IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARGARITA IOANNOU KARNAOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(*Case No.* 146/65).

Elementary Education—Schoolteachers—Dismissal in 1950 *of a schoolteacher on the Permanent Staff Register by the then Colonial Government for political reasons—Reappointment of the said schoolteacher in 1960 after the establishment of the Republic—By a decision of the Council of Ministers taken in 1965 the aforesaid dismissal of the applicant schoolteacher in question was considered to have been illegal—And the years of service up to applicant's said dismissal were considered as pensionable service—But the period between such dismissal in 1950 and the applicant's said reappointment in 1960 was considered as leave without pay and, consequently, the said intervening period cannot be taken into account for the purposes of pension, or, indeed, for the purposes of payment of any salary or other monetary compensation—The said decision of the Council of Ministers was taken in all good faith, but under the misconception that there were no other possibilities available under the Elementary Education Law, Cap. 166—Such possibilities however exist in view* e.g. *of sections 33 (1) and 49 of the said Law, Cap.* 166*—Therefore, the Council of Ministers acted in the matter under a handicap of misconceptions and did not consider the matter fully from all its material aspects—As a result the* sub judice *decision has to be annulled as being the product of a defective exercise of its relevant discretionary powers and, thus, contrary to law* (i.e. *contrary to the basic principles of Administrative Law*) *and in abuse of powers, though the said decision was taken in all good faith—Cfr. the Reinstatement of Public Officers Law, 1961* (*Law No. 48/61*).

Administrative Law—Discretionary powers—Defective exercise

thereof—Failure to consider the matter from all its material aspects—Decision taken under the handicap of misconceptions—Therefore such decision, being the product of a defective exercise of discretionary powers has to be annulled, though taken in all good faith, as being contrary to law, i.e. *contrary to the basic principles of Administrative Law, and as taken in abuse of powers—See, also, above under Elementary Education.*

Basic principles of Administrative Law—Decision taken contrary to such principles is a decision contrary to law—See, also, above.

Abuse of power—See above.

Discretionary powers vested in the administration—Defective exercise—Abuse of—Basic principles of Administrative Law—See above.

The applicant was a teacher on the Permanent Staff Register. On the 3rd July, 1950, she was dismissed from her post by the then Colonial Government on the ground of certain disciplinary offences relating to political activities. After the establishment in 1960 of the Republic, the applicant applied for reinstatement ; and as a matter of fact she was reappointed as a teacher on the Permanent Staff Register as from the 7th June, 1960. After her reappointment, the applicant claimed full restitution for the wrong done to her, through her said dismissal for political reasons, and she applied for the purpose without result to various authorities. Eventually she placed the matter before the Council of Ministers asking that her years of service before her dismissal, as well as the years intervening between her dismissal in 1950 and her reappointment in 1960, be considered as pensionable and that she should be given monetary compensation for the injustice done to her through her dismissal.

On the 1st June, 1965, she was informed that the Council of Ministers had decided that her years of service up to her said dismissal be considered as pensionable service, because it had been decided to regard as illegal her dismissal in 1950 by the then Colonial Government, but that the period between such dismissal and her reappointment in 1960 should be considered as leave without pay.

It is against this decision that applicant has made the present recourse under Article 146 of the Constitution—because the period of such leave cannot be taken into account for the purposes of pension, and, also, once it is leave without pay no question of payment to her in respect thereto of any salary or other compensation could arise.

It is perfectly clear that applicant has been regarded as a victim of unjust action by the previous colonial regime and that there exists every goodwill to remedy as far as possible the injustice done to her. It has been, also, rightly accepted that applicant has suffered for national reasons.

It appears from all the material before the Court, that the Council has been presented with the case of applicant, and has accordingly approached it, as being a case in which there existed no possibility whatsoever under the Elementary Education Law, Cap. 166, of granting applicant pension in respect of the period when she stood dismissed, or of making to her any monetary payment in relation to such period.

The Court held that it was erroneous to take it as granted that there existed no such possibilities of effecting restitution to applicant under the provisions of the statute *viz.* Cap. 166 (*supra*). The aforesaid possibilities exist in view of sections 33 (1) and 49 of the said statute Cap. 166. The Court, of course, did not decide that such restitution can actually be effected under Cap. 166 (*supra*). The Court held, therefore, that the Council of Ministers acted in this case under the handicap of misconceptions, and that it did not consider fully the matter from all its material aspects. As a result the Court annulled the *sub judice* decision of the Council of Ministers as being the product of a defective exercise of its relevant discretionary powers and thus contrary to law (*i.e.* the relevant basic principles of Administrative Law) and in abuse of powers, though no doubt such decision was taken in all good faith.

