1979 April 14

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ZENON GEORGHIADES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Respondent

(*Case No.* 444/71).

Discrimination—Principle of—It means unequal treatment of persons under like circumstances—It does not exclude classification—Difference in the treatment, for purposes of pension, of persons who served with the British Forces during the last war and of persons who served in the National Guard does not give rise to discrimination—Because the said persons form two different classes—Section 6(2) *of the Secondary School Teachers' Pensions Law,* 1967 *and section* 17 *of the Pension Law, Cap.* 311 (*read in conjunction with regulation* 18 *of the Pensions Regulations*).

Pensions—Educational officers—Secondary Education school master—Service in a civil capacity with the military authorities during the period 1940–1942—*Cannot count as pensionable—Secondary School Teachers' Pensions Laws,* 1967–1971.

The applicant served as a teacher of the English language and commercial subjects in the Paphos Gymnasium from 1935 until August 31, 1940. During the period 1940–1942 he was granted leave of absence and served with the British military authorities in a civil capacity. In 1971 he was holding the post of Educational Guidance and Counselling Officer, which by virtue of a decision of the Council of Ministers had been included in the educational service and made pensionable. When he retired on pension in September 1971 he was informed by the respondent Minister that his service in a civil capacity with the military authorities during the period 1940–1942 could not count as pensionable under the Secondary School Teachers' Pensions Laws, 1967–1971.

Hence this recourse.

Counsel for the applicant mainly argued that there arose discrimination out of the fact that in section 6(2) of the Secondary School Teachers' Pensions Law, 1967, service in the armed forces of the Republic, but not in any other armed force, counts as pensionable service, whereas by section 17 of the Pensions Law, Cap. 311 (read in conjunction with regulation 18 of the Pensions Regulations) pensionability in respect of service in an armed force is confined to "service with Her Majesty's Forces".

Held, that, leaving aside the fact that the two laws were enacted by different legislative authorities and at different times, "discrimination" means unequal treatment of persons under *like circumstances*; that, thus, the doctrine does not exclude "classification" (see e.g. Seervai's Constitutional Law of India, pp. 210-212 para. 918); that persons who served with the British Forces during the last war form one class and persons who served in the National Guard form another; that for this reason, if for no other, the difference in the treatment of the two classes cannot support a contention about discrimination; and that, accordingly, the application must fail.

Application dismissed.

Recourse.

Recourse against the decision of the respondent whereby applicant's service between 1940-1942 with the British military authorities in a civil capacity was not counted as a pensionable period.

C. Demetriades, for the applicant.

A. Evangelou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

STAVRINIDES, J. read the following judgment. The applicant served as a teacher of the English language and commercial subjects in the Paphos Gymnasium from 1935 until August 31, 1940. That month, at the request of the British military authorities to the Paphos Greek Schools Committee, he was granted a year's leave of absence from the first day of the following month for the purpose of taking up employment with those authorities in a civil capacity. At the latter's request the leave was renewed for the school year 1941-1942. (The school years

1940–1941 and 1941–1942 commenced respectively on September 1, 1940, and September 1, 1941, and ended in each case on the 31st of the following August). He then resumed his teaching service at the Gymnasium. On September 7, 1945, a question having arisen about his salary having regard to his teaching service, he wrote to the Director of Education, who on the following September 25 replied to him (*exhibit* 4) stating that

> " The following years of service can be taken into consideration as service when computing your position on a salary scale in force in a school receiving a grant-in-aid from the Cyprus Government:
>
> | | | |
> |---|---|---|
> | 1935–40 | Paphos Gymnasium | 5 years |
> | 1940–42 | Civilian employee with the military authorities | 2 " |
> | 1942–43 | As for 1940–42 with part-time teaching in Paphos Gymnasium | 1 " |
> | 1943–45 | Paphos Gymnasium | 2 " |
> | | | 10 " |
>
> ."

On September 27, 1962, the Director of the Office of Greek Education wrote to him on behalf of the Appointments, Promotions and Transfers Committee of the Greek Education Office a letter (*exhibit* 6) offering him "permanent appointment as a teacher in the communal secondary schools". Paragraph 2 of that letter, so far as relevant, states:

> " ... and on the basis of your years of service in schools of secondary education in Cyprus totalling fifteen you will be receiving during the school year 1962–63 a basic salary of C£1,020."

He retired on pension in September, 1971. At that time he was holding the post of Educational Guidance and Counselling Officer, which by virtue of a decision of the Council of Ministers had been included in the educational service and made pensionable. On September 4, 1971, he received a letter from the Ministry of Finance (*exhibit* 1) which, so far as relevant, reads:

> "I have been instructed by the Minister of Finance to

refer to your letter of May 13, 1971, regarding your pensionable service and to inform you as follows:

(b) Your service in a civilian capacity with the military authorities of Cyprus during the period 1940–1942 cannot count as pensionable under the said Laws (the reference being to the Secondary School Teachers' Pensions Laws, 1967–1971).

.....

2. The Minister of Finance decided that the following interruption in your service shall not be regarded as breaking the continuity of your pensionable service, viz.:

September 1, 1940 — August 31, 1942
September 1, 1950 — October 31, 1950
September 1, 1951 — August 1951–1952
September 1, 1952 — August 31, 1954
September 1, 1960 — October 21, 1961."

Following on that letter he applied to this Court claiming a declaration

"that the decision of the respondent, conveyed to applicant by letter dated September 1, 1971, received by applicant on September 4, 1971 (*exhibit* 1), to the effect that the period of service of the applicant between 1940–1942 with the British military authorities in a civil capacity cannot be counted as a pensionable period is *null* and *void* and of no effect whatsoever, being contrary to the Constitution and/or law and/or as having been taken in excess or in abuse of the powers vested in him."

Mr. Demetriades for the applicant based his case essentially on an argument about discrimination said to arise out of the fact that in s. 6(2) of the Secondary School Teachers' Pensions Law, 1967, service in the armed forces of the Republic, but not in any other armed force, counts as pensionable service, whereas by s. 17 of the Pensions Law, Cap. 311 (read in conjunction with reg. 18 of the Pensions Regulations set out in the Schedule to that Law) pensionability in respect of service in an armed force is confined to "service with Her Majesty's Forces", a description which, clearly and admittedly, the applicant's service with the

British Forces during the years 1940–1942 in a civilian capacity does not answer.

In my judgment that argument must fail. Leaving aside the fact that the two Laws were enacted by different legislative authorities and at different times, "discrimination" means unequal treatment of persons under *like circumstances*. Thus the doctrine does not exclude "classification": see, e.g., Seervai's Constitutional Law of India, pp. 210–212, para. 918. But persons who served with the British Forces during the last war form one class and persons who served in the National Guard form another, and for this reason, if for no other, the difference in the treatment of the two classes cannot support a contention about discrimination.

It follows that the application must fail.

Application dismissed without costs.

Application dismissed without costs.