[STAVRINIDES, L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

1976
June 28

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REPUBLIC (MINISTER OF LABOUR AND SOCIAL INSURANCE AND ANOTHER) v. PANAYIOTIS KATSARAS AND OTHERS

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF LABOUR AND SOCIAL INSURANCE,
2. THE SENIOR INSURANCE OFFICER,

Appellants,

and

PANAYIOTIS KATSARAS AND OTHERS,

Respondents.

(*Revisional Jurisdiction Appeals Nos.* 115–121).

Statutes—Construction—Conflict between leading section and schedule—Principles of construction applicable—Word or phrase in a statute to which no effect can be given or which is of itself insensible—Must be eliminated—Construction of s. 13(3)(*a*) *and of proviso to paragraph* 3 *of the sixth Schedule to the Social Insurance Law,* 1964 (*Law* 2 *of* 1964)*—Irreconcilable conflict between the two provisions—Provisions of the section prevail—That part of the proviso which refers to the right of "election" treated as repugnant or inoperative—Word "election" eliminated from the proviso as being in conflict with the enacting part of the Law.*

Social Insurance Law, 1964 (*Law* 2 *of* 1964)*—Construction of s.* 13(3)(*a*) *and of proviso to paragraph* 3 *of the sixth Schedule to the law—Irreconcilable conflict between the two provisions—Provisions of section prevail—Proviso cannot be treated as a provision restricting the generality or the application of the said s.* 13(3)(*a*).

Election—Statutory election.

Social Insurance—Pensioner—Old age pensioner—Reduced old age pension—Section 13(3)(*a*) *of the Social Insurance Law,* 1964 (*Law* 2 *of* 1964) *and paragraph* 3 *of the sixth Schedule to the Law.*

The respondents in this appeal were insured under the provisions of the Social Insurance Law, Cap. 354 which was repealed by the Social Insurance Law, 1964 (Law No. 2 of 1964). Under the latter law they were all "existing contributors" in the sense of the proviso* to paragraph 3 of the sixth Schedule to this Law.

* Quoted in full at pp. 175–176 *post.*

When they applied for old age pension they were granted reduced old age pensions, instead of full ones, on the ground that the yearly average of the contributions paid by or credited to them were less than fifty i.e. less than the minimum required by paragraph 3(b)* of the sixth Schedule to Law 2 of 1964.

The validity of the decision refusing full old age pension was challenged by the respondents by means of a recourse and the Court annulled the decision complained of having held that the appellants have wrongly resolved an ambiguity resulting from the conflict between the text of section 13(3)(a)** of Law 2 of 1964 and the text of paragraph 3*** of the Sixth Schedule to this Law.

Hence the present appeal.

Counsel for the appellants contended:

(a) That the trial Judge wrongly found that if the right of election provided in the proviso to paragraph 3 of the sixth Schedule to Law 2 of 1964 is treated as inoperative, being in conflict with the enacting part in the body of the statute in question, then the rest of the provisions of the same proviso should also be treated as inoperative, because in accordance with the principles of construction only those provisions which are in direct conflict with the provisions of section 13(3)(a) and section 24 should be treated as inoperative.

(b) That the trial Judge wrongly found that the said proviso can be treated as a provision restricting the generality of the application of section 13(3)(a) of Law 2 of 1964, in the sense that it enables a contributor to elect not to accept the benefit conferred on him by that section if that section would entail adverse consequences for him by way of a reduced pension.

