IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHROSSO SOUNDIA,

Applicant,

and

1. THE TOWN SCHOOL COMMITTEE, OF LARNACA,
2. THE GREEK COMMUNAL CHAMBER, AND/OR
3. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondents.

(Case No. 46/63)

Administrative Law—Gratuities Scheme—Complaint against basis for computation of gratuity payable to Applicant thereunder.

Administrative Law—Practice—Interim decision on a number of issues—Direction for re-opening of hearing in relation to remaining issues—Evidence—Production of a letter headed "without prejudice" during hearing of administrative recourse —Objection and Ruling thereon.

Administrative Law—Competence, Article 146 of the Constitution — Decision taken in implementing a Gratuity Scheme established under legislative provision, a matter of public administration within Article 146.

Applicant by this recourse, has, in effect, two claims:

One against the alleged omission to liquidate the Gratuities Scheme of the Larnaca Commercial Lyceum and another in respect of the proper basis for the computation of the gratuity due to her under such scheme.

Counsel for Applicant has stated during the hearing of the Case that he did not insist on the first aforesaid claim and it was struck out accordingly.

Applicant has served the said school for 31 years, from the school-year 1930-1931 up to and including the school-year 1960-1961. She served for nine school-years after attaining the age of 55, in June, 1952.

In 1952 Applicant was paid in respect of her gratuity £525-. It was admitted by both parties, that, this amount falls short of the gratuity due to her.

After her services came to an end in 1961, the Applicant, in 1962, started making claims for the balance of the gratuity allegedly due to her. She claimed gratuity in respect of her service during the years between 1952 and 1961 i.e. her service after reaching her 55th year, and she also disputes that the particular monthly salary, which was adopted as the basis for computing her gratuity, was the proper basis for the purpose. It has been Applicant's contention that her full montly emoluments in the school-year 1960-1961 should have been used as such basis, and not her basic salary in 1952.

Counsel for Respondent 1 has objected that this recourse is out of time under Article 146(3).

The Court, after conclusion of hearing and reservation of judgment, found it impossible to reach final conclusions on a number of issues because it felt, as an administrative Court and following in this respect the Case of *Dafnides and the Republic,* 1964 C.L.R. 180 that such issues had to be inquired into further. The Court, gave this Interim Decision determining some of the issues of this Case and directed that the hearing be re-opened in relation to the remaining issues.

Held, I. On whether or not the recourse is out of time:

The recourse was filed by Applicant less than seventy-five days after the letter of Respondent 1, of the 26th February, 1963, was written to her counsel.

II. As regards the admissibility in evidence of a letter headed "without prejudice":

(a) It is unheard of for any administrative body, which had already been greatly in arrears in giving a reply to a letter addressed to it on behalf of a person—as it ought to have done in view of Article 29 of the Constitution—to head its reply "without prejudice" and to object later, when such reply is to be produced during the hearing of an administrative recourse, that it is not admissible on the ground that it was written without prejudice. There is nothing in the said letter of the 26th February, 1963,

to show that it was written without prejudice, by way of a compromise offer. On the contrary, it appears from that letter that the School Committee were stating their strict position as they themselves saw it to exist, in the light of all relevant factors.

(b) The fact that efforts might had been going on, independently of this correspondence, with a view to arranging Applicant's claim is not a proper ground for treating this letter as inadmissible.

(c) This letter of the 26th February, 1963, was filed together with the Application in this Case—both the original Application and the one filed later on the 4th October, 1963—and in the Opposition filed by counsel for Respondent 1 no objection is taken that this letter is not admissible.

III. As regards competence:

(a) As the Gratuities Scheme in question was established for the purpose of necessary compliance with legislative provision, regulation 17 *(f)* (previously 14 *(f)*) of the Secondary Education Regulations (Subsidiary Legislation vol. 1 p. 504), and as the decision complained of in this Case appears to have been taken in the course of implementing such Scheme as a matter of public administration, a recourse does lie in this case under Article 146.

(b) Furthermore, this is not a Case where the exact financial liability is not disputed and there has only been a refusal or omission to meet such liability, so that it could be properly argued that the competent Court to entertain the claim is an ordinary civil Court and not this Court.

III. On whether Applicant is entitled to the years of her service, after she had attained the age of 55, for gratuity purposes:

(a) Applicant's gratuity - carrying years of service were rightly regarded by Respondent 1, as being limited to 22 years only i.e. 31 years of service minus the 9 years of her service which she served after attaining the age of 55.

Order in terms.

Cases referred to:

Dafnides and The Republic, 1964 C.L.R. 180;

Kyriakides and The Republic, 1 R.S.C.C. p. 66 at p. 76.

Decisions of the Greek Council of State 412/1931 and 588/1931.

