

1986 December 18

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

COSTAS GREGORIADES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE AND
THE MINISTER OF EDUCATION,

Respondents.

Administrative act—Executory act—Confirmatory act.

By means of this recourse the applicant challenges the refusal of the respondents to take into consideration in the computation of his pension and gratuity upon his retirement a period of five years as from 1.9.55 till 5
31.8.60, when he was abroad for studies.

On 16.5.77 the applicant, who had been retired as from 10.3.77 on medical grounds from his post as a teacher of Technical Education applied to the Minister of Finance that both the said period as well as the period 10
between 1949 - 1955 be taken into consideration in computing his pension. The Minister of Finance accepted the request as regards the period 1949 - 1955, but refused the claim as regards the period 1.9.55 - 31.8.60. The decision of the Minister was communicated to the applicant by letter dated 11.10.77. 15

About 16 months later the applicant wrote to the Minister of Education, protesting against the said refusal and repeating the same matters as those contained in his said application to the Minister of Finance. The Minister of Education informed the applicant that his 20
request was forwarded to the Ministry of Finance with-

in whose competence the matter lied. By letter dated 13.7.79 the Director of the Personnel Department of the Ministry of Finance informed the Director-General of the Ministry of Education that applicant's request could not be accepted. The Director-General of the Ministry of Education informed the applicant accordingly by letter dated 19.7.79.

Hence the present recourse challenging the validity of the decision communicated to the applicant by the letter of 19.7.79.

Held, dismissing the recourse, that the letter of the 19.7.79 does not embody a new decision taken on the basis of new material, but is merely confirmatory of the previous decisions on the same matter, and, as such, it lacks executory nature.

*Recourse dismissed.
No order as to costs.*

Recourse.

Recourse against the refusal of the respondents to take into consideration in the computation of applicant's pension and gratuity upon his retirement the period he was on educational leave abroad.

N. Panayiotou, for the applicant.

M. Kyprianou, Senior Counsel of the republic, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. Before embarking on the matters in issue in this recourse, I find it necessary to narrate, briefly, the history of this recourse which has been pending before this Court since 1979.

The present recourse was filed on the 29th September, 1979 and was fixed for hearing on the 15th May, 1980, when at the request of both counsel, it was adjourned for mention to the 14th October, 1980, on the ground that efforts were to be made for an amicable settlement. As

counsel were not in a position to inform the Court as to whether a settlement was foreseeable the case was fixed for hearing on the 4th March 1981. On that date counsel for applicant made the following statement on which counsel for the respondents raised no objection:

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“I have made an application to the Council of Ministers and the case, as I understand, is under consideration. So, I apply for an adjournment for mention.”

The case was again fixed for hearing on the 9th November, 1981 when counsel applied for an adjournment on the ground that both of them were engaged in continuous hearings before other Courts.

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There were further adjournments at the request of counsel either on the ground that the applicant who was a necessary witness in the case could not attend the Court to give evidence due to his absence abroad and his difficulty in securing from his employer leave to attend on the date of the hearing, or that negotiations were again in progress for an amicable settlement of applicant's claim. Directions were finally made for written addresses to be filed by counsel which had been complied with. In the meantime counsel for applicant, Mr. A. Georghiades, took up permanent employment with the Republic and the case was handled by Mr. N. Panayiotou, who, on the 1st August, 1983, applied for an adjournment to a future date when arrangements could be made for applicant to come to Cyprus from Dubai where he was employed. The case was, as a result, adjourned sine die to be fixed on the application of counsel for applicant after he could be in a position to inform the Court that the applicant would come to Cyprus. On the 14th October, 1983, counsel for applicant informed the Court that the applicant would come to Cyprus between the 15th December, 1983 and the 12th January, 1984 and as result, the case was fixed for hearing on the 9th January, 1984. On the 9th January, 1984, counsel for applicant applied for an adjournment on the ground that after he had taken the case over from the previous advocate who was handling it, he

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was negotiating the case with the respondents with a view to settlement and counsel for the respondents consented expressing his expectation that an amicable settlement could be reached, and he joined the application of counsel for applicant for an adjournment. As a result, the case was fixed for mention for the purpose that counsel should inform the Court as to whether any settlement had been reached. Finally, counsel informed the Court that the negotiations for a settlement had failed and as a result, the case was fixed for hearing on the 27th June, 1985, when the proceedings were concluded and judgment was reserved.

The applicant in this recourse challenges the decision of the respondents to refuse to take into consideration in the computation of his pension and gratuity upon his retirement a period of five years as from the 1st September, 1955 till the 31st August, 1960, when, as he alleges, he was on educational leave abroad.