Held, allowing the appeal, (1) that the remaining provisions of the said proviso should be treated as operative because in accordance with the rules of construction where there is a conflict between a leading section and a schedule, one has to try and reconcile them as best as he may; that having tried to reconcile

* Quoted in full at p. 175 *post.*
** Quoted at p. 174 *post.*
*** Quoted at p. 175 *post.*

them it appears that they cannot be reconciled; that that part of the proviso which refers to the right of election of an existing contributor in the Schedule should be treated as repugnant or inoperative only once the rest of the provisions are reconcilable with section 13(3)(a); that this is just the case in which when there is a conflict between a leading section and a Schedule, the leading section should prevail (see *Institute of Patent Agents* v. *Lockwood* [1894] A.C. 347 at p. 360); and that, accordingly, having failed to reconcile the provisions of section 13(3)(a) with paragraph 3 of the proviso to the sixth Schedule, the subordinate provision, that is to say the proviso, should give way to the leading provision, which is section 13(3)(a) by treating the provision in the proviso referring to election as being inoperative (see, also, *Stone* v. *The Mayor, Aldermen and Burgesses of Yeovil*, 45 L.J. Q.B. 657 at p. 660).

(2) That once the word "election" is of itself insensible, when one considers the rest of the legislation, it should be eliminated; that this Court finds itself unable to agree with the learned trial Judge that the proviso can be treated as a provision restricting the generality or the application of section 13(3)(a), because when a law grants a right of election, that is done by an express provision in which it should provide that the person who has a right of election has to elect between two disjunctive ways which specifically or expressly are mentioned in the said Law; and that election takes place when a man is left to his own free will to take or do one thing or another which would please him; that the view taken by the trial Judge is contrary to the provisions of our Law; and that, accordingly, the appeal will be allowed and the decision of the Chief Insurance Officer that the respondents were entitled to a reduced old age pension only will be confirmed.

Appeal allowed.

Cases referred to:

Institute of Patent Agents v. *Lockwood* [1894] A.C. 347 at p. 360;

Stone v. *The Mayor, Aldermen and Burgesses of Yeovil*, 45 L.J. Q.B. 657 at p. 660;

Re Baines, 41 E.R. 400 at p. 406;

Young v. *Bristol Aeroplane Co. Ltd.* [1946] A.C. 163 at p. 173.

Appeals.

Appeals against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 13th March, 1973 (Cases Nos. 168/169, 201/69, 202/69, 205/69, 206/69,

210/69 and 237/69) whereby the decision of the respondents that the applicants, as old age pensioners, were entitled to reduced, and not to full, old age pensions was annulled.

L. Loucaides, Deputy Attorney-General of the Republic, for the appellants.

L. Papaphilippou, for the respondents (in appeals Nos. 115-120).

D. Demetriades, for the respondents (in appeal Nos. 116 and 121).

E. Emilianides, for the respondents (in appeals Nos. 118 and 119).

Chr. Demetriades, for the respondent (in appeal No. 117).

Cur. adv. vult.

STAVRINIDES, J.: The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU, J.: The present consolidated appeals are made under the provisions of s. 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64), against the decision* of a Judge of the Supreme Court, by which all the *sub judice* decisions of the Chief Insurance Officer of the Ministry of Labour and Social Insurance granting to the applicants reduced old age pension, were declared to be null and void and of no effect whatsoever as being contrary to law.

The facts as shortly as possible are these:-

The applicants were considered as "insured persons" under s. 2 of the Social Insurance Law, Cap. 354. On April 19, 1964, the House of Representatives enacted the Social Insurance Law, 1974 (No. 2/64), and its long title shows that it is a law to amend and consolidate the laws of social insurance and workmen's compensation law establishing a scheme providing cash benefits for marriage, maternity, sickness, unemployment, widowhood, orphanhood, old age, accidents and death.

This new law which repealed the earlier law became operative on October 5, 1964, and all the applicants who were insured persons under the previous law, came within the ambit of the relevant provisions of the new law; and when finally they became entitled, they applied to the Chief Insurance Officer to grant

* Reported in (1973) 3 C.L.R. 145.

them cash benefits for old age pension which they claimed they were entitled to.

On February 27, 1968, the Chief Insurance Officer in reply told the applicants that they would be granted reduced old age pensions because the yearly average of their contributions were less than the yearly average of fifty which was required for full pensions.

