

1985 March 29

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

COSTAS CASSINOPOULOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE,

Respondent.

(Case No. 91/71).

*Pensions and gratuities—Computation—Educational Officers—
Break in the service—Disregard of, for purposes of com-
putation of pension—Within the absolute discretion of the
respondent Minister—Second proviso to section 7(1) of
the Pensions (Secondary School Teachers) Law, 1967 (Law
56/67).* 5

The applicant served as an elementary school teacher from 1st September, 1925 to 31st August, 1945. In August, 1945 he was transferred from Nicosia to Morphou but he did not accept the transfer and preferred to resign. 10
In his letter of resignation he stated that because of the Greek Conservatory of Music of Nicosia where he was working part-time as a teacher it was impossible for him to accept the said transfer. From the 1st September, 1946 to 31st August, 1948 he served as a teacher of music at 15
various elementary schools of Nicosia and thereafter until 1967 at various secondary schools. When he retired in 1967 he was granted pension and gratuity and in computing them the years of service prior to 1946 were not taken into account because of the above break in his 20
service. The respondent turned down his original request*

* The request was made under section 7 of the Pensions (Secondary School Teachers) Law, 1967 (Law 56/67) which is quoted at p. 773 post.

that the said break in his service be disregarded for pension purposes. The applicant repeated his request by putting forward, inter alia, new grounds as a result of which he did not accept his transfer to Morphou and preferred to resign.
5 The respondents turned down his application again stating that there was nothing in his personal file to support his new allegations.

Upon a recourse by the applicant.

Held, that the second proviso to section 7(1) of the Pensions (Secondary School Teachers) Law, 1967 (Law 56/67) gives the Minister an absolute discretion with which this Court will not interfere unless it is established that due regard was not given to all material facts, that it was based on a misconception of Law or fact, or that such
10 decision was taken in abuse or excess of his powers; that there was ample material to enable the Minister of Finance to decide as he did and the decision he reached was, in the light of the facts and circumstances of this case, reasonably open to him; accordingly the recourse must fail.

20 *Application dismissed.*

Recourse.

Recourse against the decision of the respondent whereby applicant's years of service prior to his resignation were not taken into consideration in computing his pension due
25 to the break in his service.

L. N. Clerides, for the applicant.

L. Loucaides, Deputy Attorney-General of the Republic, for the respondent.

Cur. adv. vult.

30 L. LOIZOU J. read the following judgment. By this recourse the applicant seeks a declaration that the decision of the respondent by virtue of which the years of his service prior to his resignation were not taken into consideration in computing his pension due to the break in his service
35 is null and void and of no effect whatsoever.

The relevant facts are briefly as follows:

The applicant served as an elementary school teacher from 1st September, 1925 to 31st August, 1945. From 1938 to 1945 he was serving in schools either of Nicosia or its suburbs. In August, 1945, he was transferred to Morphou but he did not accept the transfer and preferred to resign. 5

In his letter of resignation dated 19th August, 1945, exhibit 2, he stated the following with regard to the reason why he could not accept his transfer to Morphou:

“Please allow me to state that because of the Greek Conservatory of Music of Nicosia where I work part-time as a teacher it is impossible for me to accept this transfer.” 10

As the applicant had elected under part VI of the Elementally Education Law, Cap. 166, to receive a gratuity, he was paid the sum of £180.- by way of gratuity, under the provisions of s. 67(2) thereof, for his service from 1925 to 1945. 15

After his resignation the applicant served as a teacher at the Greek Conservatory of Music of Nicosia for a year i.e. 1st September, 1945 to 31st August, 1946. From 1st September, 1946 to 31st August, 1948, he served as a teacher of music at various elementary schools of Nicosia and from 1948 to 1967 at various secondary schools having been appointed by the Nicosia Committee of Education. Having reached retirement age the applicant retired on 1st September, 1967, and he was granted pension and gratuity for his service from 1st September, 1946 to 31st August, 1967. In computing his pension and gratuity the years of service prior to 1946 were not taken into account because of the break in his service, above mentioned between 1st September, 1945 and 31st August, 1946. Later, by letter dated 27th November, 1967, exhibit 3, he applied under the provisions of s. 7 of Law 56/67 to the Director-General of the Ministry of Education requesting that the break in his service be disregarded for pension purposes offering to refund the gratuity he had received when he resigned. Applicant's request was rejected and as a result and prior to the filing of this recourse he had filed another 20 25 30 35

three recourses 210/68, 288/68 and 121/70 all of which were at some stage withdrawn.

Before the withdrawal of the last of the three recourses (No. 121/70) counsel appearing for the applicant, by letter
5 dated 16th November, 1970, exhibit 5, applied to the Minister of Finance requesting that the period 1st September, 1945 to 31st August, 1946, be not considered as a break in his service for pension purposes and putting forward
10 new grounds as a result of which, in his allegation, the applicant did not accept his transfer to Morphou and preferred to resign. It was alleged in the letter that in 1945 there had been an intense attempt of dehellénism of education on behalf of the Colonial government with the
15 secondary schools as a main target and that, for the first time, teachers of music were asked to introduce English songs in elementary schools. The applicant, it was alleged, refused to do this whereas another colleague of his, a Mr. K. Ioannides, who had less years of service than the applicant and had accepted to comply with the request was
20 promoted to the post of Inspector of Music at lower schools. He further stated in the same letter that he could adduce evidence that this was basically the reason of applicant's resignation and that the fact that his service after his resignation was in elementary and secondary schools as
25 a teacher of music on appointment by the School Committee of Nicosia supported this view.

