

C A S E S
DECIDED BY
THE SUPREME COURT OF CYPRUS
ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

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[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

IOANNIS TSIARTZIAZIS,

Applicant,

v.

THE REPUBLIC OF CYPFUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 232/81).

5 *Act or decision in the sense of Article 146.1 of the Constitution—
Which can be made the subject of a recourse thereunder—
Refusal to pay gratuity to applicant after the termination of
his contract of service with the administration—An execu-
tory administrative act, within the domain of public law,
even though it relates to a financial dispute.*

*Gratuities—Government employees—Casual Government em-
ployee—Employed on special contract—Entitled to a gra-
tuity by virtue of Regulations of a circular dated the 31st*

March, 1979, issued by the Director of the Department of Personnel.

*Administrative acts or decisions—Presumption of regularity of
—Circulars issued by a Government Department—In the
absence of proof to the contrary they are legally binding 5
even though they were not issued by the Council of
Ministers.*

*Circulars—Issued by Government departments—Unless un-
favourable are binding as regards persons within the
Government Service. 10*

The applicant was a municipal employee and was assigned to the Ministry of Commerce and Industry from the 1st February, 1970, where he served until his retirement on the 31st July, 1970.

In view of his idenspesability and great experience in 15
the area of the implementation of the Commodities and Services (Regulation and Control) Law of 1962 (Law 32/62), he was reappointed by the Council of Ministers, to the same Ministry, on a contractual basis from the 1st August, 1970; his contract was renewed by the Council 20
of Ministers at regular intervals of two years, except for the last period which was for one year, upto the termination of his services on the 1st July, 1979. It was evident from the terms of the agreement that the applicant was not on daily wages because his contract provided, inter alia, 25
for an annual salary, payable monthly (as opposed to daily wages) and for a written notice of termination of three months or payment of one month's salary.

The respondent refused to pay applicant a gratuity after the termination of his contract of service and hence 30
this recourse.

Applicant contended that he was entitled to a gratuity by virtue of the Regulations * ("the 1979 Regulations")

* Under regulation 1 of these Regulations casual government employees are employees who are not manual workers and are employed under a special contract for development projects, seasonal needs and casual work Regulation 1 specifically excludes manual workers but makes no reference at all to pensioners

of a circular dated the 31st March, 1979, issued by the Director of the Department of Personnel.

On the other hand Counsel for the respondent contended:

- 5 (1) That the decision complained of was not an administrative act for two reasons, first as it was a dispute on financial matters and, secondly, as it was a decision emanating from a contract between a private individual and the administration and was, as such, within the domain of private law;
- 10 (2) (i) That the 1979 Regulations were, in any case, not applicable in this instance, as they referred to different terms of employment than those of the agreement between the parties;
- 15 (ii) That the 1979 Regulations were not applicable as they were not part of the contract between the parties, which contract determined the rights and duties between them.
- 20 (3) That the 1979 Regulations had not been approved by the Council of Ministers but were used only for the purposes of the Department of Personnel; they were, therefore, inapplicable outside the Department, whereas the 1977 Regulations had the approval of the Council of Ministers.

25 *Held*, (1) that the refusal of the respondent is an executory administrative act, within the domain of Public Law and as such can be the subject of a recourse notwithstanding that it relates to a financial dispute, because many of the disputes before the Administrative Courts are without doubt, financial disputes, as for instance, tax matters.

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35 (2) That contracts between private individuals and the Administration, though at times may be governed by private law, can, nonetheless, be governed by Public Law; that it is well established that the appointment of a public officer is an administrative act and not a mere private contractual engagement; and

that, therefore, the decision of the respondents is in the domain of public law and can be challenged by means of a recourse.

(3) That taking into consideration that the applicant was a casual Government employee, who had been re-employed on a special contract, for the performance of special duties, and who does not fall within the exemptions of regulation 1 of these Regulations, he is entitled to the gratuity provided for upon the termination of his contract of employment; that this Court cannot agree with the contention of counsel for the respondents that the 1979 Regulations are inapplicable in the case of the applicant as his contract contained different terms of service than those contained in the Regulations of 1979; that the fact that there are differences as regards matters of sick-leave, vacation leave, and medical treatment, in no way precludes the Regulations of 1979 from being applicable in the present case. The Regulations clearly apply in so far as the contract in question makes no specific provision on any particular matter.