The facts of the case, as emanating from the personal file of the applicant which has been produced as exhibit 1 and from the exposition of facts by both counsel, are briefly as follows:

The applicant was appointed as a teacher of the elementary education on the 1st September, 1949 and he was promoted to the post of headmaster in September, 1952. In the summer of 1955 he left Cyprus for England for the purpose of accompanying his wife abroad for surgical operation and treatment. Whilst in England, he registered with the Coventry College for a post-graduate course. He also applied for leave of absence abroad without pay, which was refused to him and he was invited to return to his post on the forthcoming school year which he failed to do and as a result his services as a teacher were terminated. Whilst in England, the then Government of Cyprus offered him a scholarship for four years' studies in England during 1956-1960 on the subject of Building Construction which he accepted, and as a result, a contract was signed, whereby he undertook to return to Cyprus after the expiration of his studies and serve for a period of five years either as a teacher or any other capacity as the Government might determine.

The applicant completed the term of his scholarship and returned to Cyprus where he was appointed as a teacher of Technical Education as from 1960-1961, and he served at such post till the 10th March, 1977, when he retired on medical grounds. 5

In the computation of his pension the respondents included the period during which he had served as a teacher in the Elementary Education during the British rule of Cyprus and, also, the years he had served as a teacher in the Technical School. The applicant by letter dated the 16th May, 1977, addressed to the Minister of Finance, requested that the five years he had spent in England for studies, be taken into consideration in computing his pension. The contents of such letter read as follows: 10

“By letter of the Director-General of the Ministry of Education dated the 29th March, 1977 my retirement as from 10th March, 1977 has been approved on medical grounds. 15

I have served education as from the 1st September, 1949 till the above date. 20

During the summer of 1955 I had to accompany my wife to the United Kingdom for medical treatment due to the fact that after two surgical operations in a clinic in Nicosia which followed a difficult child birth, her life was in danger. Whilst in the United Kingdom I applied to the Education Office for leave of absence without pay and at the same time enrolled in the Coventry Technical College, where I was attending building construction till the health of my wife was restored. The Education Office did not grant me such leave, but the Government of Cyprus offered me a four years' scholarship with full emoluments for studies for the years 1956-1960, at the Royal Technical College, Salford U.K. on condition that I would serve in Cyprus either in the field of Education or in any other Government post after the completion of my studies, which I did. 25 30 35

As the interruption of my service for one year is not due to any fault of mine, as the law provides, and

furthermore, taking into consideration the Secondary School Teachers Law, you are kindly requested to add the six years of my service before the interruption of my service, that is, between 1949 - 1955, and, also, the years that I was on scholarship, that is, 1956-1960 in the number of my years of service for the purposes of pension."

The Ministry of Finance having considered his application, decided to recognise the years of his service as a teacher during 1949 - 1955, as years of service for pension purposes which were added to his service as a teacher in the Technical School, as from 1.9.1960 till 9.3.1977, the date of his retirement, but refused to accept his claim in respect of the five years that he had spent in England. The decision of the Ministry of Finance appears in a letter to the Director-General of the Ministry of Education, dated 21.9.1977 (blue 74 in exhibit 1). His pension was calculated on such basis on the 27th September, 1977 and the applicant was informed accordingly by letter of the Director of the Personnel Department of the Ministry of Finance dated the 11th October, 1977, the contents of which are as follows:

"I have been instructed to refer to your retirement from the Public Educational Service as from the 10th March, 1977 and inform you that according to the Pensions (Secondary School Teachers) Laws 1967 - 1976, a reduced annual pension will be granted to you amounting to £859,200 mils and, also a lump sum gratuity of £3,580,005 mils.

2. The Accountant-General has been requested to arrange payment."

On the basis of the above letter his annual pension and gratuity were paid to him and his pension continued to be so paid.

The applicant about 16 months later and in fact on the 11th January, 1979, by a letter addressed to the Minister of Education, after making reference to the aforesaid letter of the 11th October, 1977, protested against the refusal of

the respondents to recognise the five years of his studies in the U.K., as pensionable in computing his pension. By his said letter, he repeated the same matters contained in his previous letter of the 16th May, 1977 addressed to the Minister of Finance and to which the reply of the 11th October, 1977 was sent. 5

The Minister of Education by letter dated the 26th February, 1979 informed the applicant that his letter of the 11th February, 1979, was forwarded to the Ministry of Finance within the competence of which the matter lied. The Director of the Personnel Department of the Ministry of Finance by letter dated the 13th July, 1979, replied to the Director-General of the Ministry of Education, informing him that the request of the applicant could not be accepted and requested him to inform the applicant accordingly. Upon receipt of such letter, the Director-General of the Ministry of Education informed the applicant by letter dated the 19th July, 1979, as follows: 10 15

“I have been instructed to refer to your application dated 11.1.1979 for re-examination of your claim for recognition of the five years of your studies (1955 - 1960) for purposes of pension, and inform you that your claim has been considered again by the Ministry of Finance but it was not possible to be approved on the basis of the existing legislation.” 20 25

As a result, the applicant filed the present recourse.