The applicants, feeling aggrieved because of the reply of the Chief Insurance Officer, filed separate recourses in Court which finally were withdrawn on the undertaking by the administration to reconsider their claims and to inform them if it was found that they had a right of election under the provisions of the Sixth Schedule of Law 2/64. On May 6, 1969, the Chief Insurance Officer having reviewed the matter, informed each applicant separately that he had reached the conclusion that his original decision which was communicated to them on April 30, 1968, regarding the reduced old age pension could not be altered. The applicants feeling aggrieved once again, filed these recourses which finally were consolidated before the learned trial Judge.

The grounds of law put forward in respect of each application were more or less identical, and are these:–

" (a) Applicants having paid the required contributions under the law, were entitled to full old age pension and not to a reduced one; and

(b) respondents or either of them, in deciding to reduce the old age pension of applicants, by taking into consideration the average yearly contributions under the previous Social Insurance Law, Cap. 354, or otherwise, acted contrary to ss. 13, 24 and to the proviso of the Sixth Schedule of the Social Insurance Law No. 2/64 (as amended).

On July 26, 1969, the opposition was filed, and counsel for the respondents raised these two grounds:–

" (1) that the decisions complained of were reached lawfully in accordance with the Social Insurance Law, 1964 (No. 2/64) after taking into consideration all the material elements of the case;

(2) that no question arises regarding the subject of election by the applicants by calculating the old contributions

under the proviso to the Sixth Schedule of the aforementioned law. The relevant provision regarding election of the said proviso contradicts expressly paragraph (a) of subsection 3 of s. 13 of the same law and, therefore, it should be ignored in accordance with the well-accepted legal principles of interpretation of laws. MAXWELL: ON INTERPRETATION OF STATUTES, 10th edn. at p. 163".

Thus, it appears that the stand taken by the respondents was that the applicants were not entitled to a right of election under the proviso to paragraph 3 of the Sixth Schedule of the law, in order to get a full pension, and I propose quoting some of the sections of our law:

It appears that in the definition of s. 2 of the Social Insurance Law, 1964, an "insured person" means a person insured under this law; and that "appointed day" means such date as the Council of Ministers may by order appoint for the coming of this law into operation and which date was fixed, the 5th October, 1964.

Section 13 of the same law deals with all kinds of benefit, rate or amount of benefit, contribution conditions and also as to the persons who are entitled to benefit, and is in these terms:

"13(1) Benefit shall be of the following kinds:–

(g) old age pension;

(2) Subject to the provisions of this Law

(b) the contribution conditions for the several kinds of benefit shall be as set out in the Sixth Schedule to this Law;

(3) For the purpose of determining whether a person is entitled to benefit of any kind –

(a) any contributions paid by or credited to an insured person under the repealed law, prior to the appointed day, shall be considered as having been paid after the appointed day".

Subsection 4 which is a provision intended to benefit a person although the relevant contribution conditions are not satisfied, provides as follows:–

" Where a person would be entitled to benefit of any kind

but for the fact that the relevant contribution conditions are not satisfied as respects the number of contributions paid or credited in the last contribution year, the yearly average of contributions paid or credited or in the case of a maternity allowance the number of contributions paid or credited in respect of the fifty-two weeks immediately preceding the period from which the allowance is payable, that person shall nevertheless be entitled, if the said number or yearly average is not less than twenty, to benefit of that kind at the reduced rate or of the reduced amount specified for benefit of that kind in the column of the Seventh Schedule to this law which is appropriate to the said number or yearly average".

The Sixth Schedule to this law, relating to the contribution conditions for the several kinds of benefits provides in paragraph 3:-

" The contribution conditions for a marriage grant, widow's pension or old age pension are -

(a) that not less than one hundred and fifty-six contributions have been paid by the insured person; and

(b) that the yearly average of the contributions paid by or credited to him over the period -

(i) beginning on the first day of the contribution year which includes the appointed day or, if he reaches the age of sixteen years after the appointed day, on the first day of the contribution year in which he reaches that age; and

(ii) ending on the last day of the last complete contribution year before the beginning of the benefit year which includes the day on which the conditions are required to be satisfied

is not less than fifty".