(4) That neither is the argument of the respondents correct that the regulations of 1979, were intended only for internal purposes of the Department of Personnel and not elsewhere, as they do not possess legal force, not having been issued by the Council of Ministers. The presumption of regularity exists for all acts of the Administration and since the Regulations were issued on the direction of the government and as there is no proof to the contrary, this Court can only but accept that they are legally binding; (see Tsatsos Recourse For Annulment, 3rd ed., 1971, at pp. 290-291, that circulars issued by Government departments, unless unfavourable, are binding as regards persons within the

5 Service); and that, therefore, the sub judice decision must be annulled, as it is clear that it was taken under a misconception of the law applicable in circumstances resulting in excess or abuse of powers.

Sub judice decision annulled.

Cases referred to:

Papakyriacou v. Republic (1970) 3 C.L.R. 351.

10 **Recourse.**

Recourse against the decision of the respondents refusing applicant a gratuity after the termination of his contract of service.

P. Polyviou with St. Middleton (Mrs.) for the applicant.

15 *S. Georghiades*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

20 MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the decision of the respondents contained in their letter dated 15th June, 1981, by which they refused the applicant a gratuity after the termination of his contract of service with them, is null and void and of no legal effect whatsoever.

25 The relevant facts of the case are as follows:

The applicant was a municipal employee and was assigned to the Ministry of Commerce and Industry from the 1st February, 1970, where he served until his retirement on the 31st July, 1970.

30 In view of his indispensability and great experience in the area of the implementation of the Commodities and Services (Regulation and Control) Law of 1962 (Law 32/62), he was reappointed by the Council of Ministers, to the same Ministry, on a contractual basis from the
35 1st August, 1970; his contract was renewed by the

Council of Ministers at regular intervals of two years, except for the last period which was for one year, upto the termination of his services on the 1st July, 1979.

The contract between the applicant and the Government, was produced as exhibit 7. 5

The applicant wrote to the respondents, on the 22nd April, 1981, applying for a gratuity to which he was entitled, as he claimed, in accordance with the regulations of the Circular dated 31st March, 1979, issued by the Director of the Department of Personnel. The Director of the Department of Personnel replied to the applicant on the 15th June, 1981, stating that the Administration was obliged to abide by their decision contained in their letter of the 8th January, 1981, to the Accountant-General, that the applicant was not entitled to a gratuity after the termination of his services as he had been reemployed after his retirement, and according to the regulations attached to the Circular of the Department of Personnel of 22nd April, 1977, he was within the exempted class of persons who were not entitled to a gratuity. Furthermore, he was not entitled to a gratuity as no provision to that effect had been made in his contract of service with the Government. 10 15 20

As a result, the applicant filed, on the 6th July, 1981, the present recourse which is based, as stated therein, on the following grounds of Law:— 25

That the respondents acted—

- (1) on the basis of a misinterpretation of the applicable regulations of 21st March, 1979;
- (2) contrary to the Law and regulations in that it was wrongly decided that the regulations of 22nd April, 1977, had not been replaced by the regulations of 21st March, 1979; 30
- (3) in abuse or in excess of power as the applicant was not given the gratuity to which he was entitled upon the termination of his contract of service on 1st September, 1979, under the regulations of 1979. 35

Counsel for applicant has primarily argued and has tried to establish that his client was not a daily paid employee and, therefore, that the regulations of 1977, had no application in his case as these applied solely and exclusively to daily paid employees; the regulations to be applied in his case were in fact those of April, 1979, which were applicable to casual government employees, like himself.

Counsel for respondents, on the other hand, argued that:

- 10 (1) The decision complained of was not an administrative act for two reasons, first as it was a dispute on financial matters and, secondly, as it was a decision emanating from a contract between a private individual and the administration and was, as such, within the domain of private law;
- 15 (2) (i) The 1979 regulations were, in any case, not applicable in this instance, as they referred to different terms of employment than those of the agreement between the parties.
- 20 (ii) The 1979 regulations were not applicable as they were not part of the contract between the parties, which contract determined the rights and duties between them.

