

[TRIANTAFYLIDIS, J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

COSTAS PAPALEONTIOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 43/65).

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Public officers—Pension and gratuity—Applicant's recourse against respondent's decision not to grant him an ex-gratia pension—Preliminary legal issues—Decision complained of is an executory one within the ambit of Article 146, and not a merely confirmatory act of an earlier decision—Granting a pension to a public officer, even on an ex-gratia basis, is a matter of public law—Which can be made the subject of a recourse under Article 146 of the Constitution.

Constitutional law—Public Officers—Pension and gratuity—Constitution of Cyprus, Articles 6 and 28—Claim to pension by public officer based on rights safeguarded under Articles 6 and 28 of the Constitution.

Pension and gratuity—Ex-gratia pension—Granting or refusing of to a public officer is a matter of public law.

Administrative Law—Final executory act—As distinct from a merely confirmatory decision of an earlier one—See above.

Executory Act—Final executory act—As distinct from a merely confirmatory one of an earlier decision—See above.

Confirmatory act—Executory act—See above.

Public Law—See above.

In this recourse against the decision of the respondent, Council of Ministers, whereby applicant was denied a pension, two preliminary issues were set down for hearing and determination at the commencement of the trial of the case, namely (1) whether the decision complained of is an executory one, or merely a confirmatory one of an earlier decision of respondent in the same matter (in respect of which this recourse would be out-of-time) and (2) whether

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in view of the fact that applicant has applied for payment to him of an *ex-gratia* pension, he has a right to come to this Court under Article 146 of the Constitution against the refusal by respondent of his application.

Held, (1) on the basis of the relevant material before the Court and bearing especially in mind the wording of the decision concerned of the Council of Ministers (*exhibit 2*), which reads as follows : " The Council considered a fresh application from Mr. C. Papaleontiou, ex-Foreman, Village Roads, requesting reconsideration of its previous Decision No. 2182 and the payment to him of an *ex-gratia* pension in respect of his services to the Government, and decided that the said Decision should not be altered ", I am of the view that, in effect, the Council of Ministers proceeded, on the occasion in question, to consider afresh the claim of applicant for a pension; having, *inter alia*, before it at the time a material administrative document, (*exhibit 7*), which was not placed before it by means of the earlier application of applicant ; therefore, the *sub judice* decision of the Council of Ministers is not merely confirmatory of its earlier one in the matter, but it is a second executory decision taken in such matter after new consideration thereof, and it can be made, as it has been made, the subject of a recourse under Article 146.

(2) Regarding the second issue, which I have to decide, I have considered it in the light, *inter alia*, of *Makrides and the Republic*, 2 R.S.C.C. p. 8, and bearing in mind also that the matter of granting a pension to a public officer, even on an *ex-gratia* basis, is a matter of public law, involving the payment of money out of public funds in accordance with certain well-established rules and principles, and that, in particular, in this Case, Applicant, appears to base his claim to a pension on one of his fundamental rights, safeguarded under Articles 6 and 28 of the Constitution, *viz.* the right of equality—claiming that he is entitled to receive equal treatment as an ex-colleague of his, a certain Mr. E. Papadopoulos, who has allegedly been granted a pension in circumstances similar to those of applicant's; I have, as a result, reached the conclusion that the decision of the Council of Ministers, in question, is a decision, coming within the ambit of Article 146 and that, therefore, it could be made the subject of this recourse.

(3) For these reasons I find that this Court has competence

to deal with the *sub judice* matter and that this recourse should now proceed to hearing on the merits.

Order in terms.

Cases referred to :

Ktenas (No. 1) and the Republic, reported in this Part at p. 64 ante;

Makrides and the Republic, 2 R.S.C.C. 8.

Recourse.

Recourse against the decision of the Respondent to the effect that applicant is not entitled to pension.

L. Clerides for Applicant.

L. Loucaides, counsel of The Republic, for the Respondent.

Cur. adv. vult.

The following Decision was delivered by:—

TRIANTAFYLIDES, J.: By this recourse the Applicant complains against the decision of the Respondent Council of Ministers, contained in a letter dated the 19th December, 1964, by virtue of which he was denied a pension.

He has also complained of an omission of Respondent in the matter, but counsel for Applicant has conceded right at the outset that no question of omission arises, in view of the fact that a decision has been taken by Respondent. I fully share his view and, in the circumstances, the said claim of Applicant fails and should stand dismissed accordingly.

At the commencement of the hearing of this Case, it became apparent that there were two issues which had to be decided as preliminary ones, because if either of them were to be decided against Applicant, then this recourse would be bound to fail, without the Court going into the substance of the matter.

Such issues are:—

First, whether the decision complained of is an executory one, or merely a confirmatory one of an earlier decision

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of Respondent in the same matter (in respect of which this recourse would be out-of-time).

Secondly, whether, in view of the fact that Applicant has applied for payment to him of an *ex-gratia* pension, he has a right to come to this Court under Article 146 of the Constitution against the refusal by Respondent of his application.

It is correct that if the sub judge decision, contained in the letter of the 19th December, 1964 (*exhibit 1*)—which actually was taken, as Decision No. 4365, by the Respondent Council of Ministers on the 10th December, 1964 (*exhibit 2*)—is merely confirmatory of the previous decision in the matter, Decision No. 2182, which is dated the 6th September, 1962 (*exhibit 3*), and which was communicated at the time to Applicant, then in the light of the relevant principles of Administrative Law (as referred to in *Ktenas and The Republic*, not reported yet)* the said sub judge decision of the Council of Ministers is not executory and, therefore, no recourse would lie against it under Article 146.

On the basis of the relevant material before the Court and bearing especially in mind the wording of the decision concerned of the Council of Ministers (*exhibit 2*), which reads as follows: "The Council considered a fresh application from Mr. C. Papaleontiou, ex-Foreman, Village Roads, requesting reconsideration of its previous Decision No. 2182 and the payment to him of an *ex-gratia* pension in respect of his services to the Government, and decided that the said Decision should not be altered", I am of the view that, in effect, the Council of Ministers proceeded, on the occasion in question, to consider afresh the claim of Applicant for a pension; having, inter alia, before it at the time a material administrative document, *exhibit 7*, which was not placed before it by means of the earlier application of Applicant; therefore, the sub judge decision of the Council of Ministers is not merely confirmatory of its earlier one in the matter, but it is a second executory decision taken in such matter after new consideration thereof, and it can be made, as it has been made, the subject of a recourse under Article 146.

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*Now reported in this Part at p. 64 *ante*.

The Republic, 2 R.S.C.C. p.8, and bearing in mind also that the matter of granting a pension to a public officer, even on an *ex-gratia* basis, is a matter of public law, involving the payment of money out of public funds in accordance with certain well-established rules and principles, and that, in particular, in this Case, Applicant appears to base his claim to a pension on one of his fundamental rights, safeguarded under Articles 6 and 28 of the Constitution, viz. the right of equality—claiming that he is entitled to receive equal treatment as an ex-colleague of his, a certain Mr. E. Papadopoulos, who has allegedly been granted a pension in circumstances similar to those of Applicant's; I have, as a result, reached the conclusion that the decision of the Council of Ministers, in question, is a decision coming within the ambit of Article 146 and that, therefore, it could be made the subject of this recourse.

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