINISTER
OF FINANCE)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS ASHOTIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 191/69).

Pension—Computation of—Secondary-School employee (accountant)—Holding office when secondary schools were taken over by the Greek Communal Chamber—Subsequently appointed to another post under section 16.(1) of the Communal Secondary Schools Employees Law, 1964 (Law 8 of 1964 of the Greek Communal Chamber)—But continuing to draw his old emoluments, which were higher than those offered under the new appointment—Section 35 (5) of the aforesaid Law 8 of 1964—Whether his “salary” for purposes of pension under the Pensions Law, Cap. 311 is the sum fixed by the instrument of appointment under the said Law 8 of 1964 or his previous emoluments.

The facts sufficiently appear in the judgment of the Court whereby on the applicant's recourse it annulled the administrative decision complained of.

Recourse.

Recourse against the decision of the respondent concerning the computation of applicant's pension.

A. Hadjioannou, for the applicant.

V. Aristodemou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :—

STAVRINIDES, J. : When the Pancyprian Gymnasium (Central), a secondary school here, along with other gymnasia was taken over by the Greek Communal Chamber the applicant was being employed by the Town Committee for

Greek Schools, Nicosia, as an Accountant in that school ; and he was still being so employed when, by a letter dated October 9, 1964 (*exhibit 1*), the Chamber offered him appointment, retrospectively from May 1, 1964, to the established post of Epimelitis, 1st Grade, which by s. 16 (1) of the Communal Secondary Schools Employees Law, 1964, of the Chamber (hereafter "the 1964 Law"), enacted in April of that year, carried a yearly salary of £570-900 "plus cost-of-living allowance equal to the rate from time to time granted to public officers and on such terms as the Chamber might determine". So far as relevant that letter reads :

" 2. Your salary will be £900 per annum on the salary scale of £570-900 plus cost-of-living allowance at such rate and on such terms as the Greek Communal Chamber may determine

Also a sum of £87.500 mils per annum will be paid as residue of old emolument, which, however, will be reduced in the future and until its complete elimination by a sum equal to any increase in the basic salary derived from promotion or annual increment."

At the time when the letter was written "public officers" were in receipt of cost-of-living allowance at the rate of 28 1/2% of their respective basic salaries, which on a basic salary of £900 per annum is £256.500 mils per annum, so that an officer drawing a yearly basic salary of £900 plus cost-of-living allowance of 28 1/2% would be in receipt of a total yearly amount of £1,156.500 mils. Thus the amount of £87.500 mils referred to in *exhibit 1* was arrived at on the footing that the applicant's "old emolument" had been £1,244 per annum.

By a letter of the following November 1 (*exhibit 2*) the applicant replied that he accepted

"with reservation the appointment sent to him because in the determination of his emoluments the transitional provisions of the Communal School Employees Law had not been observed,"

adding that

"he was submitting an objection in that behalf to the Review Committee"

of the Chamber. He did so and he was informed of that committee's determination by a letter to him from the

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Director of the Education Office dated January 2, 1966 (*exhibit 4*), which, so far as material, reads :

“ You are hereby informed of a decision of the Review Committee, approved by the Greek Communal Chamber, concerning you and reading as follows :

‘ The applicant by his complaint seeks to retain his total emoluments which he was receiving during the school year 1960-61. During the year 1959-60 he was receiving £1,244 and in the year 1960-61 he was receiving £1,386 as total emoluments. The applicant based his application on s. 34 (5) of the transitional provisions of (the 1964 Law).

Therefore our committee for the reasons mentioned in application 124/64 unanimously decides that the applicant is entitled to total emoluments of £1,386 per annum retrospectively from January 1, 1963 ’.”

The decision complained of by this application was conveyed to the applicant by a letter to him from the Ministry of Education dated June 6, 1969 (*exhibit 5*), which, so far as relevant, reads :

“ With reference to your application to the Director of the Personnel Department dated April 17, 1969, regarding your pension, I have been instructed to inform you that the pension granted to you was computed on your basic salary plus 12 1/2%, which make up the pensionable emoluments of your post in accordance with the Pensions Law. The residue of old emolument drawn by you cannot be regarded as pensionable.”

The figure of £1,386 is not broken down in *exhibit 4*. But counsel for the applicant in his address described it as “ an annual salary ” and specifically stated that his client “ had not been in receipt of any cost-of-living or other allowance ”. Not only was neither of these statements disputed by counsel for the respondent but counsel on either side later made a joint statement to the effect that

“ on the enactment of the Communal Schools Employees Law, 1964, the applicant retained his salary of £1,386 per annum and in fact he retained that salary down to his retirement on pension on March 15, 1966.”

Again, later counsel for the applicant said that :

“ The whole of the sum of £1,386 was a ‘ salary ’, or, if part of it was not, that part was a ‘ personal allowance ’ No condition has ever been posed that any part of the £1,386 should not be pensionable ;” and this also stands uncontradicted.

On the basis of those statements, taken in conjunction with the determination quoted in *exhibit* 4, I find that the sum of £1,386 was either wholly an annual “ salary ” in the ordinary sense of the word, being a fixed periodical payment made to the applicant for his services as Accountant and later as Epimelitis, 1st Grade, or, if not wholly “ salary ” in that sense, then partly salary and partly “ personal allowance ” within the definition of that expression in s. 2 (1) of the Pensions Law, Cap. 311.

That the applicant is entitled to a pension payable to him by the Republic is common ground ; and further it is not in question that that pension must be computed on his “ salary ” and any other “ emolument ” or “ emoluments ” falling within the definition of “ pensionable emoluments ” in the provision just referred to. Where they differ is as to whether his “ salary ” for the purposes of the pension computation is a yearly sum of £900 payable to him in virtue of *exhibit* 1, as counsel for the respondent argued, or, as counsel for the applicant contended, the whole of the yearly sum of £1,386.

The applicant's case is based on sub-s. (4), or, alternatively, on sub-s. (5) of s. 35 of the 1964 Law, which read :

“(4) Where the salary scale applicable to the officer immediately before the enactment of this Law was higher than the scale of the new established post in which he is placed he will retain personally the old scale and also the salary and incremental date.

(5) Where before the secondary schools were made communal the total emolument of an officer during the last two years of his service was higher than that provided for by this Law, that officer shall retain his old emolument retrospectively from January 1, 1963.”

On the other hand the respondent's case rests on the fact that from the time of his appointment by *exhibit* 1 till his retirement the applicant held a post which by s. 16 (1) of the 1964 Law carried a maximum salary of £900 per annum.

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On the basis of the Review Committee's determination above referred to sub-s.(5) of s. 35 of the 1964 Law applies to the applicant ; and I proceed on this basis.

As above stated, the yearly sum of £1,386 was either wholly salary or partly salary and partly personal allowance which was pensionable. In either case the whole of the £1,386 was pensionable. Therefore the applicant's pension must be computed on the whole of that figure, unless there is anything in any statute that expressly or by implication otherwise requires. But it has not been suggested, and I am not aware, that any such provision exists.

For the above reasons the decision complained of is hereby annulled. The respondent to pay the applicant £20 costs.

Sub judice decision annulled. Order for costs as above.