As a result of inquiries made in relation to the allegations contained in exhibit 5 on the 7th December, 1970, a letter, exhibit 6, was addressed by the Director-General
30 of the Ministry of Education to the Director of the Personnel Department. It was stated in this letter that there was nothing in applicant's personal file to support his allegations and that the reason he did not accept his transfer to Morphou was that he was teaching at the Greek Conservatory, of Nicosia and that as a matter of fact about a year
35 after his resignation he had applied for appointment at Nicosia schools again. With regard to the allegation made about Mr. Ioannides it was stated that he served as a teacher at Morphou for the school-years 1943/4, 1944/5 and that
40 it was after he followed a post-graduate course in England for two years that he was appointed as a master at the

teachers training school with effect from 1st September, 1947 i.e. two years after the resignation of the applicant.

A few days after the letter exhibit 5 was forwarded to the Minister by applicant's counsel the applicant himself addressed a letter to the President of the House of Representatives in which he enclosed copy of his counsel's letter to the Minister, exhibit 5, and made certain other similar allegations particularly that during the years 1940 to 1945 he had been subjected to successive transfers because of Mr. Ioannides so that he would be made an example of.

In a long and detailed letter dated 8th January, 1971, exhibit 7, addressed to the President of the House of Representatives the Minister explains the whole position and why he was not prepared to revise the previous decision rejecting applicant's application for disregarding the break in his service.

On the 15th January, 1971, applicant's counsel was informed by the letter exhibit 1 that the Minister had re-examined the matter in the light of his letter but saw no reason to change the previous decision.

Counsel for applicant contended at the hearing that the Minister exercised his discretion under the second proviso to s.7 of Law 56/67 in circumstances amounting to abuse of power and under a misconception of facts in that he failed to carry out a full and proper inquiry into the allegations contained in his letter and instead relied only on the contentions in the letter exhibit 6 and also disregarded a minute of counsel of the Republic (minute 2 in exhibit 4) to the effect that the resignation of the applicant appeared to be voluntary and that the Minister of Finance could decide that the break be not considered as a break in the continuity of his service if he considered that the circumstances of the case justified such decision.

It should be noted, however, that the whole of exhibit 4 presumably relates to applicant's application, exhibit 3, which was made before the filing of the present recourse and long before the letter exhibit 5 was written to the Minister by applicant's counsel.

Counsel for the respondent on the other hand submitted

that the Minister had all the relevant material before him on the basis of which it was reasonably open to him to reject applicant's new allegations regarding the reasons of his retirement and reach the decision that he did especially in view of his letter of resignation, exhibit 2, and his previous application exhibit 3.

The relevant part of s. 7 of Law 56/67, as it stood at the time reads as follows:

«7(1) Τηρουμένων τῶν διατάξεων τοῦ ἔδαφίου (2) μόνον συνεχῆς συντάξιμος ὑπηρεσία λαμβάνεται ὑπ' ὄψιν διὰ τὸν ὑπολογισμὸν τῆς συντάξεως:

Νοεῖται ὅτι

Νοεῖται περαιτέρω ὅτι ὁ Ὑπουργὸς Οἰκονομικῶν δύναται νὰ ἀποφασίσῃ ὅπως οἰαδήποτε διακοπὴ ὑπηρεσίας πρὸ τῆς 6ης Ὀκτωβρίου, 1967, ἡ ὁποία δὲν ἐμπίπτει εἰς τὴν προηγουμένην ἐπιφύλαξιν, μὴ θεωρηθῆ ὡς διακόπτουσα τὴν συνέχειαν τῆς ὑπηρεσίας ἐὰν ἰκανοποιηθῆ ὅτι αἱ περιστάσεις τῆς διακοπῆς δικαιολογοῦν τοιαύτην ἀπόφασιν.»

("7(1) Subject to the provisions of sub-section (2) only continuous pensionable service is taken into consideration in the computation of the pension:

Provided that

Provided further that the Minister of Finance may decide that any break in the service before the 6th October, 1967, which does not come within the first proviso, may not be considered as breaking the continuity of the service if he is satisfied that the circumstances of the break justify such a decision.")

It will be seen from the above that the second proviso to s. 7(1) upon which learned counsel for the applicant has rested his case gives the Minister an absolute discretion with which this Court will not interfere unless it is established that due regard was not given to all material facts, that it was based on a misconception of Law or fact, or that such decision was taken in abuse or excess of his powers.

It is clear from the letter of the Minister exhibit 7, that he had before him all relevant material including the new allegations made in the letter of counsel for applicant to the Minister, exhibit 5, and in applicant's letter to the President of the House and came to the conclusion that in the light of the undisputed facts of the case such allegations could not be sustained.

As it transpires from the Minister's letter he based his conclusion on the fact that in applicant's letter of resignation, exhibit 2, he expressly states the reason why he refused his transfer to Morphou and decided to resign. That in his letter of the 27th November, 1967, exhibit 3, which was addressed to the Director-General of the Ministry of Finance soon after the enactment of Law 56/67 but long after the establishment of the Republic he does not mention any such allegations; and that his allegations relating to his treatment by the Colonial government both in relation to a colleague of his, Mr. Ioannides, and in relation to the alleged successive transfers he had been subjected to, proved to be untenable as Mr. Ioannides was in fact promoted, after he acquired the additional qualifications, and this was two years after applicant's resignation and the applicant himself from the school-year 1938/39 until the school-year 1944/45 served in schools of Nicosia or its suburbs and for a period of twenty years of his service prior to his resignation he served only for one year at a village.

In the light of the above there was, in my view, ample material to enable the Minister of Finance to decide and the decision he reached was, in the light of the facts and circumstances of this case, reasonably open to him.

In the result this recourse fails and it is hereby dismissed.

There will be no order as to costs.

*Recourse dismissed.
No order as to costs.*