

1986 October 7

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRISTODOULOS K. PROTOPAPAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE DIRECTOR OF THE DEPARTMENT OF
TOWN PLANNING AND HOUSING.

Respondents.

(Case No. 99/84).

Casual employees—Gratuities upon their retirement—Whether public officers, who, having retired from a permanent office, are re-employed as casual employees, are entitled to a gratuity upon termination of their service as casual employees in respect of such service—Question answered in the negative—The 1977 Regulations governing the payment of gratuities to casual employees (Circular 426 dated 22.4.77)—The Regulations contained in the Circular dated 21.3.79, regs. 1, 3, 4, 11 and 12—Nature of—The main difference between the Regulations of 1979 and the pre-1979 regulations—The combined effect of regs. 11 and 12.

The applicant was employed until his retirement on 31.1.74, as Housing Manager in the Department of Town Planning and Housing, Ministry of Interior. On 1.2.74 he was re-employed as a casual government employee. His services as such were terminated on 30.6.83.

On 8.11.83 the applicant applied for a gratuity in respect of his services as a casual employee. The application was turned down on the ground that “by virtue of the relevant regulations no gratuity is granted to pensioners

who are re-employed as casual or on contract after their retirement”.

5 As a result the applicant filed the present recourse. It should be noted that the applicant was not during the period 1.2.74 - 30.6.83 a daily paid employee. His contract provided for an annual salary payable monthly.

10 *Held*, dismissing the recourse: (1) The regulations attached to the Circular 426 dated 22.4.77 do not apply to labourers, technicians and all other manual workers as well as to persons who were re-employed on daily wages after their retirement. They apply to the granting of gratuities of daily paid employees upon their retirement. It follows that as the applicant was not a daily paid employee the said regulations have no application in this case.

15 (2) The regulations attached to the Circular dated 21.3.79 do not only deal with the granting of gratuities, but also with the terms of employment of casual government employees. These regulations are a codification of all pre-existing regulations and, therefore, their effect was
20 not the repeal of all pre-existing regulations. The main difference between these regulations and the pre-1979 regulations is that these regulations are of a wider application in that they apply to casual employees as opposed to only daily paid.

25 (3) The applicant falls within the definition of a “casual employee” in reg. 1 of the 1979 Regulations. The regulation, however, which governs the granting of gratuities is reg. 12. The combined effect of this Regulation and
30 of reg. 11* is clear, namely that gratuities are paid on their retirement to casual employees who were casual employees before their retirement. As the applicant had retired from a permanent office at the age of 60, his services were not extended after the age of 60 from an employment as casual officer. Reg. 11 does not apply
35 to pensioners, and therefore, neither does reg. 12 apply to such a case.

Recourse dismissed.

No order as to costs.

* Regulations 11 and 12 are quoted at pp. 1817-1818 post.

Cases referred to:

Tsiartzazis v. The Republic (1985) 3 C.L.R. 1.

Recourse.

Recourse against the refusal and/or omission of the respondents to grant applicant a gratuity after the end of his contract of service with the Government. 5

P. Polyviou, for the applicant.

M. Photiou, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the refusal and/or omission of the respondents communicated to him on the 10th December, 1983, to grant him a gratuity after the end of his contract of service with the Government is null and void and of no legal effect whatsoever. 10
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The applicant was employed until his retirement on 31st January, 1974, as Housing Manager in the Department of Town Planning and Housing, Ministry of Interior, on the 1st February 1974, he was re-employed on contract as a casual government employee, as Housing Coordinator in the Department of Town Planning and Housing. His services were terminated on the 30th June, 1983. 20

On the 8th November, 1983, he wrote to the Director of the Department of Town Planning and Housing requesting that he be granted a gratuity in respect of his services as a casual government employee from the 1st February 1974 to 30th June, 1983. His request was refused on the ground that no gratuity could be granted to him as "by virtue of the relevant regulations no gratuity is granted to pensioners who are re-employed as casual or on contract after their retirement". As against this reply the applicant filed the present recourse. 25
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It was argued on his behalf that, in the first place, from the contents of his contract of employment it cannot be deduced that he is not entitled to such a gratuity. 35

Secondly, it was argued, that the regulations of the 22nd April 1977, governing the granting of gratuities, could not be applied to the case of the applicant because such regulations applied only to daily paid employees, and from the terms of his contract he could not be considered as daily paid.

It was submitted that the regulations applicable in his case were the regulations dated 21st March, 1979, which were a codification and modernization of the regulations in force until then, as a result of which the 1977 Regulations ceased to have effect.

It was argued that the applicant fell within the class of persons which the regulations of 1979 intended to be benefited by the receipt of a gratuity on termination of their services and in particular within the definition of a "casual servant" as it appears in regulation 1, thereof and referred to the case of *Ioannis Tsiartzazis v. Republic* (1985) 3 C.L.R. 1.

The regulations attached to the Circular No. 426 of the Department of Personnel dated 22nd April 1977 (file No. 6038/63/V) are regulations governing the granting of gratuities to daily paid employees upon their retirement and do not apply to labourers, technicians and all other manual workers, as well as to persons who were re-employed on daily wages after their retirement.

It is evident to me from the terms of the contract of employment of the applicant that he was not a daily paid employee, his contract provided inter alia for an annual salary payable monthly. Therefore, as quite rightly submitted by both sides, the regulations of 1977 have no application in the case of the applicant because he was not a daily paid employee.