The facts of the case sufficiently appear in the judgment of the Court

Cases referred to :

Pikis and The Republic (1965) 3 C.L.R. *131.*

Recourse.

Recourse against the decision of the Respondent to the effect that the period between the 3rd July, 1950, and 7th June, 1960, be considered as leave without pay, in so far as Applicant's service as a teacher is concerned.

A. Indianos with *E. Efstathiou,* for the Applicant.

K. Talarides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: By this recourse the Applicant complains against a decision of the Council of Ministers to the effect that the period between the 3rd July, 1950 and 7th June, 1960 be considered as leave without pay, in so far as her service as a teacher is concerned.

The history of events in this Case is as follows:-

The Applicant was a teacher on the Permanent Staff Register. On the 9th June, 1950 she was charged by the then Colonial Government with certain disciplinary offences relating to political activities (see *exhibit* 1), and as a result on the 3rd July, 1950 she was informed that it was decided that she should be dismissed forthwith from her post as a teacher (see *exhibit* 4).

She left Cyprus for England, where she worked as a private teacher, and after the establishment of the Republic she applied for reinstatement; and as a matter of fact she was reappointed as a teacher on the Permanent Staff Register as from the 7th June, 1960.

After her reappointment Applicant claimed full restitution for the wrong done to her, through her dismissal for political reasons, and she applied for the purpose without result to various authorities, including the Greek Communal Chamber. Eventually she placed the matter before the Council of Ministers (see Appendix "A" of *exhibit* 5) asking that her years of service before her dismissal, as well as the years intervening between such dismissal and her reappointment, be considered as pensionable, and that she should be given monetary compensation for the injustice done to her through her dismissal.

On the 1st June, 1965, she was informed (see *exhibit* 3) that the Council of Ministers had decided that her years of service up to her dismissal should be considered as pensionable service, because it had been decided to regard as illegal her dismissal, but that the period between such dismissal and her reappointment should be considered as leave without pay. It is against the decision to treat the said period as being leave without pay that Applicant has made this recourse —because such leave cannot be taken into account for the purposes of pension, and, also, once it is leave without pay no question of payment to her, in respect thereto, of any salary or other compensation could arise.

The relevant submission made by the Ministry of Finance to the Council of Ministers with regard to the case of Applicant is dated the 8th April, 1965 (see *exhibit* 5); and the decision of the Council as eventually taken has adopted substantially such submission (see *exhibit* 6).

Both from the said submission, and also from the Opposition filed by Respondent in this recourse, it is perfectly clear that Applicant has been regarded as a victim of unjust action of the previous colonial Government of Cyprus, and that there exists every goodwill to remedy as far as possible the injustice done to her thereby. It has been, also, rightly accepted, both in the said submission and in the Opposition, that Applicant has suffered for national reasons.

It appears, from all the material before the Court, that the Council has been presented with the case of Applicant, and has accordingly approached it, as being a case in which there existed no possibility whatsoever, under the Elementary Education Law, Cap. 166, of granting Applicant pension in respect of the period when she stood dismissed, or of making to her any monetary payment in relation to such period.

Furthermore, as it appears from the relevant submission to the Council of Ministers, the Council was referred to, for guidance by analogy, to two cases of teachers who had been dismissed in 1931, by the then colonial Government, for political reasons, and who were reappointed in 1934 by the same Government, which decided, at the time, to treat their service up to their dismissal as pensionable, and the period between their dismissal and their reappointment as leave without pay.

In my opinion the Council of Ministers, though no doubt motivated by the best intentions towards Applicant, has dealt with her case on an erroneous basis, as follows:-

First, it was erroneous to take it as granted that there existed no possibility of effecting restitution to her under the provisions of Cap. 166: I am not deciding, now, in this Judgment, that such restitution *can* be effected under Cap. 166; but I am satisfied that there appear properly to exist possibilities in that direction which had to be duly considered; such possibilities were, in the circumstances, never within the contemplation of the Council of Ministers, though they do constitute, in my opinion, quite material considerations to which the Council ought to have been given an opportunity to pay due regard.

The aforesaid possibilities arise, in my view, from the fact that Applicant's dismissal in 1950 was regarded as *illegal* by the Council of Ministers. In my opinion such a course was reasonably and properly open to the Council in the light of all relevant circumstances of the matter: irrespective of the question of whether or not the Council can exercise directly any competence in relation to the period prior to the coming into existence of the Republic in 1960, there was, indeed, nothing to prevent the Council from considering, for the purpose of exercising its competence at the time when it dealt with the case of Applicant, the essential legality or illegality of relevant acts or decisions which took place before 1960.