Interim Decision.

Interim decision whereby the Court determined some of the issues in a recourse, against the omission of the respondent to liquidate the Gratuities Scheme established by virtue of the Secondary Education Regulations 1948 in respect of the Larnaca Commercial Lyceum and to pay over to applicant the sum of £875 as gratuity due to her and against the decision to pay applicant the sum of £17.500 mils gratuity instead of £875, and directed that the hearing be re-opened in relation to the remaining issues.

L.N. Clerides for the applicant.

S. Demetriou for respondent No. 1.

G. Tornaritis for respondent No. 2.

Cur. adv. vult.

The following direction was given by:

TRIANTAFYLLIDES, J.: As, during the time when judgment was still reserved in this Case the enactment of Law 12/65 has intervened, it is proper, in view of sections 14 and 15 of such Law in particular, to amend the title of the proceedings by adding a third Respondent as follows "and/or 3. The Republic, through the Attorney-General as successor to the Greek Communal Chamber". Such amendment does not relate at all to the substantive issues of this Case but it is necessary in the interests of justice in order to bring the title of this Case in conformity with the realities of the situation as it has shaped itself in the meantime. I am satisfied that none of the parties to this Case can be said to be prejudiced by this amendment or by its being ordered at this stage of the proceedings. It is ordered, therefore, that the title of these proceedings should, now on, read as follows:—

"Between:

Phrosso Soundia, of Larnaca,

Applicant,

and

1. The Town School Committee of Larnaca,

2. The Greek Communal Chamber,

and/or 3. The Republic, through the Attorney-General, as successor to the Greek Communal Chamber,

Respondents".

The facts of the case sufficiently appear in the Interim Decision delivered by:-

TRIANTAFYLLIDES, J.: I have to state at the outset that having gone into the issues arising in this Case on the basis of the material before me I have found it impossible to reach final conclusions on a number of such issues because I felt, as an administrative Court (vide *Dafnides and the Republic*, 1964 C.L.R. 180) that such issues had to be inquired into further. I have, therefore, decided to give this Interim Decision determining some of the issues of this Case and to direct that the hearing be re-opened in relation to the remaining issues.

In this recourse Applicant has, in effect, two claims:-

One against the alleged omission to liquidate the Gratuities Scheme of the Larnaca Commercial Lyceum and another in respect of the proper basis for the computation of the gratuity due to her under such scheme.

Counsel for Applicant has stated during the hearing of the Case that he does not insist on the first aforesaid claim and we need not be concerned any further in relation thereto. It is deemed to have been abandoned and struck out accordingly.

Applicant has served the said school for 31 years, from the school-year 1930-1931 up to and including the school-year 1960-1961. She served for nine school-years after attaining the age of 55, in June, 1952.

In 1952 Applicant was paid in respect of her gratuity £525.- It is common ground that this amount falls, on any view, short of the gratuity due to her; even if such gratuity were to be calculated on the basis adopted by Respondent 1, she would still have to receive £17.

After her services came to an end in 1961, the Applicant, in 1962, started making claims for the balance of the gratuity allegedly due to her. Such balance according to her was far

more than the said £17. In effect, as she has also told the Court in evidence, she claims gratuity in respect of her service during the years between 1952 and 1961 i.e. her service after reaching her 55th year, and she also disputes that the particular monthly salary, which was adopted as the basis for computing her gratuity, was the proper basis for the purpose. It has been Applicant's contention that her full monthly emoluments in the school-year 1960-1961 should have been used as such basis, and not her basic salary in 1952.

Counsel for Respondent 1 has objected that this recourse is out of time under Article 146(3).

This recourse was filed on the 9th April, 1963. According to the contention of Respondent 1 Applicant was informed orally by the Secretary of Respondent 1, Mr. Photiou, that she was only entitled to £17.- only by way of balance of her gratuity, at the latest in December, 1962, i.e. more than 75 days before the filing of her recourse. The said Mr. Photiou has given evidence to that effect. Applicant, in giving evidence, has not accepted that she had been so informed.

Assuming that I were to rely entirely and exclusively on the evidence of Mr. Photiou I do not see, even then, how the objection of Respondent No. 1 could succeed.

It is well settled that time under Article 146(3) begins to run only from the publication of, or knowledge by a person of, the *final* decision in a particular matter; here, in my opinion, such final decision is only to be found in a letter by Respondent 1, which was addressed to counsel for Applicant on the 26th February, 1963 and which is exhibit 5. Such letter was the final and formal reply given in answer to a claim already made by counsel, on behalf of Applicant, as far as back as 12th November, 1962, and who, having received no reply until the 26th February, 1962, had had to send two reminders, on the 21st January, 1963 and the 12th February, 1963, respectively.

