

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

GEORGHIOS VAFADES,

Applicant,

and

1. THE GREEK COMMUNAL CHAMBER, AND/OR
2. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondents.

(Case No. 179/63).

1964
Nov. 7,
Dec. 12,
1965
Jan. 21,
Mar. 12, 26, 27, 30,
April 14,
June 1, 12, 15, 26,
Oct. 5, 6, 12,
Nov. 8, 10,
1966
Feb. 26
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VAFADES
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Elementary Education—Schoolteacher—Age of retirement—Recourse against his retirement from service and his non-employment as schoolteacher until his sixtieth year of age—Setting aside of retirement by subsequent events viz. by a decision of the appropriate authority extending his service for another year—Present recourse must, therefore, be regarded as abated due to disappearance of its subject matter—Validity of applicant's later retirement a matter entirely outside the ambit of this recourse.

Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Abatement due to disappearance of its subject matter.

Cases referred to:

Malliotis and The Municipality of Nicosia (1965) 3 C.L.R. 75;

Eleftherios Soteriou and The Greek Communal Chamber etc. reported in this Part, p. 83 *ante*; and the ruling in the same case reported in (1965) 3 C.L.R. 334.

Recourse.

Recourse against the decision of the Respondents concerning the date of Applicant's retirement as a teacher.

Fr. Markides with A. Triantafyllides, for the Applicant.

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The facts sufficiently appear in the judgment of the learned Justice:

TRIANAFYLLIDES, J.: This Case has been heard together with Case 161/63, and the ruling delivered in that Case, on the 12th June, 1965*, has been made applicable to this Case too; it has, therefore, to be read together with this judgment. Also the judgment delivered in Case 161/63 should be read together with this judgment to the extent necessary because of references in this judgment to Case 161/63, and the judgment delivered therein.**

The claim of Applicant in this Case is the same as that of Applicant in Case 161/63 and the salient facts of the two Cases are quite similar, up to a point:—

Applicant having been requested on the 15th June, 1962, to signify his intentions, regarding service after the fifty-fifth year of his age, which he would complete on the 14th February, 1963, elected, on the 25th June, 1962, to serve also for the school-year 1963-1964. His election to serve after the fifty-fifth year of his age took place in the same legal and factual context as that of Applicant in Case 161/63.

Then, in July, 1963, Applicant received a letter—the same as the one received by Applicant in Case 161/63—notifying him of his retirement as from the 1st September, 1963, i.e. at the very commencement of the school-year 1963-1964.

Applicant protested against his retirement, in the same terms as Applicant in Case 161/63, and he received a reply, dated 22nd July, 1963, from the Director of the Greek Education Office, again in the same terms as that given, in answer to his protest, to Applicant in Case 161/63.

Documents relating to the sequence of events set out above are to be found in the personal file of Applicant which is exhibit 42, (vide blues 115, 119, 121, 123 and 124).

Then developments took a course altogether different from that with regard to Applicant in Case 161/63:—

*Ruling published in (1965) 3 C.L.R. at p.334.

**Judgment published ante, at p. 83.

On the 19th August, 1963, Applicant wrote to the Director of the Greek Education Office pointing out that his service till then did not entitle him to full pension and referring to an announcement made by the President of the Greek Communal Chamber to the effect that the service, of those schoolteachers who had reached the fifty-fifth year of their age but had not yet completed service entitling them to full pension, would be extended.

Applicant filed this recourse on the 7th September, 1963. Subsequently to the filing of this recourse, Applicant was employed as a schoolteacher as from September, 1963 and by letter of the 4th January, 1964, he was informed that his service had been extended until the 31st August, 1964.

Thus, Applicant did not retire at all as from the 1st September, 1963, but he remained in service until the 31st August, 1964. He served until then not by way of temporary service but by way of an extension of his pensionable service.

On the 17th July, 1964, he was given notice informing him that he would be retired on the 31st August, 1964.

By letter of the 21st July, 1964, he requested an extension of service for another year, but on the 10th September, 1964, he was informed of a decision of the Administration Committee of the Greek Communal Chamber to the effect that schoolteachers who had reached retirement age should be duly retired and be pensioned off as from the 31st August, 1964.

As a result Applicant was finally retired as from the said date.

Documents relating to the events between the 19th August, 1963, and the 10th September, 1964, are to be found as blues 125, 126, 129, 130, 131 and 132 in *exhibit 42*.

Since Applicant has had his service extended beyond the originally fixed date of his retirement, viz. the 1st September, 1963, and he has been allowed to remain in service until the 31st August, 1964—the decision to retire him in 1963 having been, thus, set aside—it follows that in so far as this recourse is aimed at the decision to retire him on the 1st September, 1963, it must be regarded as having been abated due to disappearance of its subject-matter, in the meantime (*vide Malliotis and The Municipality of Nicosia*, (1965) 3 C.L.R. p. 75).

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So, though had the Applicant been retired on the 1st September, 1963, his retirement could, in the circumstances, have been annulled for the same reasons as set out in the judgment in Case 161/63, no such course is now open, in view of the subsequent events in the present Case which themselves put an end to such retirement.

By the said events Applicant found himself, in effect, in the same position as Applicant in Case 161/63 might have found himself, had, in July 1963, been decided, on a proper examination of his case, not to retire him but to extend his service for another school-year.

Nor can this recourse succeed as against any decision not to keep Applicant in service until the sixtieth year of his age or, alternatively, as against an omission so to do, because it has already been held (*vide* the ruling of the 12th June, 1965)* that Applicant was not entitled in law, as of right, to serve until the sixtieth year of his age and the age of his retirement remained the fifty-fifth year.

Once Applicant has failed in his contention, in this recourse, that he was entitled to serve until the age of sixty, the validity of Applicant's later retirement on the 31st August, 1964, is a matter which is entirely outside the ambit of this recourse, because such retirement is a new subsequent act or decision which supervened after the filing of this recourse and it has not been—and it could not have been—made the subject-matter hereof.

For all the above reasons this recourse fails and has to be dismissed; but, in the circumstances, I have decided to make no order as to costs.

Application dismissed.
No order as to costs.

*Published in (1965) 3 C.L.R. p. 334.