

1986 March 22

ΤΡΙΑΝΤΑΦΥΛΛΙΔΕΣ Ρ 1

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STALO KANTOUNA,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent

(Case No 105/81)

Pensions — Educational Officers — The Pensions (Secondary Schoolmasters) Law 56/67 as repealed and replaced by Law 40/81, section 7(1) — Ambit of — Applicant's temporary appointment as a schoolmistress revoked on 28 12 67 — Applicant reappointed on 23 9 71 and retired in 1980 — The period of her service prior to 28 12 67 rightly not taken into account in computing her pension 5

The appointment of applicant as a schoolmistress for the teaching of art on a temporary basis was revoked on 28 12 67, in view of the fact that she did not possess the required qualifications

The applicant obtained in 1971 the qualifications required by the relevant scheme of service and was appointed as schoolmistress for the teaching of art, on contract, as from 23 September 1971, and as from May 1972 to a permanent post, and she served until her retirement for reasons of health on 29 April 1980 10

As the service of the applicant up to 1967 was not taken into account for pension purposes she filed the present recourse 15

Held, *dismissing the recourse* (1) The case of the applicant cannot come within the proviso to section 7(1) of Law 56/67 because the break in her service in 1967 for the reasons for which it occurred cannot be considered as a temporary suspension of her employment not due to her fault 20

(2) Section 7(1) of Law 40/81, whereby section 7(1) of Law 56/67 was repealed and replaced, applies when the officer concerned should have «left or will leave» the public service for any reason whereas in the present case the

applicant has not left the service in 1967 but her services were terminated for the reasons already stated in the present judgment

(3) It follows that even if the revocation of 28 12 67 did not operate *ex tunc*, *ab initio*, the recourse has to be dismissed

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Recourse dismissed

No order as to costs

Recourse.

Recourse against the refusal of the respondent to take into account for pension purposes applicant's service prior to 1967 as a schoolmistress in Secondary Education.

Ch. Ierides, for the applicant.

R Gavnelides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

15 TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicant is complaining against the refusal of the Public Administration and Personnel Service, which comes under the Ministry of Finance, to take into account for pension purposes her service prior to 1967 as a schoolmistress in Secondary Education.

The applicant was first appointed as a schoolmistress to teach art, on a month to month basis, for the period from 14 February 1963 to 10 July 1963, and, then, on probation to the permanent post of schoolmistress as from 1 September 1963.

25 After her appointment it was found that the applicant did not possess the required for such appointment qualifications she was informed, on 24 January 1966, that she had been regraded in Grade C, instead of Grade B.

30 After her regrading the applicant filed a recourse and by means of the judgment delivered in that case the decision to regrade her was annulled (see *Kantouna v. The Republic*, (1967) 3 C.L.R. 395).

35 Then, it was decided, in view of the fact that she still did not possess the required qualifications, to revoke her appointment as from 28 December 1967.

Against this decision the applicant filed recourse No. 39/68, which was withdrawn on 1st December 1969, after a statement of counsel for the respondent that the matter would be reconsidered.

While the reconsideration of the matter of the appointment of the applicant was in abeyance, the applicant obtained in 1971 the qualifications required by the relevant scheme of service and was appointed as schoolmistress for the teaching of art, on contract, as from 23 September 1971, and as from May 1972 to a permanent post, and she served until her retirement for reasons of health on 29 April 1980.

As the service of the applicant up to 1967 was not taken into account for pension purposes she filed the present recourse.

Inasmuch as the issue of the validity of the revocation of the appointment of the applicant in 1967 appeared to be relevant to the outcome of this case her counsel filed, on 26 October 1983, an application for the reinstatement of recourse No. 39/68, which had been withdrawn as aforesaid; but such application was dismissed by this Court (see *Kantouna v. The Republic* (1984) 3 C.L.R. 1315).

As regards the merits of the present case it must be pointed out that, even if it is found that the revocation of the appointment of the applicant as from 28 December 1967 operated ex nunc and not ex tunc there still remains to be decided whether the applicant's claim for recognition for pension purposes of her service prior to the said date can succeed in the light of the proviso to section 7(1) of the Pensions (Secondary Schoolmasters) Law, 1967 (Law 56/67), as repealed and replaced by the Pensions (Secondary Schoolmasters) (Amendment) Law, 1981 (Law 40/81).

In view of the fact that the revocation of the appointment of the applicant was effected because she did not have the required qualifications I am of the opinion that her case cannot come within the proviso to section 7(1) of Law 56/67 because the break in her service in 1967 for the reasons for which it occurred cannot be considered as a temporary suspension of her employment not due to her fault

Consequently, for the purposes of section 7(1) of Law 56/67 her service up to 1967 and from 1971 cannot be treated as being continuous for pension purposes and, thus, her claim regarding the taking into account of her service up to 1967 was rightly rejected.

Counsel for the applicant had argued, further, that, in any case on the basis of the provisions of the new section 7(1) of Law 40/81 which, as he contends, has retrospective operation, all the previous service of the applicant should have been taken into
5 account in computing her pension upon her final retirement.

I have to treat section 7(1) of Law 40/81 as inapplicable to the case of the applicant because, as it is provided therein, the officer concerned should have «left or will leave» the public service for any reason whereas in the present case the applicant has not left.
10 the service in 1967 but her services were terminated for the reasons already stated in the present judgment.

Irrespective, therefore, of whether the new section 7(1) of Law 40/81 could have retrospective application the case of the applicant cannot be covered by it.

15 In view of all the foregoing the present recourse fails and it is dismissed accordingly; but with no order as to its costs.

*Recourse dismissed.
No order as to costs.*