It is significant that in the said letter, exhibit 5, nothing is stated to the effect that Applicant had *already* been informed in December, 1962, of the final decision of Respondent 1; and yet such letter is signed by the Secretary of Respondent 1, the same Mr. Photiou.

Moreover, under Article 29 of the Constitution Applicant was, indeed, entitled to a written reply in the matter (vide

Kyriakides and The Republic, 1 R.S.C.C. p.66 at p.76). So no oral communication should properly be deemed as a sufficient final communication of Respondent's 1 decision.

Mr. Photiou has himself stated in his evidence: "It is correct that when I informed Applicant of our decision in December, 1962, we had already received a letter from her counsel in November. The reason we did not reply to counsel for Applicant at once was that the Committee wanted to consult our legal adviser as well as the Greek Communal Chamber and to examine whether its position could be prejudiced by replying directly to counsel. We could have communicated to counsel for Applicant personally our decision in December, 1962, but we were not ready yet to write to him about it, before finding out whether our interests might be prejudiced".

In all the circumstances, I am satisfied that whatever may have been told by Mr. Photiou to Applicant in December, 1962, was communicated to her informally and not by way of a formal final decision of Respondent 1 in the matter.

The objection, therefore, that the recourse is out of time fails, as such recourse was filed less than seventy-five days after the 26th February, 1963, when exhibit 5 was written to her counsel by Respondent 1.

As it appears from the evidence of Mr. Photiou—already referred to—Respondent 1 were at first hesitant to commit themselves in writing by replying formally and directly to Applicant's counsel. Such attitude found expression also in the fact that eventually exhibit 5 was headed as being "without prejudice to any rights". A mere perusal of exhibit 5 will show that it was not written by way of a compromise offer, made without prejudice; it was only purposely so headed in order to enable Respondent 1 to object eventually against its production in any proceedings that were to be instituted in relation thereto; and such an objection was taken before me at the hearing. At the time I disposed of it as follows:—

"It is unheard of for any administrative body, which had already been greatly in arrears in giving a reply to a letter addressed to it on behalf of a person—as it ought to have done in view of Article 29 of the Constitution—to head its reply 'without prejudice' and to object later, when such reply

is to be produced during the hearing of an administrative recourse, that it is not admissible on the ground that it was written without prejudice. There is nothing in the said letter of the 26th February, 1963, to show that it was written without prejudice, by way of a compromise offer. On the contrary, it appears from that letter that the School Committee were stating their strict position as they themselves saw it to exist, in the light of all relevant factors.

"The fact that efforts might had been going on, independently of this correspondence, with a view to arranging Applicant's claim is not a proper ground for treating this letter as inadmissible.

"This letter of the 26th February, 1963, was filed together with the Application in this Case—both the original Application and the one filed later on the 4th October, 1963—and in the Opposition filed by counsel for Respondent 1 no objection is taken that this letter is not admissible".

I still stand by that Ruling and it has now been made part of this Decision too. I would add that I regard the attempt to evade being bound by this exhibit 5 (which appears to have been carefully prepared by irrelevantly heading it "without prejudice") as an attitude to be avoided in matters of public law. I have to stress this both for the guidance of Respondent 1 and of all administrative authorities in similar situations.

The next matter, to be dwelt upon briefly, is the question of the competence of the Court to entertain this recourse.

This has not been actually disputed at the hearing by either Respondent but, as in the Opposition of Respondent 2 it is alleged that the matter complained of refers to private rights and cannot be a matter of recourse under Article 146, I have thought fit to express a view on the point.

I am of the opinion that as the Gratuities Scheme in question was established for the purpose of necessary compliance with legislative provision, regulation 17(*f*) (previously 14(*f*)) of the Secondary Education Regulations (Subsidiary Legislation vol. 1 p. 504), and as the decision complained of in the Case appears to have been taken in the course of implementing such Scheme as a matter of public administration, a recourse does lie in this Case under Article 146.

Furthermore, this is not a Case where the exact financial liability, as alleged, is not disputed and there has only been a refusal or omission to meet such liability, so that it could be properly argued that the competent Court to entertain the claim is an ordinary civil Court and not this Court (vide for guidance in this respect Decisions of the Greek Council of State 412/1931 and 588/1931).

This is a Case where the financial liability alleged is not admitted; therefore, what is challenged is not an administrative refusal to pay out a specific amount due, but an administrative decision laying down in an executory manner the rights of Applicant in this particular matter. The mere fact that such decision, as administrative decisions often do, has financial consequences for Applicant, is not sufficient to prevent it from being subject to the competence of this Court under Article 146.

It appears useful to deal next, in part, with the legal aspects of this Case and particularly with the question whether Applicant is entitled to the years of her service, after she had attained the age of 55, being taken into account as years of service carrying gratuity.