Once the dismissal of Applicant had been regarded as illegal, it fell to be considered whether the provisions of section 33(1) of Cap. 166 come into play, and Applicant might be regarded as having been unemployed during the relevant period *not* "owing to suspension or dismissal or to refusal to accept a proposed post, or to absence on study leave or abolition" of her post, with the result that Applicant might be entitled to receive her relevant salaries.

Even if it were to be found that section 33(1) could not be applied in favour of Applicant, there would still remain to be considered whether or not the period, during which Applicant was under dismissal, might not be regarded, under section 49 of Cap. 166, as being leave without pay granted in the interests of elementary education, so as to render

such period a pension-earning one. That the reasons for which Applicant was dismissed were actions on her part which were to the best interests of Greek elementary education is a fact beyond dispute, but it would have to be examined, next, whether the period during which Applicant was under dismissal can be treated, now, retrospectively, as leave without pay in the interests of elementary education; in this connection it must not be lost sight of that the decision of the Council of Ministers complained of in this recourse viz. to regard Applicant as having been on leave without pay during the aforesaid period, is itself a retrospective one.

Secondly, apart from non-examining the above described possibilities, under Cap. 166, it was, in my opinion, erroneous, also, to compare Applicant's case with those of the two other teachers who were dismissed in 1931 and reappointed in 1934 — as mentioned earlier in this Judgment.

Applicant's case has been approached by the Council of Ministers on the footing that her dismissal was an *illegal* one, whereas the cases of the said teachers were dealt with by the then colonial Government on the footing that their dismissals were proper and *legal*, and in the circumstances it clearly could not have done much more in order to redress the position in their favour, other than what it did. So, no proper comparison could be made between the case of the Applicant and the cases of the said two teachers and, thus, the Council of Ministers in being invited to act, inter alia, on the basis of such a comparison, was led to decide the case of Applicant under a misconception, on the basis of a false analogy; if any proper analogy is to be sought in the present instance that is to be found, in my opinion, in relation to the cases of dismissed public officers provided for under the Reinstatement of Public Officers Law 1961 (Law 48/61); as a matter of fact, the said Law was mentioned in the relevant submission to the Council of Ministers, it being pointed out —quite rightly—that it does not apply, *ratione temporis*, to the case of Applicant; but instead of the Council being asked to be guided by it by way of proper analogy in exercising its relevant discretion, reference was made to the two aforesaid cases of teachers, who were dismissed in 1931 and reappointed in a context totally different from that in which the case of Applicant was viewed by the Council of Ministers—their dismissals being regarded for the purpose as legal, by the then colonial Government, whereas Applicant's dismissal was regarded as illegal by the Government of our Republic, and

also as a sacrifice for national reasons.

For all the above reasons, I am of the opinion that the Council of Ministers in dealing with the case of Applicant acted under the handicap of misconceptions, and did not consider the matter fully from all its material aspects. As a result its sub judice decision has to be annulled as being the product of a defective exercise of its relevant discretionary powers and thus contrary to law (i.e. the relevant basic principles of Administrative Law) and in abuse of powers—though no doubt it was taken in all good faith.

In my opinion the sub judice decision of the Council of Ministers has to be annulled as a whole, because I agree with the submission in this respect of counsel for Respondent, that the said decision is to be treated as an integrate whole, and it is not severable; therefore, the whole decision of the Council of Ministers, as communicated to Applicant, on the 1st June, 1965, by means of the letter, *exhibit* 3, is declared to be null and void, and it is now up to the Council of Ministers to reconsider the matter again in the light of this Judgment and in the light of, no doubt, the expert legal, and other, advice which it will receive.

I am not deciding in this Judgment how the case of Applicant *has* to be dealt with by the Council of Ministers—whether under sections 33 or 49 of Cap. 166, or otherwise. All that I have decided is that there do exist possibilities which constitute material considerations to be gone into, before a decision can validly be reached in the case of Applicant; moreover, such decision should be reached through the relevant discretion being exercised in a manner free from misconceptions such as false analogies.

In this Case this Court could not, and would not, carry the matter before it any further. As stated in *Pikis and The Republic* (1965) 3 C.L.R. 131 at p. 149 "... . After all it must not be lost sight of that it is for the Government to govern and for the Court only to control, to the extent necessary, and it is not up to the Court to determine in the first instance matters of administration before Government has itself dealt with such matters on the merits. "

Regarding costs, as Applicant has not drawn, herself, the attention of the Council of Ministers to the possibility of redress under section 33(1), or any other provision of Cap. 166, I have decided to make no order as to costs.

Decision complained of annulled.
No order as to costs.