

1984 March 8

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CONSTANTINOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS AND OTHERS,

Respondents.

(Case No. 316/81).

Pensions and gratuities—Police Force—Requirement to resign of member of, following his disciplinary conviction—No absolute right to receive pension—Regulation 45 of the Police (Discipline) Regulations 1958 to 1977—Sections 6(f) and 7 of the Pensions Law, Cap. 311.

5

Pensions Law, Cap. 311—“As provided in this Law” in section 6(f) of the Law—Meaning.

The applicant, a police constable, was found guilty, on his own plea, of the disciplinary charge of absence without leave and was required to resign. The Council of Ministers rejected his application for the grant of pension to him and hence this recourse,

10

Counsel for the applicant mainly contended:

(a) That the sub judge decision was contrary to regulation 45* of the Police (Discipline) Regulations 1958 to 1977.

15

(b) That there has been a wrong exercise of discretion by the Council of Ministers in refusing to give to the applicant a pension.

Section 6(f) of the Pensions Law, Cap. 311 provides as follows:

“No pension, gratuity or other allowance shall be granted

20

* Regulation 45 is quoted at pp. 459-460 post.

under this Law to any officer except on his retirement from the Public Service in one of the following cases:

(f) In the case of termination of employment in the public interest as provided in this Law".

5 *Held*, that the expression "as provided in this Law" in para (f) of section 6 of the Law cannot be confined to a particular provision of the Law but to the whole of it and in this respect section 7 which deals with the question of pension, gratuity or other allowance in cases of termination of services in the public interest is applicable also to cases under regulation 45 when the punishment imposed for a disciplinary offence is the one of requirement to resign: that the expression "will not deprive the member of his rights to pension" appearing in regulation 45 does not take away the discretionary powers of the Council of Ministers that are given to it by section 7 as the said expression in this regulation is followed by the expression "on the basis of termination of services in the public interest" and the word "basis" in this expression means the powers - discretionary at that - that the Council of Ministers has under section 7 of the Law; accordingly contention (a) must fail.

20 (2) That as the applicant had submitted his resignation, stayed away for a long time from his duties without any justification and without leave his whole conduct was such that it could not be successfully claimed that the Council of Ministers exercised its discretion in abuse or excess of power or contrary to law; accordingly, contention (b) must, also, fail.

Application dismissed

Cases referred to:

20 *Sarva v. Republic* (1979) 3 C.L.R. 250;
 Sarva v. Republic (1981) 3 C.L.R. 599.

Recourse.

Recourse against the refusal of the respondents to grant pension to the applicant.

D. Lambides, for the applicant.

35 *N. Charalambous*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The applicant enlisted in the Cyprus Police Force on the 6th February, 1964, and between the 8th July, 1978 to the 26th September, 1979, he was serving at Paphos. On the 21st July, 1979, he was required to resign by a First Instance Disciplinary Body, having been found guilty, on his own plea, of the disciplinary charge of absence without leave in breach of the Disciplinary Code, regulation 7, para. 10, and regulation 18 of the Police (Discipline) Regulations, 1958-1977. 5

The facts of the case as they appear from the bundle of documents, exhibit 1, are these: "The accused, P.C.2158 A. Constantinou, enlisted in the Police Force on the 6.2.1974 (the correct year must be 1964, as it appears from the Opposition). He served in various districts and on the 8.7.1978 he was transferred to Paphos and posted at the Criminal Investigation Department. On the 23.3.1979 he was transferred from the C.I.D. to the Reliefs where he worked until 12.6.1979. On that date he submitted to the Chief of Police his resignation. On the following day, 13.6.1979, he obtained ten days leave of absence. After the expiration of the said leave, on the 23.6.1979 he obtained another six days leave of absence and he should return at 0800 hrs. of the 29.6.1979 for service to the 'A' Relief. The Officer in charge of 'A' Relief is Inspector P. Hadjicostis and Sgt. 853 was his assistant. Until 0855 hrs. of the 29.6.1979 the accused did not report for work and Sgt. 853 reported him. On the same day, after instructions from the Divisional Police Commander Paphos, Inspector Hadjicostis found the accused and asked him why he did not report for work, the accused answered 'I want to resign', and that he had submitted already his resignation. A disciplinary case was opened against the accused for absence from his duty without leave and on 30.6.1979 he was given Form P. 215 and the accused made the following statement: "I have submitted my resignation since some time". The accused has not reported until to-day for duty although his application for resignation was not approved by the Chief of Police". His previous convictions consisted of the offence of improper behaviour committed on 1.5.1979 (five counts) for which he was fined C£35. He said nothing in mitigation and in imposing the disciplinary sentence the presiding Officer said to him: "You have been found guilty on you own plea. The offence is sufficiently serious. Your whole conduct shows a 10
15
20
25
30
35
40

man who does not wish to stay in the Police Force. The Court cannot but impose on you the sentence of 'requirement to resign' ". The Divisional Police Commander, Paphos, in the exercise of his power as a Reviewing Officer by virtue of Disciplinary Regulation 18(4) confirmed the First Instance decision.

