

1977 March 12

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS HARAKIS AND OTHERS,

*Applicants.*

v.

THE REPUBLIC OF CYPRUS, THROUGH THE  
MINISTER OF FINANCE AND ANOTHER,

*Respondents.*

(Case No. 41/70).

*Public Officers—Pensions and gratuities—Secondary education teachers in grant-aided school—Members of pensions or gratuity fund established under regulation 14(f) of the Secondary Education Regulations, 1948—Contributions to the fund by employer and the teachers—Dissolution of the Fund in 1961 by distribution—* 5  
*Teachers' pensions for service prior to dissolution undertaken by Government by virtue of section 6(4) of the Secondary School Teachers' Pension Law, 1967 (Law 56/67)—Amount that has to be refunded by the said teachers so that their service, in respect* 10  
*of which they received a pecuniary amount from the fund, may count as pensionable service.*

The applicants were in the employment of the Limassol Town School Committee as teachers at the Lanition Gymnasium. The school being grant-aided the Committee was required, under the Secondary Education Law, Cap. 169, to establish a pension or gratuity scheme for the benefit of all permanent members of the teaching and clerical staff. Such scheme was established by virtue of regulation 14(f) of the Secondary Education Regulations, 1948 and the Committee used to contribute the amount of £800.—yearly into the gratuities fund. This fund was, by agreement of all concerned, dissolved by distribution in 1961. 15  
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On November 26, 1969 the applicants were informed by letter\*

\* The letter is quoted at pp. 81-83 *post*.

of the Ministry of Finance that since for their service at the above school the "Government undertook by the Secondary School Teachers' Pension Law, 1967\* the obligation of paying an annual pension to them the amount of gratuity received by them should be returned to it because otherwise the axiom that no one may receive from his employer two retirement benefits in respect of the same period of service would be violated". Hence this recourse which aimed at establishing that only one half of the total amount received by each applicant in respect of payments into the fund was payable to the respondent as a condition of his being credited, for pension purposes, with the years of educational service in respect of which that part had been paid into the fund.

*Held*, that the amounts in dispute did not fall within paragraph (ii) of section 6(4) of Law 56/67; that to do so they must be moneys received (a) "in the form of a pension, compensation or gratuity" and (b) "by virtue of any Law, Regulation or General Order"; that though they were "gratuities" they were not received "by virtue of any Law, Regulation or General Order", if only because they were not paid consequent on dissolution of the fund, for which dissolution in fact no provision was made either in any Law, Regulation or General Order; that, therefore, paragraph (ii) is not applicable; that there is clear, reliable, and in fact uncontradicted, evidence clearly establishing that the moneys in question in effect represented, as to one half, contributions by the applicants; that, therefore, it clearly follows that half of the amount received by each applicant represented, in effect, a refund of his or her contributions to the fund; that, hence, the "employer's contributions" which the applicants had to pay to the respondent amounted to only half of what each applicant had received out of the fund; and that, accordingly, the *sub judice* decision must be annulled.

*Sub judice decision annulled.*

\* The relevant provision appears in s. 6(4) which runs as follows:

"Any period of service in respect of which any pecuniary amount was received by a teacher—

- (i) derived from contributions by the employer to any provident fund and interest on these contributions, or
- (ii) in the form of a pension, compensation or gratuity by virtue of any Law, Regulation or General Order,

does not count as pensionable service unless the person interested elects to return the amount so received by him together with interest at 4% per annum beginning from the publication of this Law".

**Recourse.**

Recourse against the decision of the respondents concerning the amount which, under the Secondary School Teachers' Pension Law, 1967 should be refunded by applicants out of the gratuity paid to them in 1961. 5

*Chr. Demetriades*, for the applicants.

*S. Nicolaidis*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

STAVRINIDES J. read the following judgment. All the applicants except Nos. 1, 16 and 17 are in the employ of the Limassol Town Committee (hereafter "the committee") as teachers at the Lanition Gymnasium. Applicant 1 also served under the committee in that capacity, but he retired some time before the commencement of these proceedings. Applicants 16 and 17 are in the same employ as clerks. These two applicants having withdrawn from the proceedings before their conclusion, this judgment does not concern them, and hereafter "applicants" will be used with exclusive reference to the remaining applicants. 10  
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The school being grant-aided under the Secondary Education Law, Cap. 169, the committee was required by the Secondary Education Regulations, reg. 17(f), to establish a "pension or gratuity scheme approved by the Director" [sc. of Education] "for the benefit of all permanent members of the teaching and clerical staff". On November 19, 1949, a scheme for the payment of lump sums to retiring teachers was established by a document which has been put in evidence (*exhibit 2*). Para. 14 of that document reads: 25

"The governing body shall in every school-year charge on and pay out of the revenue of the school, including the Government grant-in-aid, a sum of £800.0.0. into the Gratuities Fund: Provided that the governing body may with the sanction of the Director, from time to time increase, reduce or suspend the above payment as circumstances may require." 30  
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Hereafter the fund mentioned in the quotation will be referred to as "the fund".

In the heading of *exhibit 2* reg. 17(f) of the Regulations referred to is stated to be the basis of the scheme, whereas in a paragraph immediately preceding the regulation numbered "1" it is stated that the committee "hereby establish the following scheme" "in compliance with the provisions of reg. 14(f)" of those Regulations. "14(f)" is the number that the provision intended to be designated has been given in the revised edition of the subsidiary legislation published in 1954, i.e. several years after the making of the scheme; 17(f) its number on the text published in the 1948 Gazette. Nothing turns on the discrepancy; and this explanation is simply intended to save any unnecessary puzzlement that might be caused by it.

In 1961 the fund was, by agreement of all concerned, dissolved by distribution.