And, finally, that

- 25 (3) The 1979 regulations had not been approved by the Council of Ministers but were used only for the purposes of the Department of Personnel; they were, therefore, inapplicable outside the Department, whereas the 1977 regulations had the approval of
- 30 the Council of Ministers.

I must say at the outset that the refusal of the respondents is an executory administrative act, within the domain of Public Law and as such can be the subject of a recourse. I cannot agree with the contention of counsel for the respondents that it cannot be such since it relates to a financial dispute. Many of the disputes before the Administrative Courts are, without doubt, financial disputes, as, for instance, tax matters, etc.

Secondly, contracts between private individuals and the Administration, though at times may be governed by private law, can, nonetheless, be governed by Public Law. It is well established that the appointment of a public officer is an administrative act and not a mere private contractual engagement. See *Nedjati Administrative Law* (1974 ed.) at p.111; also in *Papakyriakou v. The Republic* (1970) 3 C.L.R. 351, where it has been held that appointments on contract, from month to month, or to satisfy the needs of the service, or reappointment on contract, come within the definition of a public officer and are within the domain of Public Law.

Having established that the decision of the respondents is in the domain of Public Law, I shall proceed to consider the terms of employment of the applicant and to deal with the two circulars and their application.

It is evident from the terms of the agreement, that the employment of the applicant was not on daily wages; his contract provides, inter alia, for an annual salary, payable monthly (as opposed to daily wages), and also that a written notice of termination of three months or payment of one month's salary are required from either side.

The regulations of 1977, regulation 1, refer, as rightly submitted by both parties, to daily paid employees and do not apply to labourers, technicians and all other manual workers, as well as persons who were re-employed on daily wages after their retirement.

Quite rightly again, it has been submitted by both parties that the regulations of 1977 do not apply in the case of the applicant who was not a daily paid employee. The applicant was never within the class intended to be benefited, not because he fell within the exemption of the definition, as the respondents alleged, but because he was never a daily paid employee.

It has been contended on behalf of the applicant that the circular applicable in his case is the one containing the regulations of 31st March, 1979, which came into force before the termination of his services. It was argued that these new regulations have codified all the pre-exist-

ing regulations, in an attempt to modernise and improve them and have thus totally replaced the regulations of 1977; they are of a wider application. They do not only deal with gratuities as the 1977 regulations, but also
5 regulate the terms of service of casual government employees, who, according to regulation 1, are employees who are not manual workers and are employed under a special contract for development projects, seasonal needs and casual work; Regulation 1 specifically excludes manual
10 workers but makes no reference at all to pensioners, as opposed to the 1977 regulations which specifically exclude pensioners.

I must say that I fully agree with the submission of counsel for applicant as to the interpretation and applica-
15 tion of the Regulations of 31st March, 1979, and, taking into consideration that the applicant was a casual Government employee, who had been re-employed on a special contract, for the performance of special duties, and who does not fall within the exemptions of regulation 1 of
20 these Regulations, he is entitled to the gratuity provided for upon the termination of his contract of employment.

I cannot agree with the contention of counsel for the respondents that the 1979 Regulations are inapplicable in the case of the applicant as his contract contained different terms
25 of service than those contained in the Regulations of 1979. In my view, the fact that there are differences as regards matters of sick-leave, vacation leave, and medical treatment, in no way precludes the regulations of 1979 from being applicable in the present case. The Regulations
30 clearly apply in so far as the contract in question makes no specific provision on any particular matter.

Neither is the argument of the respondents correct that the regulations of 1979, were intended only for internal purposes of the Department of Personnel and not elsewhere,
35 as they do not possess legal force, not having been issued by the Council of Ministers. The presumption of regularity exists for all acts of the Administration and since the Regulations were issued on the direction of the government and as there is no proof to the contrary, I can only
40 but accept that they are legally binding; See *Tsatsos Recourse For Annulment*, 3rd ed., 1971, at pp. 290-291.

that circulars issued by Government departments, unless unfavourable, are binding as regards persons within the Service.

For the reasons stated above, the sub judice decision is annulled, as it is clear that it was taken under a misconception of the law applicable in circumstances resulting in excess or abuse of powers. 5

The respondent is adjudged to pay £30.— against the costs of the applicant.

Sub judice decision annulled. Order for costs as above. 10