

1973
May 15

REPUBLIC
(MINISTER
OF FINANCE)

v.

ROGHIROS CHR.
MICHAELIDES

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU,
A. LOIZOU, MALACHTOS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Appellant,

and

ROGHIROS CHR. MICHAELIDES,

Respondent.

(Revisional Jurisdiction Appeal No. 105).

*Public Officers—Revision of salaries—Conversion of salaries
—Public Officers (Revision of Salaries and Salary Scales)
Law, 1968 (Law 106/1968), enacted on October 19,
1968—Section 3(2)—Construction and effect—It has
retrospective effect as from January 1, 1968.*

*Colonial Regulations—Regulation 57—The Regulations can be
resorted to as established practice—Section 86 of the
Public Service Law, 1967 (Law 33/67) and section 4(2)
of the Public Officers (Revision of Salaries and Salary
Scales) Law, 1968 (Law 106/68).*

Salaries—Revision of—See supra.

Salary Scales—See supra.

The facts sufficiently appear in the judgment of the Court allowing this appeal by the Republic from a judgment of a Judge of the Supreme Court annulling the decision complained of*.

Appeal.

Appeal by the Minister of Finance against the judgment of a Judge of the Supreme Court of Cyprus (L. Loizou, J.) given on the 31st July, 1972 (Revisional Jurisdiction Case No. 18/69) annulling appellant's decision to place the respondent on scale 27 instead of scale 28 on his appointment to the post of Director-General, Ministry of Agriculture and Natural Resources.

* Reported in (1972) 3 C.L.R. 365.

A. Frangos, Senior Counsel of the Republic,
for the appellant.

A. HadjiIoannou, for the respondent.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : This is an appeal from a first instance decision * of a judge of this Court by means of which, on a recourse by the respondent, there was annulled a decision of the Ministry of Finance as regards the salary payable to him on his promotion to the post of Director-General of the Ministry of Agriculture.

It is useful to quote from the judgment of the trial judge as regards the salient facts of this case, which are as follows :

“The applicant in the present case was the Director of the Department of Agriculture up to the 15th July, 1968, when he was appointed to the post of Director-General, Ministry of Agriculture.

The salary scale of both posts was salary scale ‘A’ *i.e.* £1752x60—£1872x72—£2,160.

On the 1st January, 1968, he was on the fourth step of the above scale *i.e.* he was drawing £1944 and as from the 1st July which was his incremental date he moved to the next step *i.e.* £2016 per annum. Upon his appointment to the post of Director-General on the 15th July, 1968, he continued to receive the same salary and there was no change to his incremental date.

When Law 106 of 1968 was enacted on the 19th October, 1968 salary scale ‘A’ in the case of the post of the Director of the Department of Agriculture was replaced by the new scale 27 *i.e.* £2040x96—£2712 whereas in the case of the Directors-General it was replaced by the new scale 28 *i.e.* £2256x120—£2976.

As stated earlier on the applicant was at the time on the 5th step of the old scale ‘A’ *i.e.* he was receiving £2016 per annum. After the enactment of

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the Law he was put on the equivalent step of scale 27 *i.e.* £2424 and in view of the fact that this salary was higher than the initial salary of the post of Director-General (new scale 28) and in between steps 2 and 3 of that scale the respondent invoked the provisions of C.R. 37 with regard to the period after the date of his appointment to the latter post and changed applicant's incremental date from 1st July to 1st February so that on the 1st February, 1969, he would be receiving £2496 on scale 28.

In the course of his address learned counsel clarified that his contention was that the applicant should have been placed on the new salary scale of the post of Director of agriculture from the 1st January to the 15th July, 1968 *i.e.* he should be paid on the basis of £2328 per annum and that thereafter, as from the date of his appointment to the post of Director-General on the appropriate step of the new salary scale 28 *i.e.* he should be paid on the basis of £2736 per annum. The conversion of the salary, he submitted, should have been made on the date that the law came into effect *i.e.* on the 19th October, 1968, and not on the 1st January, 1968, which was the date of retrospective payment.

Learned counsel for the respondent, on the other part, submitted that the case of the applicant falls under section 3(2) of the Law by virtue of which the new scales came into force as from the 1st January, 1968, and all other scales should be converted as from that date."

The outcome of this case depends on the construction of section 3(2) of the Public Officers (Revision of Salaries and Salary Scales) Law, 1968 (Law 106/68), which was enacted on the 19th October, 1968, with effect as from the 1st January, 1968.

Section 3(2) of Law 106/68 reads as follows :-

"(2) Οί εις τήν δευτέραν στήλην τοῦ Πίνακος Β προνοούμενοι ἀριθμοὶ κλιμάκων καὶ αἱ εις τήν τρίτην στήλην προνοούμεναι μισθοδοτικαὶ κλίμακες (ἐν τῷ παρόντι ἔδραφῳ καὶ ἐν τῷ Πίνακι Β ἀναφερόμεναι

ὡς 'παλαιὰ κλίμακες') τῶν εἰς τὴν πρώτην στήλην ἀναφερομένων ἀνωτέρων δημοσίων θέσεων ἀντικαθίστανται διὰ τῶν εἰς τὴν τετάρτην καὶ πέμπτην στήλην προνοουμένων ἀριθμῶν νέων κλιμάκων καὶ διὰ τῶν νέων κλιμάκων (ἐν τῷ παρόντι ἐδαφίῳ καὶ ἐν τῷ Πίνακι Β ἀναφερομένων ὡς 'νέαι κλίμακες'), ἀντιστοίχως, καὶ ἀπὸ τῆς ὀρισθείσης ἡμέρας ἢ καταβολῆ τῶν μισθῶν τῶν εἰρημένων θέσεων θὰ γίνεται ἐπὶ τῇ βάσει τῶν νέων κλιμάκων”.

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“The reference numbers of salary scales which are set out in the second column of Schedule B and the salary scales set out in the third column (which are described in this section and in Schedule B as ‘old scales’) in respect of the higher public posts set out in the first column, are hereby replaced by the reference numbers of salary scales and the new salary scales set out in the fourth and fifth columns, respectively (which are described in this section and in Schedule B as ‘new scales’), and as from the appointed date the payment of salaries for the said posts will be effected on the basis of the new scales”.

The “appointed date” referred to in section 3(2) is the 1st January, 1968 (see section 2 of Law 106/68).

We are of the view that section 3(2), above, has retrospective effect to the extent of rendering the new salary scales applicable in every respect to the posts concerned, as from the 1st January, 1968, and not merely to the limited extent of entitling the holders of such posts to receive retrospectively increased emoluments, as was found by the trial judge; we are, therefore, of the opinion that there was no legal impediment to fixing the salary payable to the respondent in this appeal (the applicant in the recourse), on his promotion to Director - General, in the manner in which this was done, by means of the *sub judice* decision of the Ministry of Finance, through the application of “Colonial Regulation 37” (C.R. 37), which could be resorted to as established practice under section 86 of the Public Service Law, 1967 (Law 33/67), as well as under section 4(2) of Law 106/68.

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For the foregoing reasons the present appeal is allowed and the judgment appealed from is set aside, with the result that the recourse of the respondent against the administrative decision concerned stands dismissed; there should not, however, be made, any order as to costs.

Appeal allowed.