By s. 6(4) of the Secondary School Teachers' Pensions Law, 1967,

" Any period of service in respect of which any pecuniary amount was received by a teacher—

- (i) derived from contributions by the employer to any provident fund and interest on these contributions, or
  - (ii) in the form of a pension, compensation or gratuity by virtue of any Law, Regulation or General Order,
- does not count as pensionable service unless the person interested elects to return the amount so received by him together with interest at 4% per annum beginning from the publication of this Law".

All the applicants elected in writing to pay to the Government the sums received by them respectively out of the fund (exhs. 18-32). In so doing all except applicant 4 stated in the election document that they were "reserving their rights" or used words to that effect.

On November 26, 1969, a letter was addressed on behalf of the Ministry of Finance to the applicants (*exhibit 1*), which, so far as relevant, reads:

" I revert to your memorandum dated November 20, 1968, on behalf of certain teachers of the Lanition Gymnasium to the Minister of Finance which relates to the amount

that under the Secondary School Teachers' Pensions Law should be returned out of the gratuity paid to them in 1961 and to inform you that this matter has been carefully considered and the Ministry has reached the following conclusions:

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(a) the amounts paid to the Lanition Gymnasium teachers in 1961 were paid out of the gratuities fund established by the Limassol School Committee on September 1, 1948, by regulations made under reg. 14(f) of the Secondary Education Regulations, 1948, for the provision of a retirement benefit to teachers retiring from the service of the committee. Into this fund the School Committee was paying annually £300, which was approximately equal to 10% of the teachers' salaries. Under the regulations of the fund the teachers were not contributing anything to it. Therefore the gratuities paid to the teachers consisted exclusively of the employer's contribution. Since for the teachers' service in question the Government undertook by the Secondary School Teachers' Pensions Law the obligation of paying an annual pension to them the amount of gratuity received by them should be returned to it because otherwise the axiom that no one may receive from his employer two retirement benefits in respect of the same period of service would be violated.

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(b) However, it is a fact that since September 1, 1957, the Limassol School Committee adopted the secondary school teachers' salary scales proposed by OELMEK but reduced them by 5% on the ground that the teachers were not obliged to contribute to the gratuities fund. For this reason it may be considered that the amount of such reduction from September 1, 1957, till August 31, 1961, belongs to the teachers and it has been decided to deduct this from the amount that should be returned by the teachers to the Government. The relevant instructions have been given to the Accountant-General and the Ministry of Education.

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(c) .....

(d) Although the salaries of the Lanition Gymnasium teachers before 1957 may have been lower than those

5 of other schools, this fact in no way affects the amount  
of their pensions in view of the fact that the pension  
is calculated on the basis of the teacher's salary at the  
time of his retirement and his total service. As you  
surely understand the payment by the Government  
of an annual pension for the service of teachers for  
which they received a gratuity is an incomparably  
greater retirement benefit than the amount of gratuity  
which the teachers are obliged to return in order to  
10 receive a pension for the said period."

This letter contains the decision complained of, and this applica-  
tion is aimed, in substance, at establishing that only one half of  
the total amount received by each applicant in respect of pay-  
ments into the fund was payable to the respondent as a condition  
15 of his, or her, being credited, for pension purposes, with the years  
of educational service in respect of which that part had been  
paid into the fund—whether for service rendered on and after  
September 1, 1957, or before.

20 Elaborate legal argument has been put forward by counsel  
of either side, the gist of which is as follows: For the applicants  
it was contended that the amounts in dispute represented "contri-  
butions" by the committee to a "provident fund" and therefore  
the matter was governed by para. (1) of s. 6(4) of the Law.  
On the other side, as to that part of the amount received by  
25 each applicant which was derived from what had been paid into  
the fund in respect of service on or after September 1, 1957,  
Counsel of the Republic agreed that only half was returnable  
to the respondent. But with regard to the amount received by  
each applicant in respect of what had been paid into the fund on  
30 account of service rendered by him or her before that date he  
contended that it was "a gratuity" within para. (ii) of that  
subsection and hence the whole of it was so returnable.

In my judgment it is not necessary to go into a detailed discus-  
sion of the argument on either side. It seems to be clear that  
35 the amounts in dispute did not fall within para. (ii): to do so  
they must be moneys received (a) "in the form of a pension,  
compensation or gratuity" and (b) "by virtue of any Law,  
Regulation or General Order". That they were "gratuities"  
cannot be doubted. But in my judgment they were not received  
40 "by virtue of any Law, Regulation or General Order", if only

because they were not paid consequent on dissolution of the fund, for which dissolution in fact no provision was made either in *exhibit 2* or any Law, Regulation or General Order. So para. (ii) is not applicable. Now there is clear, reliable, and in fact uncontradicted, evidence (viz. that of witness 3 for the applicants, N. Dometakis, to say nothing of the newspaper cutting, *exhibit 4*), clearly establishing that the moneys in question in effect represented, as to one half, contributions by the applicants. Therefore it clearly follows that half of the amount received by each applicant represented, in effect, a refund of his or her contributions to the fund. Hence the "employer's contributions" which the applicants had to pay to the respondent amounted to only half of what each applicant had received out of the fund. 5 10

For the reasons I have given the applicants succeed and I make the following declaration: 15

It is hereby declared that in calculating the respective pensions of each one of applicants 1-15 inclusive the respective period of service on the basis of which he or she was paid a share out of the "Gratuities Fund" established by the Limassol Town School Committee by a document dated November 19, 1949 (*exhibit 2*), should be accounted pensionable. 20

Respondent to pay applicants £40 costs.

*Sub judice decision annulled.  
Declaration accordingly. Order  
for costs as above.* 25