The legal grounds raised by counsel for applicant in support of his prayer for relief, are the following:

1. The respondents' decision is contrary to the provisions of the Elementary Education Law and in particular s. 37 (prior to its repeal) sections 45, 49, 51, 55 and 71 (as amended) by Law 19/67) and the Public Educational Service Law of 1969 and section 6 of the Pensions (Secondary School Teachers) Law No. 56/67. 30 35

2. The respondents' decision is manifestly wrong, not duly reasoned and/or its reasoning is wrong or defective.

3. The respondents' decision is the result or product of a misconception of facts.

By his opposition counsel for the respondents raised the following grounds of law:

5 (1) The application is out of time, as the decision which was communicated to the applicant by the letter of 19.7.1979, which is being challenged, is confirmatory of a previous decision taken on 21.9.1977.

10 (2) The sub judge decision was taken lawfully and in compliance with the provisions of the existing legislation and, in particular, sections 6(3) and 7(1) of the Pensions (Secondary School Teachers) Laws, 1967 - 1979.

15 (3) The sub judge decision was taken after a careful examination of all material facts of the case and in the proper exercise of the discretion of the respondents.

20 After the filing of his recourse the applicant submitted by letter dated the 19th February, 1981, a new application to the Minister of Education for reconsideration of his case, obviously, as a result of an interview he had with him on the 16th February, 1981, as it emanates from the contents of such letter.

25 By letter dated the 21st April, 1981, the Director-General of the Ministry of Education, informed the applicant that a re-examination of his case was not advisable from the administrative point of view, in view of the fact that a recourse on the same matter was pending before the Supreme Court.

30 The contents of applicant's letter of the 19th February, 1981 and the reply of the Director-General of the Ministry to such letter are matters irrelevant to the present recourse, as they took place after the filing of the recourse and in any event they do not add anything to the case.

35 Before embarking on the substance of the case, I find it necessary to deal first with the preliminary objection raised by counsel for the respondents in that the sub judge decision does not amount to an executory act and is

merely confirmatory of a previous decision of the respondents.

From what emanates from the material before me the first time that a decision concerning the five years of applicant's absence abroad was taken, was the 21st September, 1977 and such decision was communicated to the applicant by letter of the Ministry of Finance dated the 11th October, 1977, on the basis of which his gratuity on retirement and his annual pension were calculated.

From what appears from his personal file, exhibit 1, the applicant objected by letter dated 30.12.1977 against the non-recognition as pensionable of the period of 5 years which he had spent in the United Kingdom. In reply he received a letter from the Ministry of Finance, dated the 7th March, 1978, (blue 78 in exhibit 1) which reads as follows:

"I have been instructed to refer to your letter to the Minister of Finance dated 30.12.1977, by which you object to the fact that the years of your studies in the United Kingdom (1955-1960) were not considered as pensionable and regret to inform you that the years of your studies cannot be considered as pensionable because the provisions of section 6(3) of the Pensions (Secondary School Teachers) Laws 1967 to 1976 are not satisfied in your case. As you yourself have confirmed, the then Office of Education did not grant to you the leave of absence applied for for the purposes of studies in the year 1955, and the fact that a scholarship was granted to you later by the Government of Cyprus does not alter the situation. Moreover, the scholarship was not granted to you in your capacity as a teacher, since it was recorded, in the register of teachers, that you had resigned."

On the 7th April, 1978, the applicant was again informed, on his request, by the Personnel Department, at his pension was calculated on the basis of his years service from 1.9.1949-9.3.1977 and that the period between 1.9.1955-31.8.1960 was deducted from his

pensionable years of service.

5 The applicant protested against the above letter by letter to the Minister of Education dated 21.8.1978, setting out again the same facts in support of his objection to which no reply was received.

10 After a new request made on the 11th January, 1979 for reconsideration of his case the applicant was informed by letter of the Ministry of Education dated the 19th July 1979 that the Ministry of Finance re-examined his case but his request could not be granted, due to the existing legislation.

15 The letter of the 19th July, 1979 the contents of which are being challenged, does not embody a new decision taken by the respondents on the basis of new material placed before them, but is merely confirmatory of the previous decisions of the respondents on the same matter. As such, it is of an executory nature. If the applicant felt aggrieved from the original decision of the respondents on the basis of which his gratuity was paid to him and his pension was calculated, he should have challenged same within the time limits fixed by the Constitution.

20 In the result, the respondents succeed on their preliminary objection.

25 Having found as above, I find that no useful purpose will be served if I proceed to deal with the merits of the case.

The recourse, therefore, fails and it is hereby dismissed but in the circumstances I make no order for costs.

*Recourse dismissed.
No order as to costs.*