On the other hand, the regulations attached to the Circular of the 31st March, 1979 issued by the Director of the Department of Personnel (ref. 6038/63/VI), do not only deal with the granting of gratuities but also generally provide for and regulate the terms of employment of casual government employees who can either be daily paid or employed on contract.

As stated in the covering letter of the Department of Personnel dated 21st March, 1979, the 1979 regulations are a codification and updating of all previous regulations, that is the regulations on the terms of employment of daily paid employees dated 5th August, 1975, circular reference 6038/63/V and all other regulations onwards. And the effect of such codification was not the repeal of all the existing regulations but their collection and arrangement into one document which could not as such change what the Council of Ministers in its competence decided. The 1975 regulations are on the terms of employment of daily paid employees, the 1977 regulations, contain provisions for the payment of gratuities to daily paid employees and no provision appears on this matter in the 1975 regulations.

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The main difference, as I see it, between the texts of the pre-1979 and the 1979 regulations is that the 1979 regulations are of a wider application in that they apply to casual employees as opposed to only daily paid.

According to regulation 1, thereof, the term "casual employee" means those persons employed in the government service under a special contract for development projects, seasonal needs and casual work and specifically excludes all manual workers, labourers, technicians, but no reference is made therein to pensioners.

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From the perusal of the whole text of the regulations of 1979, I find that regulation 1 thereof gives a general definition of what a casual employee is for the purposes of the regulations as a whole and I do not disagree that the applicant does fall within such definition. However, whether it applies to any particular class of persons, such as to pensioners as in the present instance, specific reference must at all times be made to the particular regulation governing or making provisions for each particular case at hand.

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For instance, reading through, in regulation 3, where provision is made as regards the remuneration and increments of (as referred to therein) "casual employees" a distinction is made in paragraph 6 thereof between them and pensioners employed on a casual basis to whom no increments are granted.

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Also in regulation 4 which refers to payment of the 13th salary, a clear distinction is made between "every casual employee" (paragraph 1) and "a pensioner who is employed as a casual employee" (paragraph 2).

- 5 The regulation governing the granting of gratuities is regulation 12 which so far as relevant provides as follows:

10 "12 (1) To every casual employee who has served for three years or more, a gratuity is granted, upon the termination of his services by virtue of the provisions of Regulation 11..."

(In Greek)

15 «12 (1) Εις έκαστον έκτακτον υπάλληλον, όστις υπηρέτησεν επί τρία έτη ή περισσότερα, χορηγείται επί τω τερματισμώ της υπηρεσίας του δυνάμει των διατάξεων του Κανονισμού 11 φιλοδώρημα. »

And regulation 11 provides as follows:

"11. The service of a casual employee is compulsorily terminated on attaining the age of sixty years

20 Provided that the Minister of Finance may, if he considers it desirable for the public benefit, allow a casual employee to remain in the service after attaining the age of sixty years, for as long a period as he seems fit but in any case not after the date he attains the age of sixty-five years."

25 (In Greek)

«11 Η υπηρεσία έκτακτου υπαλλήλου τερματίζεται αναγκαστικώς επί τη συμπληρώσει της ηλικίας των εξήκοντα ετών

30 Νοείται ότι ο Υπουργός Οικονομικών δύναται, εαν θεωρή τούτο επιθυμητόν προς το δημόσιον συμφέρον, να επιτρέψη εις έκτακτον υπάλληλον όπως παραμείνη εν τη υπηρεσία μετά την συμπλήρωσιν της ηλικίας των εξήκοντα ετών επί τσούτου χρονικόν διάστημα όσον ο

Υπουργός ήθελε ορίσει, αλλ' εν πάση περιπτώσει ουχί πέραν της ημερομηνίας συμπληρώσεως της ηλικίας των εξήκοντα πέντε ετών.»

The provisions of these two regulations are clear. They provide that gratuities are paid on their retirement, to casual employees who were casual employees before their retirement.

In the present case I have no doubts that the said regulations do not apply to the applicant. He retired from the public service, from a permanent office at the age of sixty. After his retirement he was employed on contract as a casual employee. His services were thus not extended after the age of sixty from an employment as a casual officer. Furthermore when his services were terminated in 1982, they were not so terminated by virtue of regulation 11, because regulation 11 did not apply to him, but because his contract came to an end.

It is clear in my mind that the aforesaid regulation 11 does not apply to the case of pensioners and therefore, since it does not apply to the applicant who was a pensioner, neither does regulation 12, apply to this case.

In any case irrespective of the position, as explained above, in the present instance the 1979 regulations must be read in the light of the circular dated 13th January 1982, in which it is clarified that regulations 11 to 15 "do not apply to the cases of casual employees who were employed after their retirement", and since the employment of the applicant was terminated after this circular, I consider that it is applicable to him and this is an additional reason why he is not entitled to the gratuity applied for.

At this stage, it is pertinent, to refer to the case of *Tsiartzazis v. Republic* (supra) from which however I feel obliged to take a different view for the reason that in that case the application of the provisions of regulations 11 and 12 was not considered.

For the reasons stated above I consider that the respondents rightly decided that the applicant was not covered

by the aforesaid regulations and was thus not entitled to the gratuity applied for

This recourse must therefore fail and it is hereby dismissed with no order as to costs.

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Recourse dismissed.
No order as to costs.