The applicant on the 4th February, 1981, applied to the Council of Ministers and asked "by virtue of the existing Police Regulations and in particular of regulation 45 whereby the right to pension of a Policeman required to resign for disciplinary offences remains unaffected" that the long standing question of his demand for the payment to him of pension be dealt with. The Council of Ministers examined the submission made to it under No. 277/81 and by its Decision No. 20.489 of the 12.6.1981 decided:-

"The Council considered the application on behalf of ex P.C. 2158 A. Constantinou (Marmara) to whom was imposed the disciplinary punishment of the requirement to resignation for the payment to him by virtue of Regulation 45 of the Police (Disciplinary) Regulations and Section 7 of the Pensions Law, Cap. 311, and Laws 17/60, 9 and 18 of 1967, 51 and 119 of 1968, 9/71, 65/73, 42/76, 38/79 and 2/81, of the retirement benefits, his rights to pension which he has earned on the basis of his actual service and having taken into consideration all that has been presented during the meeting, as well as the record of the applicant, decided that his application should not be accepted".

Upon this decision being communicated to the applicant by letter dated the 11th July, 1981, he filed the present recourse seeking its annulment and/or a declaration that the omission to grant him pension is null and that what was omitted ought to be performed.

Regulation 45 of the Police (Discipline) Regulations, 1958 to 1977 reads as follows:-

"In case the punishment imposed by virtue of these Regulations on a member of the Force for a disciplinary offence is the one of requirement to resign, the resignation of the member arising as a result of such punishment will, for purposes of pension, be considered as termination of ser-

vices in the Public interest and will not deprive the member of his rights to pension granted on the said basis of termination of services in the public interest”.

Section 6(f) of the Pensions Law, Cap. 311, in so far as relevant, reads as follows:-

5

“No pension, gratuity or other allowance shall be granted under this Law to any officer except on his retirement from the Public Service in one of the following cases:

.....
(f) In the case of termination of employment in the public interest as provided in this Law”.

10

The expression “as provided in this Law” naturally refers, inter alia, to its section 7 which reads as follows:-

“7. Where an officer’s service is terminated by the Council of Ministers on the ground that, having regard to the conditions of the public service, the usefulness of the officer there-
to and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law, the Council of Ministers may, if it thinks fit, grant such pension, gratuity or other allowance as it thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6 of this Law”.

15

20

25

In *Charalambos Sayva v. The Republic* (1979) 3 C.L.R., p. 250, Malachos, J., trying the case in the first instance, held that regulation 45 does not give to a member of the Police Force who was required to resign an absolute right to receive pension, gratuity or other allowances; that the sentence imposed, —which was the same as the one in the case in hand—under regulation 45 is considered for pension purposes as termination of employment in the public interest and so under section 6(f) of the Pensions Law, Cap. 311, the applicant is entitled to pension as provided by the said Law; that the expression “as provided in this Law” appearing in section 6(f) does not mean the calculation and machinery under which pension, gratuity

30

35

and other allowances are collected, as counsel for the applicant in that case had submitted, but the right to such benefits and so the provisions of section 7 of the Law come into play; that being so it becomes clear that by virtue of section 7 of the Law the
5 Council of Ministers is vested with discretionary power to grant or refuse pension benefits.

The Full Bench of this Court which heard the appeal from the said judgment, in its judgment reported as *Charalambos Savva v. The Republic* (1981) 3 C.L.R., p. 599, after commenting that
10 the issue whether the Council of Ministers has a discretionary power to refuse, altogether a pension to the appellant, was not free from difficulty and as in that case it did not think that it had to pronounce finally on it, left it open and proceeded to resolve the issue before it on the assumption that the Council
15 of Ministers had a discretionary power in the matter.

I agree fully with the approach of Malachos, J., hereinabove referred to on the construction of the relevant provisions of the Law and of regulation 45. The expression "as provided in this Law" in para. (f) of section 6 of the Law cannot be confined
20 to a particular provision of the Law but to the whole of it and in this respect section 7 which deals with the question of pension, gratuity or other allowance in cases of termination of services in the public interest is applicable also to cases under regulation 45 when the punishment imposed for a disciplinary offence is
25 the one of requirement to resign. The expression "will not deprive the member of his rights to pension" appearing in regulation 45 does not take away the discretionary powers of the Council of Ministers that are given to it by section 7 as the said expression in this regulation is followed by the expression "on
30 the basis of termination of services in the public interest" and the word "basis" in this expression means the powers—discretionary at that—that the Council of Ministers has under section 7 of the Law.

Any other interpretation would lead to absurdity in the sense
35 that a person submitting his resignation might be deprived of his pension rights, whereas a person required to resign as a result of a disciplinary offence would be entitled as of right to the receipt of a pension.

Having disposed of the first ground of Law relied upon on behalf of the applicant in this recourse, I turn now to the second one which is to the effect that there has been a wrong exercise of discretion by the Council of Ministers in refusing to give to the applicant a pension. On the facts and circumstances of his case I have no difficulty in dismissing this ground also inasmuch as the sub judice decision was reasonably open to it. The applicant had submitted his resignation, stayed away for a long time from his duties without any justification and without leave, and his whole conduct was such that it could not be successfully claimed that the Council of Ministers exercised its discretion in abuse or excess of power or contrary to Law.

For all the above reasons this recourse is dismissed, but in the circumstances I make no order as to costs.

*Recourse dismissed with no order
as to costs.*