Then comes the proviso which admittedly because of its defective drafting has given a lot of headache to all concerned. This proviso is in these terms:-

" Provided that, where an existing contributor elects to have all or part of the contributions paid by or credited to him

under the repealed Law, Cap. 354, to be considered as having been paid by or credited to him after the appointed day, the yearly average of contributions paid by or credited to him shall be for the period beginning on the first day of the contribution year, prior to the appointed day, which includes the first contribution considered as having been paid after the appointed day and ending on the last complete contribution year before the beginning of the benefit year which includes the day on which the conditions are required to be satisfied".

Now section 24(1) (as amended) lays down that a person is entitled to old age pension if –

" (a) he is over pensionable age; and in the case of an employed person he has retired from regular employment; and

(b) he satisfies the relevant contribution conditions; or

(c) he does not satisfy those conditions on that day, as from the first day thereafter on which he satisfies those conditions:

Provided that where a person was an existing contributor under the repealed Social Insurance Law, was over the age of fifty–five on the 7th January, 1957, and the number of contributions paid by him for contribution weeks which begin before the day on which he reaches the age of sixty–five, excluding contributions paid by him as a voluntary contributor under the repealed Law is less than fifty, that person shall be deemed for the purposes of this section to reach pensionable age, if he is then alive, on the 7th January, 1967:

Provided further that any contributions paid by or in respect of an employed person under the repealed Social Insurance Law for any period after that person reached the age of sixty five shall be considered for the purposes of this section as having been paid before he reached the age of sixty–five".

The learned trial Judge, having considered both sub–section 3(a) of s. 13 and paragraph 3 of the Sixth Schedule, and obviously facing difficulties as to the correct construction of those two provisions, had this to say:–

"There obviously arises great difficulty in trying to apply together subsection (3)(a) of section 13 and paragraph 3 of the Sixth Schedule; there appears to exist a conflict between them; and there does exist much ambiguity as to the combined effect of these two provisions; as a result the respondents treated the right of election in the proviso to paragraph 3 of the Sixth Schedule as being a provision which should be ignored, so as to give effect to the intention of the Legislature as allegedly otherwise expressed in Law 2/64, by subsection (3)(a) of section 13 in particular".

Then the learned trial Judge, having addressed his mind (a) to the principles regarding the construction of statutes and particularly having regard to the existence of ambiguity as to the effect of the two aforesaid provisions; and

(b) to the question whether the right of election in the proviso to the Sixth Schedule should be ignored or disregarded in order to accord with the true intent of the makers of the law in question, particularly of subsection 3(a) of s. 13. Having dealt also with a number of authorities and having quoted other sections, including ss. 13(4) and 24(1) of Law 2/64, said:

"It is against the background of the foregoing that there should be examined the riddle that, *though* the already quoted proviso to paragraph 3 of the Sixth Schedule to Law 2/64 gives a right to an existing contributor—that is (see section 2 of Law 2/64) a person who had been contributing under Cap. 354—to elect to have the contributions under Cap. 354 treated as having been paid by or credited to, him after the coming into force of Law 2/64 (provided that in such a case the method of calculating the yearly average of his contributions is different than the one laid down in sub-paragraph (b) of the said paragraph 3), *nevertheless* what such existing contributor can bring about by exercising the said right of election, under the proviso in question, is something which is ordained, by section 3(3)(a), to happen in any case by operation of law, without any right of election in this respect by the existing contributor concerned."