In this respect regulation 5 of the Gratuities Scheme in question, which has been put in evidence by consent as exhibit 11, is so explicit that I cannot see how Applicant's relevant contention could ever succeed. Such regulation, in its relevant part, provides that "....no female teacher who attains the age of 55.....shall receive any gratuity in respect of service after the year in which.....she attains the age of ....55...."

It is hereby held, therefore, that Applicant's gratuity—carrying years of service were rightly regarded by Respondent 1, in exhibit 5, as being limited to 22 years only i.e. 31 years of service minus the 9 years of her service which she served after attaining the age of 55.

Concerning the other legal issues of the Case which arise in connection with the effect of regulation 5, when read together with regulation 4 of the relevant Scheme, I have decided not to resolve them at this stage and reserve them until after some factual aspects closely related thereto have been cleared up—as I do hope that they will be, after the resumed hearing of this Case as hereinafter directed. To

proceed to resolve such legal issues at this stage would be rather premature and possibly only of academic interest eventually, because, in my opinion, the proper application of the Gratuities Scheme to Applicant's case depends a great deal on, *inter alia*, her exact status while serving after she had reached her 55th year of age.

I shall now proceed to give more fully my reasons for directing a re-opening of the hearing of this Case:-

Having addressed my mind to the substantive issues in this Case and particularly the issue whether the Scheme concerned has properly been implemented in relation to Applicant and what, if any, are the respective responsibilities and involvement of Respondents 1 and 2 in the matter, I have reached the conclusion that the proper material has not yet been placed before the Court in order to enable it to reach definite conclusions.

I regret to have to say that the parties, and in particular Respondent 1, have not discharged fully their duty of assisting the Court by placing before it all available material.

In this respect it appears that considerable responsibility lies with the Secretary of Respondent 1 Mr. Demetrakis Photiou who gave evidence and who must have been, due to his office, a person primarily responsible for giving instructions in the matter to counsel for Respondent 1.

I have formed the impression that he has not gone sufficiently thoroughly into this matter, with a view to instructing counsel and giving his evidence before the Court. Without in any way making at this stage any adverse finding concerning his credibility, it is clear that he has given his evidence without the benefit of a full examination of the relevant records available and actually in his possession. To mention only one example, he has had in his possession a minutes-book or "journal" of the old School Committee which was in office in 1952 and which has come to be in his possession in his capacity as the Secretary of the new School Committee. He has stated in evidence that he had not traced any entry—relevant to this Case, of course—in the minutes in 1952 and the first relevant entry is one of the 16th June, 1955, which, as a matter of fact, was put in evidence by consent as exhibit 13. Yet a mere perusal of such journal would show that relevant entries concerning Applicant, and particularly the

much disputed issue of her actual emoluments, are to be found in the said journal as far back as the 13th October, 1952 and the 21st June, 1954. Also he has had in his possession a file relating to the salaries and gratuities of the teaching staff of the school in question. He has produced two documents out of this file as being relevant, and they are exhibits 14 and 15. A mere perusal of such file. which he has left with the Court. shows that it contains other documents most relevant to the issues under examination and yet they were never made available or referred to in evidence. I am not suggesting at all that this witness has purposely withheld any information from the Court but it appears that he has given evidence without he himself having first marshalled and studied all available material.

When counsel for the parties peruse the journal and file in question it will become plainly obvious that there are many relevant entries or documents which could assist in elucidating most of the disputed aspects of this Case and that there are persons who have to be called as witnesses for the purpose.

This Court in considering its reserved judgment could not take upon itself the task of admitting at that stage in evidence entries or documents to be found in the said journal and file; this is a matter which has to be done during the course of a hearing so that parties may comment on them and take any course in respect to them as they may deem fit.

This is not a Case where the Court is faced with the task of making findings on scanty material, none other being available; it is clear that plenty of relevant material though available has not yet been placed before the Court.

It is, thus, directed that the hearing of this Case be resumed, that Mr. Photiou be recalled to give further and fuller evidence in the matter and he is requested to go thoroughly through the said journal and file and any other material which may be in his possession for the purpose of giving as much assistance to this Court as possible. Also after he has been recalled and his evidence has been taken counsel for all parties are expected to adduce such evidence as they have been, with due diligence, able to secure for the purpose of resolving the disputed issues in this Case and particularly the question of the nature of the employment of Applicant after she had attained the age of 55, the circumstances in

which she received the amount of £525 in respect of her gratuity when she had attained such age and the emoluments of Applicant during the period from 1952 onwards.

Likewise I expect all relevant evidence to be adduced concerning the question of whether and under what terms Respondent 2 has accepted responsibility for the school in question, under the legislation in force at the material time.

Order in terms.