

1985 July 8

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANTONIS LOUCA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF INTERIOR,
2. THE DIRECTOR-GENERAL OF THE MINISTRY
OF INTERIOR,

Respondents.

(Case No. 198/82).

*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, 1958-1981—Section 6(f)
and 7 of the Pensions Law, Cap. 311—Meaning of expres-
sion “As provided in the Law” in section 6(f) of Cap. 311.*

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10 The applicant, then a member of the Police Force, was charged with committing five disciplinary offences and upon his plea of guilty was finally sentenced to the disciplinary punishment of the “requirement to resign”.

15 On the 26.10.1981 the applicant, after complying with the above sentence, applied to the Council of Ministers for pension under regulation 45 of the Police (Discipline) Regulations, 1958-1981 and sections 6(f) and 7 of the Pension Law, Cap. 311*

20 The Council of Ministers after a submission by the Minister of Interior, in which all facts relating to the personal circumstances of the applicant and his conduct, while serving in the Police Force, are stated, decided to reject the application of the applicant. Its decision was communicated

* Sections 6(f) and 7 of Cap 311 and Regulation 45 are quoted at pp 1533-1534 post

to applicant's counsel by a letter of the Director-General of the Ministry of Interior dated 2.3.1982. As a result the applicant filed the present recourse. One of the grounds of Law on which the applicant bases his present recourse is that the respondents acted under a misconception regarding the interpretation and application of the said regulation 45.

Held, dismissing the recourse (1) The power vested in the Council of Ministers to grant pensions and other benefits earned in cases where a member of the Police Force has been sentenced to the disciplinary punishment of the "requirement to resign" is discretionary (*Savva v. The Republic* (1979) 3 C.L.R. 250 reversed on appeal on another point and *Constantinou v. The Republic* (1984) 3 C.L.R. 456 followed).

(2) In the circumstances of this case and having regard to all the material placed before the Court, which had also been placed before the Council of Ministers, it cannot be said that the Council of Ministers exercised its discretion in a defective manner or acted in any way in abuse or excess of power.

Recourse dismissed.

No order as to costs.

Cases referred to:

Savva v. The Republic (1979) 3 C.L.R. 250 (on appeal (1981) 3 C.L.R. 599);

Constantinou v. The Republic (1984) 3 C.L.R. 456.

Recourse.

Recourse against the decision of the Council of Ministers to reject applicant's request for the grant to him of retirement benefits after the disciplinary punishment of requirement to resign from the Police Force was imposed on him.

A. Spyridakis, for the applicant.

A. Vladimirov, for the respondents.

Cur. adv. vult. 35

DEMETRIADES J. read the following judgment. The applicant, an ex Police Constable, was enlisted in the Police Force in 1964.

Between the 29th January, 1981, and the 31st May, 1981, while serving as a constable at the Police Station of Amiantos, without authorization and in breach of the Police regulations, used the Government telephone of the said Police Station for private calls, thus charging the Republic with the sum of £279.745 mils. As a result, the applicant was charged with committing five disciplinary offences to which he pleaded guilty and was sentenced to pay a fine equal to ten and five daily wages in respect of the first and second count, respectively, but the Divisional Police Commander of the district in which the applicant was serving, in the exercise of his power as a reviewing officer, by virtue of regulation 18(4) of the Police (Discipline) Regulations, 1958-1981, decided that the proper sentence to be imposed on the applicant was dismissal from the Police Force. The applicant then appealed to the Chief of Police who, by virtue of the powers vested in him by regulation 21 of the relevant Regulations, imposed on the applicant the disciplinary punishment of the "requirement to resign".

On the 26th October, 1981, the applicant, after complying with the sentence imposed on him by the Chief of Police, wrote, through his lawyer, a letter to the Secretary of the Council of Ministers asking for the examination by the Council of Ministers of his claim for pension under regulation 45 of the Police (Discipline) Regulations, 1958-1981 (see No. 40 in the Third Supplement to the Official Gazette, Part 1, dated 26th March, 1976) and sections 6(f) and 7 of the Pensions Law, Cap. 311.

Regulation 45, above, reads as follows:

«45. Εἰς περίπτωσιν καθ' ἣν ἡ δυνάμει τῶν παρόντων Κανονισμῶν ἐπιβληθεῖσα εἰς μέλος τῆς Δυνάμεως ποινὴ διὰ πειθαρχικὸν ἄδίκημα εἶναι ἢ τῆς ὑπὸ τοῦ ἐκδικάσαντος τὸ ἄδίκημα ἀπαιτήσεως πρὸς τὸ μέλος διὰ παραίτησιν, ἢ συνεπείᾳ τῆς τοιαύτης ποινῆς παραίτησις τοῦ μέλους θὰ θεωρῆται, διὰ σκοποὺς συντάξεως, ὡς τερματισμὸς ὑπηρεσίας πρὸς τὸ δημόσιον συμφέρον καὶ δὲν θὰ ἀποστερῇ τὸ μέλος τοῦ δικαιώματός

του διὰ σύνταξιν χορηγουμένην ἐπὶ τῆς ρηθείας βά-
σεως τοῦ τερματισμοῦ ὑπηρεσίας πρὸς τὸ δημόσιον
συμφέρον.»