Then the learned trial Judge goes on:-

" In the light of various principles of construction of statutes, which have been referred to in this judgment, the provision regarding the right of election of an existing contributor, in the proviso to paragraph 3 of the Sixth Schedule, might be treated as inoperative in view of being in conflict with an enacting part in the body of the statute, namely section 13(3)(a), but in such a case there must also be treated as inoperative the remaining provisions of the proviso, because it is clear from the proviso that such provisions become operative only when the right of election in question is exercised; and thus we are left only with the other relevant provisions in the said paragraph 3, which are those in sub-paragraph (b) thereof.

On the other hand, the said proviso can be treated as a provision restricting the generality of the application of section 13(3)(a), not in the sense that the said section comes into operation only when an existing contributor elects that this should be so, but in the sense that it enables such a contributor to elect not to accept the benefit conferred on him by section 13(3)(a), if this would entail adverse consequences for him by way of a reduced pension, in view of the, by operation of the provisions of the proviso, increase of the years taken into account and resulting reduction of his yearly average of contributions."

Finally, he concludes:

" Neither of the above alternative courses was adopted by the respondent authorities in reaching the in these recourses *sub judice* decisions; what they did was to treat the right of election in the proviso as non-existent and yet to apply the other provisions in the proviso, which could only come into operation if a right of election existed and had been exercised; as it is to be derived from the foregoing such a course was not a correct application of the relevant law and it follows that the *sub judice* decisions have to be declared to be *null* and *void* and of no effect whatsoever as being contrary to law."

Then the learned Judge, for the sake of guidance, says:

" Having annulled the *sub judice* decisions as contrary to

law it is not really necessary to proceed further and decide, in these proceedings, which out of my two aforementioned alternative views as to the proviso in question is the correct one; but I might state for the sake of guidance of all concerned that I am inclined in favour of the latter because I think that in this way is better served the social insurance legislative policy which is expressly stated in section 12(3) of Law 106/72 and which had, without doubt, been all along sought to be implemented by means of the provisions, under scrutiny in this judgment, of Law 2/64."

The first complaint of counsel in this appeal, resisted by counsel on behalf of the respondents, is that the learned trial Judge wrongly found that if the right of election provided in the proviso to paragraph 3 of the Sixth Schedule to Law 2/64, is treated as inoperative, being in conflict with the enacting part in the body of the statute in question, then the rest of the provisions of the same proviso should also be treated as inoperative, because in accordance with the principles of construction only those provisions which are in direct conflict with the provisions of s. 13(3)(a) and s. 24 should be treated as inoperative.

Having considered carefully this contention of counsel, with the greatest respect to the learned trial Judge, we hold a different view because in our opinion the remaining provisions of the said proviso should be treated as operative as in accordance with the rules of construction where there is a conflict between a leading section and a schedule, one has to try and reconcile them as best he may. Having done so, it appears that they cannot be reconciled, and we think that that part of the proviso which refers to the right of election of an existing contributor in the Schedule should be treated as repugnant or inoperative only once the rest of the provisions are reconcilable with s. 13(3)(a) which says that "for the purpose of determining whether a person is entitled to benefit of any kind—(a) any contributions paid by or credited to an insured person under the repealed law, prior to the appointed day, shall be considered as having been paid after the appointed day". It seems to us that this is just the case in which when there is a conflict between a leading section and a schedule, the first should prevail, and if authority is needed, we think the case of *Institute of Patent Agents* v. *Lockwood*, [1894] A.C. 347 provides the solution to this problem. Lord Herschell, L.C., facing the same difficulty of having two

conflicting sections in the same Act, in his speech in the House of Lords, said at p. 360:–

> " No doubt there might be some conflict between a rule and a provision of the Act. Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other. That would be so with regard to the enactment and with regard to rules which are to be treated as if within the enactment. In that case, probably the enactment itself would be treated as a governing consideration and the rule as subordinate to it."