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“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 services 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) and 7 of Cap. 311, above, read as follows:

“6. 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.

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 thereto 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.”

During its meeting of the 10th, 11th and 12th February, 1982, the Council of Ministers, after a submission of the Minister of Interior, under No. 143/82, copy of which is an exhibit in the file of the recourse, and in which all facts

relating to the personal circumstances of the applicant and his conduct whilst serving in the Police Force are stated, by its Decision No. 21.357, decided to reject the application of the applicant and its decision was communicated to his
5 counsel by letter of the Director-General of the Ministry of Interior dated the 2nd March, 1982.

The relevant decision of the Council of Ministers reads as follows:

«43. Τὸ Συμβούλιον ἐμελέτησεν αἴτησιν, ἐκ μέρους
10 τοῦ πρώην Ἀστυφύλακος ὑπ' Ἀρ. 2540 Ἀντώνη Λουκά, εἰς τὸν ὅποιον ἐπεβλήθη ἡ πειθαρχικὴ ποινὴ τῆς ἀπαίτησεως πρὸς παραίτησιν, διὰ τὴν καταβολὴν εἰς αὐτόν, δυνάμει τοῦ Κανονισμοῦ 45 τῶν περὶ Ἀστυνομίας (Πειθαρχικῶν) Κανονισμῶν καὶ τοῦ ἄρθρου 7
15 τοῦ περὶ Συντάξεων Νόμου, Κεφ. 311 καὶ Νόμων 17 τοῦ 1960, 9 καὶ 18 τοῦ 1967, 51 καὶ 119 τοῦ 1968, 9 τοῦ 1971, 65 τοῦ 1983, 42 τοῦ 1976, 38 τοῦ 1979, 2 καὶ 39 τοῦ 1981, τῶν ὠφελημάτων ἀφυπηρητήσεως τὰ ὅποια οὗτος ἐκέρδισε βάσει τῆς πραγματικῆς αὐτοῦ
20 ὑπηρεσίας καί, λαβὸν ὑπ' ὄψιν ἅπαντα τὰ ἐκτεθέντα κατὰ τὴν Συνεδρίαν ὡς καὶ τὸ μητρώον τοῦ αἰτητοῦ, ἀπεφάσισεν ὅπως ἡ αἴτησίς του μὴ γίνῃ ἀποδεκτὴ.»

(“The Council considered an application on behalf of ex P. C. 2540 Antonis Louca, to whom there was
25 imposed the disciplinary punishment of the requirement to resign, for the payment to him, by virtue of Regulation 45 of the Police (Discipline) Regulations and section 7 of the Pensions Law, Cap. 311, and
30 Laws 17 of 1960, 9 and 18 of 1967, 51 and 119 of 1968, 9 of 1971, 65 of 1973, 42 of 1976, 38 of 1979, 2 and 39 of 1981, of the retirement benefits which he has earned on the basis of his actual service and, having taken into consideration all that has been presented during the meetings, as well as the record of the applicant,
35 decided that his application should not be accepted.”)

As a result of the above decision the applicant filed the present recourse by which he seeks its annulment and/or that what was omitted ought to be performed.

The legal grounds on which the applicant bases his present recourse are the following:
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- (a) The respondents had acted under a misconception regarding the interpretation and application of regulation 45 of the Police (Discipline) Regulations 1958-1981.
- (b) The respondents, in refusing to grant to him a pension and other benefits, had acted in a discriminatory manner and in contravention of the rules of proper administration. 5
- (c) The respondents had acted under a misconception of fact and in abuse or excess of their powers. 10

The meaning and effect of regulation 45, above, has been decided by this Court in, inter alia, the cases of *Savva v. The Republic*, (1979) 3 C.L.R. 250 (on appeal (1981) 3 C.L.R. 599), and *Constantinou v. The Republic*, (1984) 3 C.L.R. 456. 15

In the *Savva* case, supra, Malachos J. 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 punishment imposed under regulation 45 is considered for pension purposes as termination of employment in the public interest and so under section 6(f) of 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 and other allowances are collected, but the right to such benefits and so the provisions of section 7 of the Law come into play, under which the Council of Ministers is vested with discretionary power to grant or refuse pension benefits. 20 25 30

In the *Constantinou* case, supra (at p. 461) A. Loizou J. had this to say on a similar issue as the one raised in the present recourse:

"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 35

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. 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.

Any other interpretation would lead to absurdity in the sense 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."

I fully agree with the approach adopted in the judgments referred to above and I am, also, of the view that the Council of Ministers in cases such as the present one have a discretion in granting pensions and other benefits earned when the disciplinary punishment of "requirement to resign" from the Police Force is imposed.

In the circumstances of the present case and having regard to all the material placed before this Court, which, as it appears from the record of the recourse, has also been placed before the Council of Ministers when it was taking the sub judge decision, it cannot be said that the Council of Ministers exercised its discretion in a defective manner or had acted in any way in abuse or excess of powers or contrary to the provisions of the Law. On the contrary, the Council of Ministers was absolutely correct in reaching the decision to reject the request of the applicant for a pension and benefits arising out of the termination of his service and, therefore, the present recourse fails and it is dismissed accordingly, but with no order as to its costs.

*Recourse dismissed.
No order as to costs.*