Applying that principle, we would reiterate that having failed to reconcile the provisions of s. 13(3)(a) with paragraph 3 of the proviso, we think that the subordinate provision, that is to say, the proviso, should give way to the leading provision, which as we said earlier, is s. 13(3)(a), which is a governing consideration, by treating the provision referring to election as being inoperative. With this in mind, I would uphold this submission of counsel, bearing in mind also the words of *Brett J.*, in *Stone* v. *The Mayor, Aldermen and Burgesses of Yeovil*, 45 L.J. Q.B. 657 at p. 660:

> " Now on reading the sentence in section 9, 'and the compensation to be paid for any permanent damage or injury to such lands', the expression 'such' at first sight confuses that compensation—the compensation in respect of lands to be purchased or taken—but when one comes to consider it carefully it is seen that if it be read thus it is insensible, and there is no effect which can be given to it in any case.
>
> What follows? As I have always understood, it is a canon of construction that you are to give effect to every word in an Act of Parliament or in an agreement, but if there be a word or phrase to which no effect can be given, which is of itself insensible, then that word must be eliminated. In the construction of this section the word 'such', is, to my mind, insensible, and therefore it must be eliminated."

We think that the case in hand is on all fours with the construction adopted in the *Stone* case (*supra*), and, therefore, the

word "election" must be eliminated from the proviso of the Sixth Schedule of our law, as being in conflict with the enacting part of our law.

The second complaint of counsel is that the learned trial Judge wrongly found that the said proviso can be treated as a provision restricting the generality of the application of s. 13(3)(a) of the law, in the sense that it enables a contributor to elect not to accept the benefit conferred on him by that section if that section would entail adverse consequences for him by way of a reduced pension.

We think in trying to answer this question we would state that if the enacting part and the schedule cannot be made to correspond, the latter must yield to the former—(see *Re Baines*, 41 E.R. 400 at p. 406). In the case in hand once the word "election" is of itself insensible when one considers the rest of the legislation, it should be eliminated. With this in mind, we find ourselves unable to agree with the learned Judge that the proviso can be treated as a provision restricting the generality or the application of s. 13(3)(a), because in our view, when a law grants a right of election, that is done by an express provision, in which it should provide that the person who has a right of election has to elect between two disjunctive ways which specifically or expressly are mentioned in the said law. It is said that election takes place when a man is left to his own free will to take or do one thing or another which would please him. On the question of the exercise of a statutory option or election, Viscount Simon in *Young* v. *Bristol Aeroplane Co. Ltd.* [1946] A.C. 163, had this to say at p. 173:–

> " Here we are dealing with a statutory 'option' in its setting in the section, and I am willing to adopt the view, which has constantly been expressed and enforced, that the workman does not lose his alternative remedy merely because he accepts some payments under the Act, when the option is unknown to him. But if the circumstances amount to this, that he persists in taking weekly compensation after knowing of the alternative course, he is debarred from changing the nature of his claim...
>
> In conclusion I would venture to express the hope that, if there is to be new statutory enactment on the subject of alternative remedies when workmen meet with industrial accident, the legislation will be so framed as to get rid of

the doubts and difficulties which have led to so much controversy, and have given rise to such fine distinctions, in the interpretation and application of s. 29."

We agree that it would have been better if the law was so framed as to avoid difficulties, but having regard to the wording of the proviso, no doubt, it presupposes that there is in existence a substantial provision granting the right of election, and because of that presupposition, the fixing of the period by which the average contributions are clearly calculated and made. (See the wording "where an existing contributor elects to have all or part of the contributions paid by or credited to him under the repealed law Cap. 354..."). But regretfully, no other provision in the context of the law is made for such election, and, moreover, no other conjunctive method is provided from which a contributor has a right to elect.

It is for the reasons we have stated that we have reached the conclusion that the view taken by the trial Judge, in his otherwise elaborate judgment, is contrary to the provisions of our law, and we would, therefore, allow the appeal and confirm the decision of the Chief Insurance Officer that the respondents are entitled to a reduced pension only. In view, however, of the important issues of law argued in this appeal, we would not make an order for costs.

Appeal allowed. No order as to costs.

Appeal allowed.